



**Operator Gazociągów Przesyłowych
GAZ-SYSTEM S.A.**

**TERMS OF REFERENCE IN A NON-PUBLIC PROCUREMENT PROCEDURE CONDUCTED AS AN OPEN
TENDER**

Procedure name: "Balancing Services at Branice Entry Point"

Procedure number: NP/2024/06/0519/0320/PK

Whenever a reference is made in these Terms of Reference to:

- **„List of Unreliable Suppliers”** – it shall mean a list of Contractors who have culpably failed to execute, improperly executed or are improperly executing a contract for the Contracting Entity, which has caused them to lose the credibility required of business partners and thus to consider that they will be unfit to execute further contracts for the Contracting Entity.
- **“Procurement Portal”** – it shall mean the Procurement Platform of GAZ-SYSTEM S.A., available at <https://portal.gaz-system.pl/>.
- **„Procedure”** – it shall mean the contract award procedure conducted as an open tender.
- **“Terms” or “ToR”** – it shall mean these Terms of Reference including Appendices.
- **“Contractor” or “Supplier”** – it shall mean a natural person, a legal person or an organisational entity not having legal personality that offers on the market the execution of works or a work, supply of products or provision of services or competes for the award of the Contract, has submitted a tender or entered into a procurement contract or framework agreement. Contractor or Supplier shall also mean entities jointly bidding for the award of the Contract.
- **“Appendix”** – it shall mean any document named as such and attached to the Terms, forming an integral part thereof.
- **“Contracting Entity”** – it shall mean Operator Gazociągów Przesyłowych GAZ-SYSTEM S.A.
- **„Contract”** – it shall mean a non-public contract, the subject of which is defined in Chapter III of the Terms.

I. INFORMATION ABOUT THE CONTRACTING ENTITY
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Operator Gazociągów Przesyłowych GAZ-SYSTEM S.A.

ul. Mszczonowska 4; 02-337 Warszawa

Telephone: +48 22,220 18 00

Internet address (URL): www.gaz-system.pl

II. PROCUREMENT PROCEDURE TYPE

1. The Procedure shall be conducted in the form of an open tender on the terms and conditions defined in these Terms.
2. An open tender is a procedure for awarding a non-public procurement contract in which, in response to a public announcement of a non-public procurement contract, tenders may be submitted by all potential Contractors who want to participate. The announcement of a Contract Award Procedure conducted as an open tender is published on the Contracting Entity's website.

3. The provisions of the Act of 11 September 2019 – Public Procurement Law (consolidated text: JoL 2023, item 1605, as amended) shall not apply to this Procedure.
4. The Procedure shall be conducted in Polish and English. In the event of a discrepancy between the Polish and English language versions of the documents, provisions in the Polish language version shall prevail.

III. DESCRIPTION OF THE SUBJECT OF THE CONTRACT

1. Subject of the Contract is the provision of balancing services at Branice (ID 372414) entry point to the transmission system. The balancing services shall be provided pursuant to Article 8 of the Commission Regulation (EU) No. 312/2014 of 26 March 2014 establishing a Network Code on Gas Balancing of Transmission Networks. Balancing services shall consist of the supply of high-methane gas (Group E) at Branice (ID 372414) entry point between 1 October 2024, 06:00 a.m. and 1 October 2025, 06:00 a.m., in quantities resulting from the demand of end-users connected to the gas network in the area supplied from this entry point.
2. A detailed specification of the Subject of the Contract is set out in Appendix 1 to the ToR.
3. The Contractor is obliged to become familiar with the content of the "Code of Conduct for Suppliers of Operator Gazociągów Przesyłowych GAZ-SYSTEM S.A." and adhere to its provisions during the Contract performance. "Code of Conduct for Suppliers of Operator Gazociągów Przesyłowych GAZ-SYSTEM S.A." is available on the Contracting Entity's website: <https://www.gaz-system.pl/en/for-suppliers/our-standards/code-of-conduct-for-suppliers.html>.
4. Contractor is obliged to become familiar with and apply the „Tenderer (Contractor/Supplier) Manual”, available on the Procurement Portal under the "Regulations and Instructions" tab.

IV. INFORMATION CONCERNING THE SUBMISSION OF PARTIAL, VARIANT AND SIMILAR TENDERS

1. The Contracting Entity **does not allow** partial tenders.
2. The Contracting Entity **does not allow** variant tenders.
3. The Contracting Entity **does not anticipate** awarding the Contract for a similar service.

V. TIME LIMIT FOR THE CONTRACT PERFORMANCE

The contract shall be performed within the time limits specified in Appendix 3 to the ToR - Draft Contract.

VI. INFORMATION ON THE CONDITIONS FOR PARTICIPATION IN THE PROCEDURE

1. Eligible to compete for the Contract shall be the Contractors who:

- 1) are not subject to exclusion from the procurement procedure,
- 2) meet the conditions for participation in the Procedure, i.e.:
 - 2.1) Have the capacity to engage in business transactions.
 - 2.2) Have the licence to conduct a specific business or professional activity, if such licence results from separate regulations.

The Contracting Entity shall consider the above-mentioned conditions met if the Contractors hold an up-to-date (valid) licence to conduct business activity in the area of trading in gaseous fuels, granted by the President of the Energy Regulatory Office, within the meaning of the provisions of the Energy Law of 10 April 1997 (consolidated text: JoL of 2024, item 266, as amended) or (if required) an equivalent licence granted by a regulator of another country, i.e. a Member State of the European Union, the Swiss Confederation or the European Free Trade Association (EFTA) – parties to the Agreement on the European Economic Area.

- 2.3) Have the economic or financial capacity.
- 2.4) Have the technical or professional capacity.

The Contracting Entity shall consider the above condition to have been fulfilled if the Contractors have executed at least 1 (in words: one) contract (order) involving the supply of gaseous fuel in the amount of at least 100,000 m³ (1,100,000 kWh), within the three years before the deadline for the submission of tenders, and if the period of conducting the business activity is shorter – within this period.

