

# TENDER DOCUMENTATION

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

## PUBLIC CONTRACT

### CESNET - Delivery of a complex QKD system

Over-the-threshold public contract for supply  
Open procedure

**Contracting Authority:**

**CESNET, interest association of legal entities**

Zikova 1903/4

160 00 Prague 6, Czech Republic

ID No: 63839172

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

Reference number: 1032/2022

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## 1. Identification of the Contracting Authority, other basic information

### 1.1. Basic information about the Contracting Authority

Name:	CESNET, interest association of legal entities
Registered office:	Zikova 1903/4, 160 00 Prague 6, Czech Republic
ID No:	63839172
Registration:	Register of Associations kept by the Municipal Court in Prague, file No L 58848
Acting for the Contracting Authority	<p>The statutory body of the Contracting Authority is the Board of Directors. The person authorised to take legal actions related to this public contract is</p> <ul style="list-style-type: none"> <li>- the director of the association (by proxy of the board of directors), or</li> <li>- a person authorised by the director of the association.</li> </ul>
Address of the Contracting Authority's profile	<a href="https://zakazky.cesnet.cz/">https://zakazky.cesnet.cz/</a>
Address of the public contract on the Contracting Authority's profile	<a href="https://zakazky.cesnet.cz/contract_display_306.html">https://zakazky.cesnet.cz/contract_display_306.html</a>
Data box ID	gn35eaq

### 1.2. Contact persons of the Contracting Authority in matters relating to the procurement procedure:

Name	e-mail
Mgr. Vojtěch Široký	<a href="mailto:zakazky@cesnet.cz">zakazky@cesnet.cz</a>
Mgr. Martin Čuřík	

### 1.3. Specification of the Tender Documentation and its provision

1.3.1. Tender Documentation means tender documentation in the narrower sense, i.e. all written documents containing tender conditions, communicated or made available to tenderers during the deadline for submission of tenders, including explanations, amendments or supplements to Tender Documentation pursuant to § 98 and § 99 of the Act.

1.3.2. In accordance with § 96 (1) and (2) of the Act, the Tender Documentation is published on the Contracting Authority's profile at the address of the public contract referred to in article 1.1.

### 1.4. Contracting Authority's Profile, electronic tool E-ZAK, communication and delivery

1.4.1. All communications and actions relating to this procurement by the Contracting Authority or the evaluation committee (e.g. provision of explanations, amendments or supplements to the Tender Documentation, requests by the evaluation committee for clarification or completion of data, documents, samples or models, notices of exclusion, notices of selection of the supplier, etc.) will be carried out via the Contracting Authority's electronic procurement tool E-ZAK (<http://zakazky.cesnet.cz/>, hereinafter referred to as the "E-ZAK system"). The Contracting Authority requests that all communications and actions by the Tenderers (e.g. requests for explanation, amendments or completion of the Tender Documentation, clarification or additions to data, documents, samples or models, objections, etc.) are also carried out via the E-ZAK system. For these purposes, registration of suppliers (Tenderers) in the E-ZAK system is required. The Contracting Authority notes that for outgoing communications (including the submission of a tender), the E-ZAK system requires a qualified certificate for electronic signatures issued by one of the qualified trust service providers (see <http://www.mvcr.cz/clanek/seznam-kvalifikovanych-poskytovateluu-sluzeb-vytvarejicich-duveru-a-poskytovanych-kvalifikovanych-sluzeb-vytvarejicich-duveru.aspx>).

The E-ZAK system also accepts electronic signatures based on a qualified certificate issued by a foreign provider according to the list at <https://webgate.ec.europa.eu/tl-browser/#/>.

- 1.4.2. For the avoidance of doubt, the Contracting Authority also draws the attention of the Tenderers (suppliers) to the fact that, in accordance with general legal provisions, the date of delivery of legal acts is the date on which
- a message is delivered (sent) by the Contracting Authority to the Tenderer's registered account in the EAK system (i.e. the moment from which the Tenderer will be able to read the message in the EAK system);
  - the message is delivered by the Tenderer (supplier) to the Contracting Authority in the E-ZAK system (i.e. the moment from which the Contracting Authority will be able to read the message in the E-ZAK system).

In view of this, and for the purpose of substitutability, the Contracting Authority recommends that suppliers have multiple contact persons (e-mail boxes) established in their registered E-ZAK account.

- 1.4.3. Detailed instructions on how to use the E-ZAK system can be found at [https://zakazky.cesnet.cz/manual\\_2/ezak-manual-contractors-cdd-pdf](https://zakazky.cesnet.cz/manual_2/ezak-manual-contractors-cdd-pdf), where detailed instructions on how to use it and contacts for user support are also located.
- 1.4.4. To be able to submit a tender, the supplier must be registered as a supplier in the E-ZAK system (link "Register Supplier" on the website <https://zakazky.cesnet.cz/>) and the user of the supplier must have the appropriate authorisation (role) to submit the tender.
- 1.4.5. The E-ZAK system guarantees compliance with all conditions of security and confidentiality of uploaded data, including the absolute inaccessibility of tenders on the part of the Contracting Authority before the expiry of the deadline for their protocol access.
- 1.4.6. The PC system requirements for submission and electronic signature in the E-ZAK system are available at <https://zakazky.cesnet.cz/>.
- 1.4.7. The Tender Documentation is provided exclusively in electronic form with unlimited remote access via the E-ZAK system. The Contracting Authority shall not require any payment for the provision of the Tender Documentation.
- 1.5. In this Tender Documentation, the term "Tenderer" means a participant in the tender procedure within the meaning of Section 47 of the Act. For the purposes of the Tender Documentation, the terms Participant, Tenderer and Supplier have the same meaning, unless the context indicates otherwise.