2. The evaluation of the fulfilment of the conditions required from the Contractors shall be made according to the "yes" – "no" formula based on the documents and statements attached to the tender.
3. In the case of Contractors jointly seeking the award of the Contract, each Contractor must individually meet the condition set in Section 1.1), while the remaining conditions may be met jointly by a group of Contractors jointly seeking the award of the Contract, with the proviso that the condition specified in Section 1.2.1) above must be met by the Contractor responsible for the performance of the Subject of the Contract in the part relating to gas trading.
4. The Contractor may rely on the technical or professional capabilities of other entities or their economic or financial capacity, regardless of the legal nature of their relations. When relying upon the resources of other entities with regard to conditions relating to educational

attainment, professional qualifications or experience, Contractors may rely upon the capabilities of other entities if these entities will provide the services for which these capabilities are required. The Contracting Entity does not allow reliance on the resources of other entities with respect to whom there are grounds for exclusion referred to in Chapter VIII, Section 1.1)-10). The reliance on the resources of other entities to whom Chapter VIII, Section 2 of the ToR applies is prohibited if their work accounts for more than 10% of the Contract value.

VII. INFORMATION ON THE STATEMENTS AND DOCUMENTS TO BE PROVIDED BY CONTRACTORS

1. The Contractor's tender should include the completed: "Tender" form together with a statement on not being excluded from a non-public contract award Procedure (compliant with the content of Appendix 2 to the ToR).
2. The Contractor shall be obliged to submit the following together with the tender:
 - 1) a document confirming that the person or persons signing the tender on behalf of the Contractor are authorised to do so (e.g. an extract from the National Court Register (KRS), a power of attorney).
 - 2) an up-to-date (valid) licence to conduct business activity in the area of trading in gaseous fuels, granted by the President of the Energy Regulatory Office, within the meaning of the provisions of the Energy Law of 10 April 1997 (consolidated text: JoL of 2024, item 266, as amended) or an equivalent licence granted by a regulator of another country, i.e. a Member State of the European Union, of the Swiss Confederation or of the European Free Trade Association (EFTA) – parties to the Agreement on the European Economic Area.
 - 3) the list of performed contracts that meet the condition specified in Chapter VI Section 1.2(4) of the ToR (in accordance with Appendix 5 to the ToR).

For each contract included on the list, the following should be specified:

- Subject of the Contract,
- Including the quantity of gas delivered (m³ or kWh),
- performance dates, i.e. start (dd/mm/yyyy) and end (dd/mm/yyyy),
- entity for which the contract was performed.

Each contract must be accompanied by documents (e.g. letters of reference) confirming that the contracts have been duly performed. The aforementioned documents must be issued or confirmed by the entity for the benefit of which the contract was performed.

3. When the tender is submitted by Contractors jointly seeking the Contract award, the requirement to submit documents specified in Section 2.1) above applies to each of the

above-mentioned Contractors. The remainder of the documents shall be submitted jointly by the group of Contractors jointly seeking the Contract award.

4. The Contracting Entity permits submission of documents in the following electronic forms:
 - 1) prepared as a hard (paper) copy, bearing a wet signature and then processed into electronic form (document scan),
 - 2) prepared as hard (paper) copy, then processed into electronic form (document scan) and signed with a qualified digital signature or a trusted signature or a personal signature.
 - 3) prepared electronically and signed with a qualified digital signature or a trusted signature or a personal signature.
5. Documents drawn up in a foreign language must be submitted with their translations into Polish. The Contracting Entity shall have the right to waive the requirement referred to in the first sentence.
6. If the Contractor, in order to demonstrate compliance with the conditions for participation in the Procedure referred to in Chapter VI Section 1.2) of the ToR, relies upon the resources of other entities on the principles set out in Chapter VI Section 4 of the ToR, it shall be obliged to prove to the Contracting Entity that it will have at its disposal the resources of those other entities, to an extent that is sufficient to duly perform the contract, and that the relationship between the Contractor and such entities guarantees actual access to their resources. To that end, the Contracting Entity requires the **submission of the following, along with the tender:**
 - 1) a commitment of these entities to provide the Contractor with the necessary resources for their use during the performance of the contract (in accordance with the content of Appendix 4 to the ToR). The Contractor shall be obliged to prove to the Contracting Entity that the above-mentioned commitment has been signed by person(s) authorised to represent this entity, or
 - 2) another document showing explicitly that the Contractor shall have at its disposal the resources of other entities to an extent that is sufficient to duly perform the contract, and that the relationship between the Contractor and such entities guarantees actual access to their resources.
7. The Contracting Entity may call upon the Contractors who have failed to submit the required documents, statements or powers to represent within the prescribed time limit, or who have submitted documents, statements or powers to represent which contain mistakes, to supplement them within the prescribed time limit. Statements and documents submitted when called upon by the Contracting Entity should confirm compliance with the conditions or requirements as on the date of submission of a given statement or document.

8. During the examination and evaluation of tenders, the Contracting Entity may demand clarifications from Contractors regarding the content of their tenders, including the content of documents and statements enclosed with the tender, as well as clarifications, including submission of evidence regarding those elements of the tender which affect the price offered.
9. If more than one Contractor submits a tender in the Procedure, the Contracting Entity reserves the right to examine and evaluate the tender of only that Contractor whose tender will be the most advantageous after the initial evaluation. In such a situation, tenders submitted by the remaining Contractors will be left by the Contracting Entity without examination and evaluation.
10. The Contracting Entity shall correct the following in the tender:
 - 1) obvious typing errors,
 - 2) obvious calculation errors,
 - 3) other errors consisting in the inconsistency of the tender with the ToR which do not result in significant changes in the contents of the tender.

- immediately informing thereof the Contractor whose tender has been corrected.
11. The Contracting Entity reserves the right to require the Contractor to submit hard copies or certified copies of statements and documents if the statements and documents in electronic form are illegible or raise doubts as to their authenticity.
12. In the event that the Contractor, in order to confirm compliance with the conditions for participation in the Procedure, encloses documents containing amounts expressed in currencies other than the Polish zloty, the Contracting Entity shall convert them into the Polish zloty. The average exchange rate of the National Bank of Poland (NBP) valid on the day of publication of the Contract notice shall be used for the conversion.
13. In the absence of publication of the exchange rates of the National Bank of Poland valid on the day referred to above, the last exchange rate announced before the aforementioned day shall apply, pursuant to § 8(5) of Resolution No. 51/2002 of the Management Board of the National Bank of Poland of 23 September 2002 on the method of calculating and announcing the current exchange rates of foreign currencies (consolidated text: OJ of the NBP of 2022, item 10).

VIII. EXCLUSION OF A CONTRACTOR
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1. The Contracting Entity shall exclude from the procurement Procedure:
 - 1) Contractor subject to winding-up proceedings or bankruptcy, whose assets are being administered by a receiver or by a court, who has entered into an arrangement with creditors, whose business activities have been suspended or who is in any of such

situations arising from a similar procedure provided for in the regulations of the place where such procedure has been initiated,

- 2) Contractor who has been in breach of obligations relating to the payment of taxes, fees or social or health insurance contributions, unless the Contractor, before the expiry of the deadline for submitting tenders, has paid the taxes, fees or social or health insurance contributions due, including any interest or fines, or has entered into a binding agreement on the payment of those receivables,
- 3) Contractor who is a natural person who has been finally and non-revisably convicted of any of the following offences:
 - i) participation in an organised crime group or association aimed at committing a crime or fiscal offence referred to in Article 258 of the Penal Code,
 - ii) trafficking in human beings as referred to in Article 189a of the Penal Code,
 - iii) referred to in Article 228-230a, Article 250a of the Penal Code or in Article 46 or Article 48 of the Act of 25 June 2010 on Sports (consolidated text: JoL 2022, item 1599),
 - iv) financing a terrorist offence referred to in Article 165a of the Penal Code or an offence of preventing or hindering the ascertainment of the criminal origin of money or the concealment of its origin referred to in Article 299 of the Penal Code,
 - v) of a terrorist nature, as referred to in Article 115(20) of the Penal Code, or aimed at committing such offence,
 - vi) entrusting work to a minor foreigner, as referred to in Article 9(2) of the Act of 15 June 2012 on the consequences of assigning work to foreigners unlawfully residing on the territory of the Republic of Poland (consolidated text; JoL 2021, item 1745, as amended),
 - vii) against economic transactions referred to in Articles 296-307 of the Penal Code, a fraud offence referred to in Article 286 of the Penal Code, an offence against the reliability of documents referred to in Articles 270-277d of the Penal Code, or a fiscal offence,
 - or for a corresponding offence under foreign law.
- 4) Contractor, if an active member of its management or supervisory body, its partner in a registered partnership or professional partnership or their general partner in a limited partnership or limited joint-stock partnership has been convicted finally and non-revisably of an offence referred to in item 3.
- 5) Contractor who has been finally and non-revisably banned from competing for public contracts,
- 6) Contractor if there has been a distortion of competition resulting from prior involvement of that Contractor or an entity which is a member of the same capital

group with the Contractor in the preparation of the Procedure, unless the distortion of competition caused thereby can be eliminated otherwise than by excluding the Contractor from participation in the Procedure,

- 7) Contractor who, as a result of deliberate action or gross negligence, misled the Contracting Entity when presenting information on not being subject to exclusion, on satisfying the conditions for participation in the Procedure or the selection criteria, which could have had a significant impact on the decisions made by the Contracting Entity during the Procedure, or who concealed this information or is not able to submit the required documents,
 - 8) Contractor who illegally influenced or attempted to influence the actions of the Contracting Entity or attempted to acquire or obtained confidential information which could give them an advantage in the Procedure for the award of the Contract,
 - 9) Contractor, if the Contracting Entity can establish, based on reliable grounds, that the Contractor entered into an agreement with other Contractors aiming at distorting competition between the Contractors in the procurement Procedure,
 - 10) Contractor entered on the List of Unreliable Suppliers,
 - 11) Contractor who, after the expiry of the deadline for submission of tenders, modifies the tender to the disadvantage of the Contracting Entity,
 - 12) Contractor, if there is a conflict of interest which cannot be effectively eliminated otherwise than by excluding the Contractor,
 - 13) Contractor, if there is grounds for exclusion under Article 7(1) of the Act of 13 April 2022 on special measures preventing support for aggression against Ukraine and protecting national security (consolidated text: JoL 2023, item 129, as amended),
 - 14) Contractor in relation to whom the prerequisites specified in Section 2 below apply.
2. It shall be prohibited to award to or further perform Contracts with the participation of:
- 1) Russian nationals or natural or legal persons, entities or bodies based in Russia,
 - 2) legal persons, entities or bodies with more than 50% direct or indirect ownership by an entity referred to in item 1) above,
 - 3) natural or legal persons, entities or bodies acting on behalf of or under the direction of an entity referred to in item 1) or 2),
- including subcontractors or entities whose capacity is relied on within the meaning of Chapter VI Section 4, in the event that they account for more than 10% of the value of the Contract.
3. If the circumstances constituting grounds for excluding the Contractor from the Procedure are found, it is possible not to exclude the Contractor if the exclusion would be clearly disproportionate to the gravity of the identified tort, in particular if, despite the above-mentioned circumstances referred to in Section 1.2), the Contractor's reliability does not

raise any doubts or poses no risk of harming the Contracting Entity's interest during the performance of the Contract.