## **2. Preliminary market consultations, persons involved in the preparation of the Tender Documentation**

- 2.1. The Contracting Authority did not carry out preliminary market consultations in the preparation of this procurement.
- 2.2. No persons outside the Contracting Authority have been involved in the preparation of the Tender Documentation.

## **3. Subject of the public contract**

### **3.1. Description of the subject of performance**

The subject of this tender is the delivery of a comprehensive QKD system, including a warranty, in accordance with the requirements set out in this Tender Documentation, in particular in its Annex 1 (Specification of the required performance, hereinafter referred to as "Annex 1") and in Annex 2 (Terms and Conditions of the Contracting Authority - Binding Model Purchase Contract, hereinafter referred to as "Annex 2").

### **3.2. Classification of the subject of performance**

CPV codes:

- 38410000-2 – Measuring instruments

- 38430000-8 – Sensing and analytical apparatus
- 35125100-7 – Sensors
- 30232600-0 – Encoders
- 32581130-9 – Data transmission devices for special applications

3.3. Technical requirements of the Contracting Authority for the subject of performance

Detailed technical requirements for the delivery and warranty are set out in Annex 1 to this Tender Documentation.

3.4. The information and data provided in this Tender Documentation, including its annexes, define the binding requirements of the Contracting Authority for the qualification of suppliers and for the performance of the public contract. The Participant is obliged to fully and unconditionally respect these requirements when preparing its bid. Failure to accept or modify the requirements of the Contracting Authority set out in this Tender Documentation, including the binding draft contract, may be considered as non-compliance with the tender conditions, resulting in the exclusion of the tenderer from further participation in the tender procedure.

3.5. Delivery, acceptance and other conditions of performance

Other, especially commercial, conditions of performance, including conditions of delivery and acceptance of performance, are set out in Annex 2 to this Tender Documentation.

**3.6. The Contracting Authority draws the Tenderers' attention to the fact that, in accordance with the Act, it is not possible, except in the cases referred to in Section 46(1) of the Act, to change the tenders after the deadline for submission of tenders, including during any clarification of tenders in the context of the assessment of the conditions of participation in the procurement procedure, the assessment of the exceptionally low tender price and the evaluation of tenders, etc. by the Contracting Authority or the evaluation committee. In view of this, the Contracting Authority recommends that, in the event of any uncertainties, suppliers make use of the possibility to submit a request for clarification of the Tender Documentation to the Contracting Authority (see Article 15 of this Tender Documentation).**

**At the same time, the Contracting Authority informs the suppliers that it is not entitled to negotiate with the tenderers on the submitted tenders.**

3.7. Socially Responsible Procurement - requirements and obligations of the Contracting Authority to comply with the principles of socially and environmentally responsible procurement and to promote innovation

3.7.1. The Contracting Authority is interested in awarding the public contract in accordance with the principles of socially responsible procurement, which, in addition to the emphasis on purely economic parameters, also take into account the related impacts of the contract, particularly in the social and environmental field. The aspects of socially responsible procurement are reflected in this Tender Documentation and its annexes, in particular in Annex 2 (binding draft contract).

3.7.2. In order to fulfil the aspects of socially responsible procurement, the Contracting Authority requires the selected supplier to ensure compliance with all relevant valid and effective, especially labour law regulations (legal employment, decent working conditions, fair remuneration, working hours, rest periods, paid overtime, etc. ), employment and occupational health and safety legislation and environmental legislation. The Contracting Authority shall require the selected contractor to ensure proper compliance with waste disposal obligations and the environmentally sound disposal of packaging from the goods supplied and of unwanted materials and goods (in particular through recycling and circular economy practices, where possible).

3.7.3. The Contracting Authority also requires that the selected supplier

- ensure the proper and timely fulfilment of financial obligations towards its subcontractors through whom it will provide the performance of the subject of the public contract, or part thereof;
- ensure a level of contractual terms and conditions for its subcontractors comparable to the terms of the binding draft contract attached as Annex 2 to this Tender Documentation, at least in terms of the amount of contractual penalties and the length of the warranty period.