4. The Contracting Entity will notify the Contractor of their exclusion from the Procedure.

IX. TENDER REJECTION

1. the Contracting Entity shall have the right to reject a tender if:
 - 1) its content does not meet the requirements specified in the ToR, subject to Chapter VII Section 10 of the ToR,
 - 2) it was submitted by Contractor who had been excluded from the participation in the Procedure,
 - 3) the Contractor, within the designated time limit, has challenged the correction of another error referred to in Chapter VII Section 10.3),
 - 4) the tender is invalid under separate regulations,
 - 5) the tender has been submitted under the conditions of an act of unfair competition within the meaning of the provisions on counteracting unfair competition,
 - 6) the tender contains an exceedingly low price or cost in relation to the subject matter of the non-public procurement Procedure, and the Contractor, having been previously requested to provide clarifications in this respect, failed to prove that the price contained in the tender is realistic or failed to submit the clarifications within the deadline indicated by the Contracting Entity,
 - 7) the tender was submitted after the deadline for submission of tenders,
 - 8) the tender was not prepared or submitted in the manner compliant with the technical and organisational requirements for preparing or submitting tenders by electronic means of communication specified by the Contracting Entity,
 - 9) the Contractor failed to prove meeting the conditions for participation in the Procedure, in particular failed to submit documents, statements or powers to represent required by the Contracting Entity,
 - 10) The Contractor has not lodged a tender security, or has lodged it incorrectly, or has failed to maintain the tender security uninterruptedly until the expiry of the tender validity period, if a tender security was required, or has not agreed to an extension of the tender validity period in response to a request from the Contracting Entity,
 - 11) the tender contains incorrect price or cost calculations,
 - 12) the Contractor did not agree to an extension of the tender validity period in the form proper for the submitted tender,

- 13) a variant tender has not been submitted or does not meet the minimum requirements specified by the Contracting Entity, where the Contracting Entity has required a variant tender to be submitted,
 - 14) the tender acceptance would violate public security or a major interest of the state security, and this security or interest could not be guaranteed in any other manner,
 - 15) the tender includes IT devices or software indicated in the recommendation referred to in Article 33(4) of the Act of 5 July 2018 on the national cybersecurity system (consolidated text, JoL 2022, item 1863, as amended), stating their negative impact on public security or national security,
 - 16) the tender has been submitted without a site visit or without checking the documents necessary for the contract performance available on the Contracting Entity's premises, where it was required by the Contracting Entity in the contract documents.
2. The Contracting Entity shall notify the Contractor whose tender has been rejected of the tender rejection.

X. INFORMATION ON THE METHOD OF COMMUNICATION BETWEEN THE CONTRACTING ENTITY AND CONTRACTORS AND PROVIDING STATEMENTS AND DOCUMENTS SPECIFYING PERSONS AUTHORISED TO COMMUNICATE WITH CONTRACTORS
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1. In the contract award Procedure, statements, requests, notifications and information shall be submitted by the Contracting Entity and Contractors by electronic means.
2. Statements, requests, notifications, information shall be provided by the Contractor by:
 - 1) **e-mail** to the following address: jaroslaw.kalisz@gaz-system.pl
The subject (heading) of an e-mail message must start with the number of the Procedure assigned by the Contracting Entity, i.e. NP/2024/06/0519/PK
 - 2) **electronic means** via the Procurement Portal.

Note:

Submission of requests for clarification of the content of the ToR shall be made only in the form specified in item 2) above.

The Contracting Entity informs that the submission of the tender is only possible after the prior setting up of an account. The procedure for setting up an account is described at: <https://portal.gaz-system.pl/> (submission of a request for clarification of the content of the ToR is possible without setting up an account on the Procurement Portal).

Statements, requests, notifications and information submitted by electronic means shall be deemed submitted within the deadline, if their content reaches the addressee before the lapse of the deadline. The Contracting Entity shall have the right to waive the requirement referred to in the first sentence.

3. If requests, notifications, statements and information are transmitted by the Contracting Entity or the Contractor by electronic means, each party shall, upon request of the other, immediately confirm the fact of their receipt.
4. The person authorised to communicate with Contractors and provide clarifications from Monday to Friday from 8:00 a.m. to 3:00 p.m. (except for public holidays), regarding formal matters, i.e. relating to the contract award Procedure, is:

Mr Jarosław Kalisz

Telephone: +48 220 18 33; e-mail: jaroslaw.kalisz@gaz-system.pl

XI. TENDER SECURITY REQUIREMENTS

The Contracting Entity **does not require** a tender security.

XII. DEADLINE FOR SUBMISSION OF TENDERS

1. The Contractor shall remain bound by his tender for the period of 30 days, i.e. until 20 of August 2024.
2. The first day of the tender validity period shall be the day on which the deadline for the submission of tenders expires.
3. The Contracting Entity may request the consent of the Contractors to extend this period by a further period necessary to complete the Procedure, i.e. conclude the contract.

XIII. DESCRIPTION OF TENDER PREPARATION

1. A Contractor may submit only one tender. Submission of more than one tender may result in rejection of all tenders submitted by the Contractor.
2. The contents of the tender shall comply with the contents of the ToR.
3. **The Contracting Entity recommends that the tender be submitted in one of the following formats: JPG, JPEG, TIF, TIFF, PNG, PDF, consistent in content with Appendix 2 to the ToR ("Tender" form).**
4. It is allowed for Contractors to apply jointly for the award of the Contract. If Contractors apply jointly for the award of the Contract, the Contracting Entity requires that entities acting jointly have an appropriate power to represent all Contractors in the contract award Procedure or to represent them in the Procedure and to conclude the Contract.
5. The tender must be signed in accordance with the rules of representation of the Contractor. If the tender is submitted on behalf of the Contractor by an authorised representative, the representative should hold a relevant authorisation. The content of the authorisation must explicitly specify the activities that the representative is authorised to perform.

6. The Contracting Entity permits submission of documents in the following electronic forms:
 - 1) prepared as a hard (paper) copy, bearing a wet signature and then processed into electronic form (document scan),
 - 2) prepared as a hard (paper) copy, then processed into electronic form (document scan) and signed with a qualified digital signature, advanced digital signature, a trusted signature or a personal signature,
 - 3) prepared electronically and signed with a qualified digital signature, advanced digital signature, a trusted signature or a personal signature.
7. The tender should be prepared in a form ensuring its full legibility.
8. The tender and other documents for which the Contracting Entity has defined templates in the form of Appendices to the ToR, should be prepared in accordance with these templates in terms of content.
9. The Contracting entity recommends that pages of the tender containing any content be numbered consecutively, subject to the situation described in Section 10 below.
10. Should the tender contain information constituting a business secret within the meaning of the provisions on counteracting unfair competition, the Contractor shall clearly stipulate which of the information contained in the tender and/or documents submitted together with the tender constitute a business secret. The pages containing the above information shall be separated while maintaining continuity of page numbering in the tender or document package submitted with the tender (it is recommended that information constituting a business secret be saved by the Contractor in a separate file marked with the attribute "Classified (contains business secrets)". The manner of attaching documents constituting business secrets is described in the "Tenderer (Contractor/Supplier) Manual".