3.7.4. The Contracting Authority further states that, given the nature and purpose of this procurement, the Contracting Authority has concluded that it is not possible to impose any specific conditions and requirements relating to the principles of socially responsible procurement, environmentally responsible procurement and innovation. For each of these areas, the Contracting Authority states:

a) In relation to the principles of socially responsible procurement::

In view of the subject matter of the performance and the target user group of the subject of the procurement, the Contracting Authority requires that the performance be provided by a professionally competent specialised supplier who has experience in similar deliveries and is familiar with this highly technical area. The Contracting Authority has consistently considered setting specific requirements related to the social area, however, due to the need for a highly technical solution and the importance of the outcome of the procurement procedure, the Contracting Authority has not found it possible to use requirements that would in any way accentuate social issues (Employment of people disadvantaged in the labour market, including people with a criminal record; Support for training, apprenticeship and retraining; Support for participation of social enterprises in public procurement; Support for participation of SMEs; Contribution to the local economy, community, etc.). On the other hand, the Contracting Authority does not restrict in any way the entities operating in the social areas mentioned above and which meet the tender conditions to participate in the tender procedure. The Contracting Authority also tries to facilitate the participation of small and medium-sized enterprises, or enterprises less experienced in public procurement, by providing draft forms and documents to be completed as annexes to the Tender Documentation, which simplifies the submission of tenders for these enterprises.

b) In relation to the principles of environmentally responsible procurement:

Similarly to ad a), the Contracting Authority has considered options to accentuate environmental issues (e.g. environmentally friendly solutions, circular procurement, etc.) and has not found any options to provide for specific environmental issues beyond the requirements set out above in this paragraph 3.7. or in the binding draft contract in Annex 2 of this Tender Documentation.

c) In relation to innovation:

In the view of the Contracting Authority, the technical specifications themselves ensure that the Contracting Authority receives an innovative (yet field-proven) solution at the highest technical level.

However, the Contracting Authority also adds that the promotion of innovation and training is one of its core activities and the procurement in question is part of this activity.

## **4. Time and place of performance of the public contract**

4.1. The time and place of performance of this public contract are specified in the binding draft contract, which forms Annex 2 to this Tender Documentation.

## 5. Inspection of the place of performance (§ 97 of the Act)

- 5.1. With regard to the nature of the required performance, the inspection of the place of performance is not relevant - the Contracting Authority does not organize it.

## 6. Conditions for qualification of Tenderers

In this procurement procedure, the Contracting Authority requires each Tenderer to prove:

- basic competence (§ 74 - § 76 of the Act and Article 6.1. below)
- professional competence (§ 77 of the Act and Article 6.2. below)

### 6.1. Requirements for proving basic competence

	The basic competence shall be fulfilled by the supplier (§ 74 of the Act):	Method of proving compliance with the conditions of basic competence in relation to the Czech Republic (§ 75 of the Act):
1	which has not been convicted of a criminal offence listed in Annex 3 to the Act or a similar criminal offence under the law of the country of the supplier's registered office within the last 5 years prior to the commencement of the procurement procedure; expunged convictions are disregarded;	<p><i>By submitting of an <b>extract from the Criminal record.</b></i></p> <p><i><u>Note:</u></i></p> <p><i>1) If the tenderer is a legal person, the tenderer shall provide a criminal record extract <b>in respect of the legal person itself and in respect of all the statutory bodies (e.g. a limited liability company) or all the members of the statutory body (e.g. a joint stock company).</b></i></p> <p><i>2) If the tenderer's statutory body or a member of the tenderer's statutory body is a legal person, the tenderer shall provide a criminal record extract both in relation to the legal person itself and <b>in relation to the person representing the legal person on the supplier's statutory body or to each member of the legal person's statutory body.</b></i></p> <p><i>(3) Where a branch of the plant is participating in the procurement procedure,</i></p> <p><i>(a) of a foreign legal person, the basic competence condition in question must be fulfilled by that legal person and by the head of the branch;</i></p> <p><i>(b) a Czech legal person, the persons referred to in point 2) and the head of the branch must fulfil the condition in question.</i></p>
2	which has no tax arrears due in the Czech Republic or in the country of its registered office;	<p><i>By submitting of:</i></p> <p><i>1) <b>confirmation from the competent tax office</b> and</i></p> <p><i>2) a <b>written affidavit in relation to excise duty.</b></i></p>
3	which has no arrears of insurance premiums or penalties for public health insurance payable in the Czech Republic or in the country of its registered office	<p><i>By submitting of a <b>written affidavit.</b></i></p>

4	who has no arrears of social security contributions or penalties payable in the Czech Republic or in the country of its registered office	<i>By submitting of a <b>confirmation from the competent district social security administration.</b></i>
5	<ul style="list-style-type: none"> <li>- which is not in liquidation (§ 187 of the Civil Code),</li> <li>- against which a bankruptcy decision has not been issued (Section 136 of Act No. 182/2006 Coll., on bankruptcy and methods of its resolution (Insolvency Act), as amended),</li> <li>- in respect of which receivership has not been ordered pursuant to another legal regulation (e.g. Act No. 21/1992 Coll., on Banks, as amended, Act No. 87/1995 Coll., on Savings and Credit Cooperatives and certain related measures and on supplementing Act of the Czech National Council No. 586/1992 Coll., on Income Taxes, as amended, Act No. 363/1999 Coll., on Insurance and on amendments to certain related acts) or in a similar situation under the law of the country of the supplier's registered office.</li> </ul>	<i>By submitting of an <b>extract from the Commercial Register</b>, or by submitting a <b>written affidavit</b> if not registered in the commercial register.</i>

\* *Note: Evidence of basic competence must show that the required competence criterion has been met no later than 3 months before the date of commencement of the procurement procedure - i.e. the relevant extract/certificate/affidavit must not be older than 3 months before the date of commencement of the procurement procedure.*

## 6.2. Requirements for proving professional competence

6.2.1. The Supplier shall prove compliance with professional competence in relation to the Czech Republic by submitting an extract from the Commercial Register or other similar register, if another legal regulation requires entry in such register; (note: the document referred to in this point must prove compliance with the required competence criterion no later than 3 months prior to the date of commencement of the procurement procedure - i.e. the relevant extract must not be older than 3 months prior to the commencement of the procurement procedure).

## 6.3. Possible ways of proving competence

6.3.1. For the purpose of proving competence, the Contracting Authority shall preferably require (and accept) documents recorded in the system that identifies documents to prove fulfilment of the qualification / competence (eCertis system).

6.3.2. A tenderer may prove its qualification / competence by:

- the documents referred to in paragraphs 6.1. to 6.3. above (plain copies of the documents are sufficient in the tender) and/or
- submission of an affidavit of qualification by the tenderer (the sample in Annex 3 to this Tender Documentation may be used) and/or
- submission of an extract from the list of qualified suppliers (see paragraph 6.5 below) and/or
- submission of a certificate from an approved system of certified suppliers (see paragraph 6.6 below) and/or
- a single European certificate for public procurement (see paragraph 6.7. below)
- by reference to the corresponding information held in a public administration information system or in a similar system held in another Member State which allows



unrestricted remote access (see paragraph 6.8.2 below for details; see also Article 45 of the Act)

#### 6.4. Extract from the list of qualified suppliers

6.4.1. The Supplier may prove part of the qualification by submitting an extract from the list of qualified suppliers (§ 226 et seq. of the Act). This extract replaces the document(s) proving:

- basic competence according to § 74 of the Act, or according to paragraph 6.1. of this Tender Documentation and
- professional competence according to § 77 of the Act, or according to paragraph 6.2. of this Tender Documentation to the extent, to which the data in the submitted statement proves compliance with the specified criteria of professional competence.

The extract from the list of qualified suppliers must prove that the required competence criterion was met no later than 3 months before the date of the start of the procurement procedure (i.e. the extract must not be older than 3 months before the start of the procurement procedure).

#### 6.5. System of certified suppliers

6.5.1. The Supplier may prove the relevant part of the qualification by submitting a certificate issued in an approved system of certified suppliers (§ 233 et seq. of the Act). The supplier shall be deemed to be qualified to the extent indicated on the certificate.

#### 6.6. Single European Procurement Certificate (§ 87 of the Act)

6.6.1. The Supplier may replace the required documents with a single European certificate for public procurement within the meaning of Section 87 of the Act. The Single European Public Procurement Certificate means a written affidavit of a tenderer on the proving of its qualification, including through another person, replacing documents issued by public authorities or third parties on the form made available in the e-Certis information system.

6.6.2. The samle of the Single European Certificate is set out in the implementing regulation of the Commission (EU) 2016/7 of 5 January 2016 establishing a standard form for the Single European Certificate for public procurement, available e.g. at: [http://eur-lex.europa.eu/legal-content/CS/TXT/?uri=uriserv%3AOJ.L\\_.2016.003.01.0016.01.CES](http://eur-lex.europa.eu/legal-content/CS/TXT/?uri=uriserv%3AOJ.L_.2016.003.01.0016.01.CES)

6.6.3. The Single European Procurement Certificate confirms compliance with the conditions of participation in this procurement procedure.

#### 6.7. Proving of subcontractor's qualification (§ 85 of the Act)

6.7.1. The Contracting Authority requires the tenderer to submit documents proving the basic competence according to § 74 of the Act (paragraph 6.1. of this Tender Documentation) and professional competence according to § 77 of the Act (paragraph 6.2.1. of this Tender Documentation) of its subcontractors to the same extent and in the same manner as the tenderer.

#### 6.8. Common provisions regarding qualification

6.8.1. It is sufficient to submit the documents required in this part of the Tender Documentation in a plain copy; however, the Contracting Authority is entitled to require the submission of the original or a certified copy of the document in accordance with Section 46(1) of the Act. Before concluding the contract, the Contracting Authority shall always request the selected supplier to submit original or certified copies of the qualification documents, unless they have already been submitted in the procurement procedure.

6.8.2. The obligation to submit a document may also be fulfilled by the Tenderer by reference to the corresponding information held in a public administration information system within the meaning of Act No. 365/2000 Coll., on public administration information systems, as amended, or in a similar system held in another Member State which allows unrestricted remote access. Such a link shall contain the Internet address and the details for logging in and retrieving the requested information, if such details are necessary. In the Czech

Republic, this includes in particular an extract from the Commercial Register, an extract from the public part of the Trade Register or an extract from the list of qualified suppliers.

- 6.8.3. In the event that there is a change in the qualification of a Tenderer or a subcontractor, it is necessary to proceed according to § 88 of the Act.
- 6.8.4. If the qualification was obtained abroad, it shall be proved by documents issued in accordance with the legal regulations of the country in which it was obtained, to the extent required by the Contracting Authority.
- 6.8.5. In the case of joint participation of suppliers, each supplier shall prove the basic competence and professional competence pursuant to paragraph 6.2.1 of this Tender Documentation separately.
- 6.8.6. In the case the documents will be in a language other than the required language of the tender (see Article 9.2.1. of this Tender Documentation), the Tenderer shall attach a translation of the documents into one of the required languages of the tender. If the Contracting Authority has doubts about the accuracy of the translation, it shall be entitled to request the submission of a certified translation of the document.