Note:

The Contractor shall be obliged to demonstrate that the proprietary information constitutes a business secret no later than at the time of submission to the Contracting Entity of the relevant document containing, in the Contractor's opinion, such a secret. Failure to prove by the above deadline that the proprietary information constitutes a business secret shall result in the Contracting Entity's assumption that all documents are public and may be made available to third parties. All information contained in Appendix 2 to the ToR (the "Tender" form), which will be provided by the Contractor, cannot be classified as a business secret, and any possible reservations in this respect shall be null and void.

11. The tender shall be submitted as follows:
 - 1) The Contractor shall commence the submission of the tender in the "Tender" tab and shall then complete all required fields and attach files, subject to Section 10 above.

- 2) The tender is considered submitted after the clicking the "Submit the tender" button.
- 3) The commands "Save and Return" and "Save Draft" allow the tender to be saved before submission. A saved tender is not a submitted tender.
- 4) When saving or submitting the tender, an encryption password must be established.

The method for submitting tenders is contained in the "Tenderer (Contractor/Supplier) Manual".

12. Any changes to the tender content (corrections, crossings out, additions) should be initialled or signed by the Contractor, otherwise they may not be taken into consideration by the Contracting Entity.
13. It is inadmissible for the Contractor to make changes to the content of the submitted tender after the deadline for tender submission unless the Contracting Entity gives its consent.
14. Before the deadline, the Contractor **may** withdraw the tender or **amend the tender submitted via the Procurement Portal**. Section 11.4) above shall apply mutatis mutandis to the amendment or withdrawal of the tender. The method for withdrawing or amending a tender is described in the "Tenderer (Contractor/Supplier) Manual". Information on the tender withdrawal or amendment should be delivered by the Contractor to the Contracting Entity before the deadline for submission of tenders in the manner permitted by the Contracting Entity for tender submission. The statement on the tender withdrawal or amendments should be explicit.
15. All costs related to the tender preparation, submission and withdrawal shall be borne by the Contractor.
16. The Contracting Entity informs that the responsibility for any possible defects in the file(s) or submission of the tender in a format other than specified in Section 3 above, resulting in the inability of the Contracting Entity to read the contents of the tender, shall be borne by the Contractor.

XIV. PLACE AND DEADLINE FOR TENDER SUBMISSION

1. **The deadline for submission of tenders is 22 July 2024 at 10:00 a.m.**
2. **Tenders must be submitted in an electronic form via the Procurement Portal.**

NOTE:

The Contracting Entity allows submission of the tender in an electronic form to the e-mail address jaroslaw.kalisz@gaz-system.pl, while submitting tenders in this manner shall be possible solely in the event the Procurement Portal is unavailable. When submitting the tender to the indicated e-mail address, the Contractor is obliged to prove that the unavailability of the Procurement Portal is due to reasons beyond the Contractor's control.

3. The opening of tenders is confidential and will take place immediately after the deadline for the submission of tenders.
4. If the tender is submitted after the deadline for submission of tenders, the Contracting Entity shall immediately notify the Contractor that the tender was submitted after the deadline.

XV. DESCRIPTION OF PRICE CALCULATION METHOD

1. The tender prices must be provided in Polish zloty (PLN) as net and gross amounts, separately showing the VAT amounts (net + VAT = gross) calculated in compliance with the applicable regulations. The Contractor shall specify the tender prices for the performance of the Subject of the Contract with the accuracy indicated in the "Tender" form (Appendix 2 to the ToR).
2. The prices contained in the "Tender" form shall be lump-sum values, including all costs and components related to the performance of the Subject of the Contract and the conditions stipulated by the Contracting Entity.
3. The tender prices shall not change throughout the validity period of the tender (shall remain binding).
4. Settlements between the Contracting Entity and the Contractor shall be made in PLN.
5. If the Contractor's registered office or a place of residence is located outside Poland and if, under the separate regulations, the Contractor is not obliged to pay the value added tax in Poland, the Contractor shall indicate only the net price in its tender (i.e. exclusive of the value added tax).
6. If a tender is submitted, the selection of which would lead to the creation of a tax obligation for the Contracting Entity pursuant to the provisions regarding the VAT, the Contractor is obliged to:
 - 1) inform the Contracting Entity that the selection of its tender will result in a tax obligation for the Contracting Entity.
 - 2) indicate the name (type) of the goods or services, the supply or provision of which will result in the creation of a tax obligation.
 - 3) indicate the value of the goods or services subject to tax obligation for the Contracting Entity, without the amount of the tax.
 - 4) indicate the value added tax rate which, to the Contractor's knowledge, shall apply.

XVI. DESCRIPTION OF THE CRITERIA GUIDING THE CONTRACTING ENTITY WHEN SELECTING THE TENDER, INCLUDING THE WEIGHT OF THOSE CRITERIA AND THE MANNER OF THE TENDER EVALUATION

1. When selecting the most advantageous tender, the Contracting Entity shall consider the following criteria:

Price – P_c – weighting 100%, which will be converted into points according to the following formula:

$$P_c = \frac{\text{Lowest (among the submitted tenders) sum of prices (i.e. } P_p + 0.01\% P_h \text{) from item 5 of the "Tender" form}}{\text{Sum of prices (i.e. } P_p + 0.01\% P_h \text{) from item 5 of the "Tender" form being evaluated}} \times 100 \text{ points}$$

where:

P_p – mark-up value for each 1 (one) kWh off-taken by the Contracting Entity,

P_h – net price for each Gas Day when, during the term of the Contract, the Contractor does not deliver Gaseous Fuel to Branice Entry Point (ID 372414) due to deliveries provided by the Shippers (price for the readiness to perform the Subject of the Contract), in accordance with the provisions provided in the Draft Contract.