#### 6.9. Consequence of failure to prove qualification

- 6.9.1. If a Tenderer fails to prove that it meets the qualifications in full (required) extent, it may be excluded from participation in the tender procedure pursuant to Section 48 of the Act. If it is a selected supplier, then in accordance with Section 48(8) of the Act, it must be excluded from the tender procedure for these reasons.
- 6.9.2. The Contracting Authority may require the replacement of a subcontractor who fails to prove compliance with the competence criteria required by the Contracting Authority or for whom the Contracting Authority proves the reasons for its incompetence pursuant to Section 48(5) of the Act. In such a case, the Tenderer must replace the subcontractor no later than by the end of a reasonable period set by the Contracting Authority. If the Tenderer fails to do so, the Contracting Authority may exclude the Tenderer from the procurement procedure.

### **7. Terms and conditions and draft contract**

- 7.1. Závazné obchodní a platební podmínky zadavatele jsou stanoveny v příloze č. 3 této zadávací dokumentace.
- 7.2. Účastník podáním nabídky vyjadřuje souhlas se závazným vzorem smlouvy uvedeným v příloze č. 3 této zadávací dokumentace. Zadavatel žádá účastníky, aby do nabídky zahrnuli jimi v příslušných částech doplněný návrh smlouvy na plnění veřejné zakázky (zejm. identifikační údaje účastníka na titulní straně, kontaktní osoby v čl. 10.2. a podmínky poskytování záruky v příloze č. 3 návrhu Smlouvy). Přílohy smlouvy se budou skládat z technické a cenové části nabídky účastníka, zadávací dokumentace (hlavní dokument a příloha č. 1) a podmínek poskytování služeb v rámci záruky.
- 7.3. Účastník není oprávněn jakkoliv měnit či doplňovat smluvní / obchodní podmínky s výjimkou polí určených k doplnění ze strany účastníka; jakýkoliv nepovolený zásah může být posouzen jako nesplnění zadávacích podmínek s následkem vyloučení účastníka ze zadávacího řízení. Účastník nesmí žádným způsobem vyloučit či omezit práva zadavatele, uvedená v obchodních podmínkách nebo v ostatních částech zadávací dokumentace.
- 7.4. The binding business and payment terms and conditions of the Contracting Authority are set out in Annex 2 to this Tender Documentation.
- 7.5. By submitting a tender, the Tenderer agrees to the binding draft contract set out in Annex 2 to this Tender Documentation. The Tenderer is requested to include in the tender a draft contract for the performance of the public contract, completed by the Tenderer in the relevant parts (in particular the identification data of the tenderer on the cover page, the contact persons in Article 10.2 and the terms of the warranty in Annex 3 to the draft contract). The annexes to the contract will consist of the technical and price parts of the

Tenderer's tender, the Tender Documentation (main document and Annex 1) and the terms of providing the services under warranty.

- 7.6. The Tenderer shall not be entitled to modify or amend the terms and conditions in any way, except for the fields intended to be filled by the Tenderer; any unauthorised modification may be considered as non-compliance with the tender conditions, resulting in the Tenderer's exclusion from the tender procedure. The Tenderer shall not in any way exclude or restrict the rights of the Contracting Authority set out in the terms and conditions or in other parts of the Tender Documentation.

## **8. Method of tender price preparation**

### **8.1. Basic requirements of the Contracting Authority**

- 8.1.1. The tender price may be quoted in Euro (EUR), Czech Crowns (CZK), US Dollars (USD) or English Pounds (GBP).
- 8.1.2. If the tender will be submitted in a currency other than EUR, the exchange rate published by the European Central Bank (see [https://www.ecb.europa.eu/stats/policy\\_and\\_exchange\\_rates/euro\\_reference\\_exchange\\_rates/html/index.en.html](https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/index.en.html)) valid on the last working day preceding the deadline for the submission of tenders shall be used to convert the price into EUR.
- 8.1.3. **The maximum price** of this public contract (for both delivery and warranty) is set by the Contracting Authority to **EUR 400 000 excluding VAT**.
- 8.1.4. The tender price shall also be the total maximum amount for the performance of the public contract in the required scope (delivery of HW/SW including warranty), including all fees and all costs related to the performance of the public contract, excluding customs duties, which shall be arranged and paid by the Contracting Authority at its own expense, taking into account all the requirements of the Contracting Authority in accordance with this Tender Documentation, including annexes.

### **8.2. 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.

## **9. Conditions and requirements for the preparation of tenders**

### **9.1. Conditions for submission of tenders**

- 9.1.1. The tender must be signed in accordance with the general legal provisions.

- 9.1.2. Tenders may only be submitted in electronic form via the E-ZAK electronic tool.

The Contracting Authority draws the attention of suppliers to the possibility to test the settings of the browser and system from which the tender will be sent, including the test of sending an electronic tender - see [https://zakazky.cesnet.cz/test\\_index.html?lang=en](https://zakazky.cesnet.cz/test_index.html?lang=en) for detailed information.

The address for the submission of electronic tenders is given in paragraph 1.1 (address of the tender on the Contracting Authority's profile); tenders shall be submitted via the link in the section of this tender (after the supplier has logged into his user account).

- 9.1.3. A supplier may submit only one tender in a procurement procedure.

- 9.1.4. A supplier who has submitted a tender in the procurement procedure must not be the person through whom another supplier in the same procurement procedure proves qualification.

- 9.1.5. The Contracting Authority shall exclude a Tenderer who has submitted multiple tenders individually or jointly with other suppliers, or who has submitted a tender and is also the person through whom another tenderer in the same procurement procedure proves qualification.

## 9.2. Particulars of tenders

- 9.2.1. The tender shall be submitted in Czech, Slovak or English.
- 9.2.2. In addition, a multi-supplier tender in the case of joint participation of suppliers shall comply with the following requirements:
- a) The tender shall be signed in a manner that legally binds all such suppliers.
  - b) One of the suppliers shall be designated as the lead Tenderer responsible for the contract and this designation shall be confirmed by the submission of a letter of authority (or contract between suppliers, etc.) to represent all other suppliers.
  - c) In their tender, suppliers shall document the specific allocation of activities for the performance of the public contract.
- 9.2.3. The Contracting Authority requires that, in order to demonstrate its ability to provide the performance required by the Contracting Authority, the Tenderer shall clearly state in its tender how it meets the requirements (especially technical) of the Contracting Authority, as set out in Annex 1 to this Tender Documentation, e.g. by way of comments, revisions, different font or font colour for individual items listed in Annex 1 to this Tender Documentation. Submission of a tender that does not comply with any of the mandatory requirements set out in Annex 1 to the Tender Documentation shall constitute a breach of the tender conditions.
- 9.2.4. The Contracting Authority asks the Tenderers that their tenders (also) contains an electronic version that can be searched automatically (i.e. not just a scan). This applies in particular to the technical part of the tender; it does not apply to the documents by which the tenderer proves its qualification and the relevant affidavits.
- 9.2.5. The Contracting Authority recommends that the tender will be submitted in the following structure:
- a) the content of the offer, indicating the pages;
  - b) a completed tender Cover Sheet containing the identification data of the Tenderer; the Contracting Authority recommends that the tender Cover Sheet will be prepared in accordance with the sample set out in Annex 5 to this Tender Documentation);
  - c) information and documents to prove that the supplier's qualifications have been met;
  - d) the required technical information (see Annex 1 to this Tender Documentation and also paragraph 9.2.3. above);
  - e) the information necessary for the evaluation of the tender (see Section 9 of this Tender Documentation);
  - f) a completed draft contract (does not have to be signed);
  - g) details of the provision of services under the warranty (see Annex 3 to the binding draft contract) and of the length of the warranty period offered;
  - h) a list of subcontractors and details and evidence of their qualifications (see Article 6.7.1. of this Tender Documentation), if relevant, and information on which part of the contract each subcontractor will perform;
  - i) an affidavit stating that there is no conflict of interest (see Article 16. and Annex 4 of this Tender Documentation);
  - j) proof (a plain copy is sufficient) of the authorisation of a person to act for the Tenderer (e.g. power of attorney), if the legal action is taken on behalf of the Tenderer by a person other than the person authorised to act as the Tenderer's statutory body or proxy;
  - k) any other information necessary for the assessment and evaluation of the tender which the Tenderer considers appropriate to include in the tender.

## 10. Evaluation criteria and rules for evaluation of tenders (Section 114 et seq. of the Act)

### 10.1. Criteria, weights and evaluation method

10.1.1. The evaluation of tenders will be carried out in accordance with Section 114 et seq. of the Act according to the economic profitability of the tenders, based on the most favourable ratio of the total tender price and the quality of the offered subject of the public contract.

10.1.2. The Contracting Authority has established the following criteria for the evaluation of tenders in accordance with Section 115 of the Act:

No.	Name of the criterion	Weight of the criterion
1	<b>Total tender price in EUR without VAT</b>	60 %
2	<b>Technical level of the offered equipment</b>	40 %

10.1.3. The evaluation of tenders in the particular criteria will be carried out by the scoring method as described below for each evaluation criterion. The resulting evaluation will be carried out by weighting the particular scores of the tenders under each evaluation criterion by the weight of the relevant evaluation criterion set out in the table above. On the basis of the sum of the resulting scores obtained after the weighting of the individual evaluation criteria, the overall ranking of the tenders will be determined and the tender with the highest total score for all evaluation criteria will be evaluated as the most profitable. The maximum number of points shall be 100.

10.1.4. For all calculations in the evaluation of tenders, numbers will be rounded to two decimal places according to mathematical rules.

10.1.5. In case of equality of the total number of points of the two or more most profitable tenders, the lower total tender price shall be decisive.

10.1.6. A Tenderer shall not be entitled to condition in any way the offered parameters of performance, which are subject to evaluation according to Article 10.2.