2. For the purpose of tender evaluation, the Contracting Entity shall calculate the points awarded to Contractors to two decimal places, rounding off the values from the thousandths according to the rules of arithmetic.
3. The Contracting Entity will consider the tender which scores the highest number of points to be the most advantageous.
4. The remaining tenders shall be ranked according to the number of points obtained.
5. If it is not possible to select the most advantageous tender due to the fact that two or more tenders present the same balance of price, the Contracting Entity shall call upon the Contractors who submitted such tenders to submit, within the time limit specified by the Contracting Entity, additional tenders containing a new price or shall conduct another round of commercial negotiations referred to in Chapter XVII of the ToR. The Contracting entity shall inform the Contractors submitting additional tenders or with whom it plans to conduct the aforementioned negotiations that they may not offer prices higher than those offered in the previously submitted tenders.

XVII. COMMERCIAL NEGOTIATIONS

1. The Contracting Entity reserves the right to conduct commercial negotiations with respect to the tender evaluation criteria indicated in the ToR.
2. Should the Contracting Entity exercise the right to conduct commercial negotiations referred to in Section 1, the Contracting Entity reserves the option to invite up to three Contractors,

whose tenders were the most advantageous after the preliminary evaluation, to possible commercial negotiations.

3. **Notwithstanding Sections 1 and 2, the Contracting Entity** reserves the option to conduct commercial negotiations relating to the terms and conditions of the Contract in order to increase its effectiveness as specified in the ToR. Thereupon, the Contracting Entity shall send an invitation to commercial negotiations and to improve the tender to all Contractors participating in the non-public contract award Procedure, with the reservation that the update of the requirements referred to above may not lead to a change in the nature of the Contract.

XVIII. INFORMATION ON ELECTRONIC AUCTION

The Contracting Entity **does not anticipate** holding an electronic auction.

XIX. INFORMATION ON FORMAL STEPS TO BE COMPLETED FOLLOWING TENDER SELECTION FOR THE PURPOSE OF CONCLUDING THE CONTRACT

1. The Contracting Entity shall select the most advantageous tender from among the non-rejected tenders on the basis of the tender evaluation criteria specified in the ToR.
2. After selecting the most advantageous tender, the Contracting Entity shall immediately notify:
 - 1) all Contractors who submitted tenders – about the selection of the most advantageous tender, indicating the name and surname (or company name) and address of the Contractor whose tender was selected,
 - 2) upon a Contractor's request – about the position which its tender gained in the tender ranking or the fact that the Contractor's tender was left without examination and evaluation in the case when the Contracting Entity exercises the right specified in Chapter VII of the ToR,
 - 3) Contractors who were excluded from the contract award Procedure or whose tender was rejected – about the grounds for their exclusion or rejection of their tender,
 - 4) the Contractor whose tender was selected as the most advantageous – about the procedure for signing the contract with the proviso that the Contract shall be deemed concluded upon its signing by both parties, and not upon the Contractor's notification of the selection of his/her tender.
3. If the Contractor whose tender has been selected evades concluding the Contract, the Contracting Entity may select the most advantageous tender from among the remaining tenders without their re-evaluation.

4. If a tender submitted by Contractors jointly competing for the Contract is selected, the Contracting Entity reserves the right to demand that the agreement governing the cooperation of these Contractors be submitted before concluding the procurement Contract.
5. If the Contract is signed on behalf of the Contractor by an authorised representative, such a representative must have an appropriate power to represent, unless the right to sign the contract arises from other documents submitted in the Procedure. The document authorising to sign the contract must be submitted, not later than before signing the Contract, in original copy, a copy certified by a notary public to be true to the original copy, a notary public's copy or extract of the document or a copy certified by the principal to be a true copy of the original.

XX. REQUIREMENTS FOR A PERFORMANCE BOND

The Contracting entity does not require a performance bond.

XXI. INFORMATION ON THE CONTENTS OF THE CONTRACT TO BE ENTERED INTO

1. The Contracting Entity shall enter into the Contract on the terms and conditions set out in the Draft Contract which constitutes Appendix 3 to the ToR.
2. The Contract must be concluded in writing otherwise being null and void.
3. The Contract shall be concluded upon signing by the Contracting Entity and the Contractor whose tender had been found the most advantageous.
4. The scope of the Contractor's work under the Contract shall be identical to his obligation contained in the tender, subject to exceptions provided for in the ToR.
5. The Contractors competing jointly for the Contract award and whose tender was selected as the most advantageous, shall be jointly and severally liable for the performance of the Contract and provision of the performance bond, if required.

XXII. CLARIFICATIONS AND AMENDMENTS TO THE ToR

1. The Contractor may request the Contracting Entity to clarify the contents of the ToR. The Contracting Entity may either provide the clarifications or leave the request unprocessed. The Contracting Entity reserves the right to amend the content of the ToR at any time, before the deadline for submission of tenders. Any amendment made to the ToR by the Contracting Entity shall become an integral part of the Procedure documentation and shall be binding.

2. The Contracting Entity may extend the deadline for submission of tenders, taking into account the time necessary to introduce changes in tenders resulting from the amendments to the content of the ToR.
3. The Contracting Entity shall immediately notify all Contractors to whom the ToR were communicated or post the extension of the deadline for submission of tenders on the Contracting Entity's website where the ToR was published.

XXIII. CANCELLATION OF THE PROCEDURE

1. The Contracting Entity reserves the right to cancel the Procedure without stating the reason for such action.
2. The Contracting Entity shall notify the following of the cancellation of the Procedure:
 - 1) Contractors who applied for the Contract award – if the Procedure is cancelled before the deadline for the submission of tenders,
 - 2) all Contractors who submitted tenders – if the Procedure is cancelled after the deadline for submission of tenders.
3. The Contracting Entity shall have the right referred to in Section 1 above also after the selection of the most advantageous tender. In such situation, the Contracting Entity may cancel the Procedure after the prior cancellation of the selection of the most advantageous tender.
4. The Contracting Entity reserves the right to cancel any of its actions performed in the Procedure before the conclusion of the contract, without having to provide the reason for such action.
5. The Contractor shall not seek compensation from the Contracting Entity for any damage arising in the event that the Contracting Entity exercises the rights provided for in this Chapter.

XXIV. SUBCONTRACTORS

1. The Contracting Entity shall allow the participation of subcontractors in the performance of the Contract.
2. The Contracting Entity demands that the Contractor indicates in their tender the part of the Contract they intend to entrust to subcontractors and the names of the subcontractors (if known at the stage of submitting the tender).
3. The Contracting Entity does not allow participation in the performance of the Contract of subcontractors with respect to whom there are grounds for exclusion referred to in Chapter VIII, Section 1.1)-10) of the ToR. The participation in the performance of the Contract of

subcontractors to whom Chapter VIII, Section 2 of the ToR applies is prohibited if their work accounts for more than 10% of the Contract value.

XXV. INFORMATION ON PERSONAL DATA PROTECTION (ARTICLE 13 of the GDPR)

Data controller

1. The data controller within the meaning of the EU Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), (OJ EU L 119 of 04 May 2016, p. 1 and OJ EU L 127 of 23 May 2018, p. 2), hereinafter referred to as "the GDPR", of:
 - 1) the Contractor who is a natural person,
 - 2) the Contractor who is a natural person running a sole proprietorship,
 - 3) representative authorised to represent the Contractor during the Procedure,shall be **Operator Gazociągów Przesyłowych GAZ-SYSTEM S.A. with its registered office in Warsaw** (address: ul. Mszczonowska 4, 02-337 Warszawa) as the Contracting Entity.
Data protection rights can be exercised (or more information can be obtained) by communicating with the Contracting Entity at the e-mail address indicated in Chapter X of the ToR or via the Procurement Portal.

Purpose of personal data processing

2. The personal data provided by the persons indicated in Section 1 shall be processed to the extent necessary to take steps to possibly conclude a contract for the performance of the Contract (Article 6(1)(b) of the GDPR), and also on the basis of Article 6(1)(f) of the GDPR will be used for the purpose of maintaining business contact. Accordingly, the provision of personal data is voluntary, but failure to do so will prevent the Contracting Entity from carrying out the activities necessary for the award of the Contract.

Legal basis for personal data processing

3. The legal basis for the processing of personal data of the persons indicated in Section 1 is Article 6(1)(f) of the GDPR.

Personal data recipients

4. Personal data will be processed by employees or associates of the Contracting Entity.
5. Personal data in the scope of names and surnames or company names will also be, in the event of selection of the most advantageous tender, published on the Contracting Entity's website at <https://portal.gaz-system.pl/>.

6. It shall also be permissible, after the relevant contract is signed, to provide the interested parties, including other Contractors, with documents related to the Procedure, which were transferred or received during the Procedure. The final decision in this respect shall be made by the Contracting Entity.
7. Personal data concerning the persons referred to in Section 1 shall also be made available to the employees or collaborators of contractors with whom the Contracting Entity has concluded contracts or agreements for the use of IT systems provided by these contractors for the transfer or archiving of data. However, the scope of the transfer of data to these recipients is limited exclusively to the possibility of becoming acquainted with this data in connection with the provision of technical support services and failure recovery. These recipients are bound by an obligation to maintain the confidentiality of all data, including personal data.
8. In addition, the following entities may be the recipients of the data: members of the Contracting Entity's bodies, entities authorised on the basis of applicable laws (in particular courts, state authorities, institutions), entities providing services to the Contracting Entity on the basis of concluded contracts, in particular entities providing the Contracting Entity with IT and new technology services, postal and courier services, document destruction and archiving services, accounting and financial services.

Period of personal data processing

9. Personal data shall be processed for the period necessary for the selection of the most advantageous tender, cancellation of the Procedure or termination of the Procedure without the selection of the most advantageous tender, and after this period the data will be stored for archival purposes for the period prescribed by law.

Transfer of data to third countries or international organisations

10. Personal data may be transferred to third countries or international organisations pursuant to the applicable legislation.

Automated decisions

11. The Contracting Entity does not make automated decisions and does not perform profiling based on your personal data.

Rights

12. The persons referred to in Section 1 have the right to:
 - 1) access their personal data, i. e. obtain information what data is processed, in what manner and for what purpose,

- 2) rectify, i. e. demand that the data be updated if it turns out that the data collected is incorrect or no longer up-to-date,
 - 3) have the personal data deleted, i.e. demand the removal of the personal data in whole or in part. If the request is justified, the Contracting Entity shall immediately delete such data;
 - 4) restrict the processing, i. e. demand that the personal data processing be limited. The restriction of the processing may be repealed after the circumstances justifying the limitation of the processing cease to exist;
 - 5) file a complaint against the Contracting Entity with the President of the Office for Personal Data Protection (Prezes Urzędu Ochrony Danych Osobowych) if you believe that the processing of your personal data violates the provisions of law.
13. In addition to the rights indicated in Section 12, the persons indicated in Section 1:
- 1) items 1) and 2) have the right to have their personal data transferred, i.e. to receive from the Contracting Entity, in a structured, commonly used machine-readable format, the personal data that concerns them,
 - 2) Section 3) have the right to object to the processing, i.e. to stop the processing of personal data for the purpose of maintaining business contacts, if, in their opinion, the Contracting Entity has violated their rights in connection with the processing of the data provided.
14. In the event that the performance of the obligations referred to in Section 12.1) above would require a disproportionate effort, the Contracting Entity may require the data subject to provide additional information to specify the request, in particular to provide the name or date of the non-public contract award procedure.
15. The exercise by the data subject of the right to rectify or supplement personal data referred to in Section 12.2) above shall not result in changing the outcome of the Procedure or the provisions of the contract.
16. The request referred to in Section 12.4) above shall not restrict the processing of personal data until the conclusion of the Procedure.

XXVI. INFORMATION ON PERSONAL DATA PROTECTION (ARTICLE 14 of the GDPR)

The Contractor shall fulfil, on behalf of the Contracting Entity, the information obligations under Article 14 of the GDPR in relation to the persons indicated below in Section 1.

The information obligation shall be fulfilled by providing the following information to these persons. The Contractor shall confirm the fulfilment of the obligation by submitting the statement included in the "Tender" form, constituting Appendix 2 to the ToR.