### 10.2. Method of evaluation of tenders

#### 10.2.1. Evaluation criterion No. 1 - Total tender price in EUR excluding VAT - weight 60 %

10.2.1.1. Under this evaluation criterion, the Contracting Authority will evaluate the total tender price, including the price for providing the warranty, in EUR excluding VAT. The most profitable tender under this evaluation criterion will be the tender with the lowest total tender price.

10.2.1.2. The evaluation of this criterion will be carried out as follows: the tender with the lowest total tender price will be awarded 100 points, the other tenders will be awarded points in the ratio of the lowest total tender price to the evaluated total tender price according to the formula:

$$\text{Number of points} = 100 \times \frac{\text{Lowest total tender price in EUR excluding VAT}}{\text{Evaluated total tender price in EUR excluding VAT}}$$

#### 10.2.2. Evaluation criterion No. 2 - Technical level of the offered equipment - weight 40 %

10.2.2.1. Under this evaluation criterion, the parameter "Total power budget of the quantum channel line" - the value provided by the Tenderer on the Tender cover sheet on the basis of row 5 of the table in Annex 1 to this Tender Documentation - will be evaluated. The higher value is better.

10.2.2.2. The evaluation of this criterion will be carried out as follows: the tender with the highest value will be awarded 100 points, the other tenders will be awarded points in the ratio of the evaluated value to the highest value according to the formula:

$$\text{Počet bodů} = 100 \times \frac{\text{Evaluated total power budget of the quantum channel line}}{\text{Highest total power budget of the quantum channel line}}$$

## **11. Deadline for the submission of tenders (Section 57 of the Act) and the Award Period (Section 40 of the Act)**

- 11.1. **The deadline for the submission of tenders** will end on **15 August 2022 at 11:00**. Tendres received after the end of the deadline will not have their contents made available to the Contracting Authority by the system (this functionality is determined by the settings of the E-ZAK system).
- 11.2. The Contracting Authority does not set the award period (a time limit throughout which the Tenderers may not withdraw from the procurement procedure).

## **12. Opening of tenders**

- 12.1. The opening of tenders will be made by making the contents of tenders available to the Contracting Authority in accordance with the settings of the Contracting Authority's E-ZAK system after the end of the deadline for submission of tenders. The opening of electronic tenders shall be made without the presence of the Tenderers' representatives.

## **13. Cooperation of the selected supplier prior to the conclusion of the contract**

- 13.1. The selected supplier is obliged to provide the Contracting Authority with the necessary cooperation to conclude a contract for the performance of the public contract.
- 13.2. The selected supplier is obliged to submit to the Contracting Authority, upon a written request made in accordance with Section 122 (3) (a) of the Act, (electronic) originals or verified copies of documents proving qualification according to paragraphs 6.1. and 6.2. of this Tender Documentation.
- 13.3. A condition for the conclusion of the contract with the selected supplier will also be the identification of data on its beneficial owner in accordance with § 122 (4) et seq. of the Act.

## **14. Explanation, change or completion of the Tender Documentation**

- 14.1. Although this Tender Documentation define the subject of the public contract in the details necessary for the preparation of the tender, suppliers may request explanation of the tender conditions. The written request must be delivered to the Contracting Authority within the time limit pursuant to Section 98(3) of the Act (8 working days before the end of the deadline for submission of tenders).
- 14.2. The Contracting Authority asks the suppliers to send requests for explanation of the Tender Documentation via the electronic tool E-ZAK. A link 'Request for explanation of the Tender Documentation' is available on the web address of this tender (see paragraph 1.1. of this Tender Documentation) after the supplier has logged into his user account.
- 14.3. The Contracting Authority is also entitled to publish on the Contracting Authority's profile an explanation of the Tender Documentation on its own initiative under the terms of Section 98(1) of the Act. According to Section 99 of the Act, it may also publish a change or completion of the Tender Documentation.

## **15. Reservations and notices from the Contracting Authority**

- 15.1. The costs associated with participation in the procurement procedure shall be borne by each Participant in the procurement procedure itself.
- 15.2. The Contracting Authority has the right to cancel the procurement procedure in accordance with the relevant provisions of the Act (see Section 127 of the Act).
- 15.3. The Contracting Authority may verify the credibility of the information and documents provided and may also obtain them itself, for example from third parties or from publicly available sources. The Tenderer is obliged to provide all necessary cooperation in this respect.

- 15.4. The Contracting Authority is entitled to use any information or documents provided by the Tenderers if it is necessary for the procedure under the Act or if it results from the purpose of the Act.
- 15.5. If the Tender Documentation contains direct or indirect references to a particular supplier or products, or patents for inventions, utility or industrial designs, trademarks or appellations of origin, the Contracting Authority expressly allows the use of other solutions, qualitatively and technically equivalent, which fulfil the functionality required by the Contracting Authority or obvious to the expert (although in a different way).
- 15.6. In case that there is a change in the information provided in the tender until the time of conclusion of the contract with the selected supplier, the relevant Tenderer is obliged to inform the Contracting Authority of this change in writing without delay.
- 15.7. The Contracting Authority does not accept variations of the tenders.
- 15.8. In accordance with Section 103(1)(f) of the Act, the Contracting Authority requires that in the case of joint participation of multiple suppliers (joint performance of the public contract), all suppliers submitting a joint tender shall be jointly and severally liable. This fact must be demonstrated in the tender (e.g. in the form of a written contract between these suppliers).
- 15.9. The Contracting Authority notifies the suppliers that it is an obliged person within the meaning of Act No. 181/2014 Coll., on Cyber Security and on Amendments to Related Acts, as amended (hereinafter referred to as the "CSA"), and that the subject of this public contract will become part of the infrastructure with respect to which the Contracting Authority is obliged to fulfil the obligations arising from the CSA. The Contracting Authority is therefore obliged, inter alia, to carry out a regular risk analysis of the technical and software resources concerned. On 17 December 2018, the National Cyber and Information Security Agency (hereinafter referred to as "NCISA"), as the central administrative authority for cyber security pursuant to Section 12(1) of CSA, issued warning No. 3012/2018-NÚKIB-E/110, where it determined that the use of technical means or software of the following companies, including their subsidiaries, constitutes a threat in the field of cyber security:
  - Huawei Technologies Co., Ltd., Shenzhen, People's Republic of China
  - ZTE Corporation, Shenzhen, People's Republic of China.

On January 4, 2019, the NCISA issued the Methodology for warning of December 17, 2018 Version 1.0 (the "Methodology"), which also identifies the procedures for updating the risk analysis. In addition, on 1 March 2020, the NCISA issued the Supporting Material entitled "Consideration of the Warning of 17 December 2018 in the Procurement Procedure" Version 1.0 (the "Supporting Material"). In accordance with the CSA, the Methodology and the Supporting Material, the Contracting Authority has carried out an up-to-date analysis of the risks related to the public contract and their assessment.

Following the risks identified by the Contracting Authority associated with the aforementioned technical and software resources of the aforementioned companies, the Contracting Authority has adopted the following security measures:

- **In this procurement procedure, the Contracting Authority shall not accept tenders whose subject matter will be technical and software resources of the companies listed in the NCISA Warning No 3012/2018-NÚKIB-E/110, i.e. Huawei Technologies Co., Ltd., Shenzhen, People's Republic of China and ZTE Corporation, Shenzhen, People's Republic of China, including their subsidiaries. In the event that any supplier offers equipment of the companies concerned, it will be excluded from the tender procedure.**

Reason: The Contracting Authority took the above decision on the basis of the NCISA Warning, the Methodology, the Supporting Material and the conducted risk analysis and assessment, in conjunction with Section 4(4) of the CSA, since the reduction of the risk associated with the use of the technical and software resources of the companies concerned cannot be achieved otherwise than by excluding them from use in the subject matter of the public contract.

## **16. Conflict of interest pursuant to Act No. 159/2006 Coll., on Conflict of Interest, as amended**

- 16.1. Pursuant to Section 4b of Act No. 159/2006 Coll., on Conflict of Interest, as amended (hereinafter referred to as the "Conflict of Interest Act"), a company in which a public official referred to in Section 2(1)(c) of the Conflict of Interest Act or a person controlled by him/her owns a share representing at least 25% of the shareholder's participation in the company may not participate in procurement proceedings under the Conflict of Interest Act. The Contracting Authority shall require that the supplier and the subcontractor through which it proves its qualification are not in a conflict of interest pursuant to Section 4b of the Conflict of Interest Act.
- 16.2. The Supplier shall submit an affidavit in his tender which clearly shows that neither he nor his subcontractor through whom he proves qualification (if any) has violated the requirement of Section 4b of the Conflict of Interest Act. A draft of the affidavit is attached as Annex 4 to this Tender Documentation.

## **17. Information on the processing of personal data**

- 17.1. The Contracting Authority, in its position as a personal data administrator, hereby, pursuant to Article 13 of Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (hereinafter referred to as "GDPR"), informs the Tenderers about the processing of personal data for the purpose of the implementation of the procurement procedure in accordance with the Act.
- 17.2. The Contracting Authority may process personal data of suppliers and their subcontractors (from among natural persons running a business), members of statutory bodies and contact persons of suppliers and their subcontractors, persons through whom the supplier proves qualification, members of the supplier's implementation team and beneficial owners of the supplier within the framework of the procurement procedure. The Contracting Authority will process personal data only to the extent necessary for the implementation of the procurement procedure and only for the period of time provided for by the legal regulations, in particular the Act. Data subjects are entitled to exercise their rights under Articles 13 to 22 of the GDPR in writing at the address of the Contracting Authority's registered office.
- 17.3. Detailed information on the processing of personal data by the Contracting Authority is contained on the Contracting Authority's website available at:

<https://www.cesnet.cz/cesnet/personal-data-protection/?lang=en>

## **18. List of Annexes**

Annex 1	Specification of the required subject of performance
Annex 2	Terms and Conditions of the Contracting Authority - Binding Draft Contract for the Supply of QKD System
Annex 3	Sample affidavit of a Tenderer on fulfilment of basic and professional competence
Annex 4	Sample Affidavit to the Conflict of Interest
Annex 5	Sample Tender cover sheet

In Prague on (see electronic signature)

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Ing. Jakub Papírník  
 director  
 CESNET, interest association of legal entities