Data controller

1. The controller of personal data within the meaning of the GDPR:
 - 1) of contact persons,
 - 2) of subcontractors, further subcontractors,
 - 3) of third parties,
 - 4) of authorised representatives of the Contractor, other entities within the meaning of Chapter VI, Section 6 of the ToR or of subcontractors,
 - 5) of members of management and supervisory bodies of legal persons or partnerships,
 - 6) of proxies,shall be **Operator Gazociągów Przesyłowych GAZ-SYSTEM S.A. with its registered office in Warsaw** (address: ul. ul. Mszczonowska 4, 02-337 Warszawa) as the Contracting Entity.
Data protection rights can be exercised (or more information can be obtained) by communicating with the Contracting Entity at the e-mail address indicated in Chapter X of the ToR.

Purpose of personal data processing

2. Personal data of the persons indicated in Section 1 shall be processed for the purpose related to the Procedure, in particular to carry out the activities necessary for the award of the Contract and for archiving.

Legal basis for personal data processing

3. The legal basis for the processing of the personal data of the persons indicated in Section 1 is Article 6(1)(f) of the GDPR. The Contracting Entity shall be entitled to process personal data for the purpose of maintaining business contacts, evaluation of tenders submitted by the Contractors and archiving of the Procedure.

Categories of personal data

4. The following categories of personal data will be processed in relation to the persons indicated in Section 1.1)-7): basic data (name and surname).

Moreover, in relation to:

- 1) contact persons: contact details (e.g. telephone number, email address, fax);
- 2) subcontractors:
 - a) company name,
 - b) contact details, in particular telephone number, fax number, e-mail address,
 - c) address information, in particular address of residence, place of stay;

- 3) other entities within the meaning of Chapter VI, Section 4 of the ToR:
 - a) company name,
 - b) contact details, in particular telephone number, fax number, e-mail address,
 - c) data concerning identification numbers, in particular series and number of the ID card, PESEL (Personal ID No.), NIP (Tax ID No), REGON (Company Registration No),
 - d) address information, in particular address of residence, place of stay,
 - e) information on the conducted activities, in particular information on the business activities;
- 4) authorised representatives of the Contractor, other entities within the meaning of Chapter VI, Section 4 of the ToR or of subcontractors,
 - a) basic identification data, in particular name and surname,
 - b) contact details, in particular telephone number, fax number, e-mail address,
 - c) data concerning identification numbers, in particular series and number of the ID card, PESEL (Personal ID No.),
 - d) information on the principal,
 - e) place of residence;
- 5) members of management and supervisory bodies of legal persons or partnerships,
 - a) basic identification data, in particular name and surname,
 - b) contact details, in particular telephone number, fax number, e-mail address,
 - c) data concerning identification numbers, in particular PESEL (Personal ID No),
 - d) data on work history (in particular the function held);
- 6) Proxies:
 - a) data concerning identification numbers, in particular PESEL (Personal ID No),
 - b) information on the principal.

Recipients of personal data

5. Personal data will be processed by employees or associates of the Contracting Entity.
6. It shall also be permissible, after the relevant contract is signed, to provide the interested parties, including other Contractors, with documents related to the Procedure, which were transferred or received during the Procedure. The final decision in this respect shall be made by the Contracting Entity.
7. Personal data concerning the persons referred to in Section 1 shall also be made available to the employees or collaborators of contractors with whom the Contracting Entity has

concluded contracts or agreements for the use of IT systems provided by these contractors for the transfer or archiving of data. However, the scope of the transfer of data to these recipients is limited exclusively to the possibility of becoming acquainted with this data in connection with the provision of technical support services and failure recovery. These recipients are bound by an obligation to maintain the confidentiality of all data, including personal data.

8. In addition, the following entities may be the recipients of the data: members of the Contracting Entity's bodies, entities authorised on the basis of applicable laws (in particular courts, state authorities, institutions), entities providing services to the Contracting Entity on the basis of concluded contracts, in particular entities providing the Contracting Entity with IT and new technology services, postal and courier services, document destruction and archiving services, accounting and financial services.

Period of personal data processing

9. Personal data will be processed for the period necessary for the selection of the Contractor in the Procedure, and after this period the data will be stored for archival purposes for the period prescribed by law.

Transfer of data to third countries or international organisations

10. Personal data may be transferred to third countries or international organisations pursuant to the applicable legislation.

Automated decisions

11. The Contracting Entity does not make automated decisions and does not perform profiling based on your personal data.

Rights

12. The persons referred to in Section 1 1)-6) shall have the right to:
 - 1) access the personal data, i. e. obtain information which data is processed, in what manner and for what purpose,
 - 2) rectify, i. e. demand the data update if it turns out that the data has been collected incorrectly or is no longer up-to-date,
 - 3) have the personal data deleted, i.e. demand the removal of the personal data in whole or in part. If the request is justified, the Contracting Entity shall immediately delete such data,

- 4) restrict the processing, i. e. demand that the personal data processing be limited. The restriction of the processing may be revoked after the circumstances justifying the limitation of the processing cease to exist,
 - 5) object to the processing, i. e. demand that the processing of personal data for the purpose indicated above is stopped if you consider that the Contracting Entity violates your rights related to the processing of the data provided,
 - 6) file a complaint against the Contracting Entity with the President of the Office for Personal Data Protection (Prezes Urzędu Ochrony Danych Osobowych) if you believe that the processing of your personal data violates the provisions of law.
13. In the event that the performance of the obligations referred to in Section 12.1) above would require a disproportionate effort, the Contracting Entity may require the data subject to provide additional information to specify the request, in particular to provide the name or date of the non-public contract award procedure.
14. The exercise by the data subject of the right to rectify or supplement personal data referred to in Section 12.2) above shall not result in changing the outcome of the Procedure or the provisions of the contract.
15. The request referred to in Section 12.4) above shall not restrict the processing of personal data until the conclusion of the Procedure.

Source of personal data

16. The Contracting Entity obtained the personal data from the Contractor participating in the Procedure.

Appendices to the ToR:

- Appendix 1 – Description of the Subject of the Contract
- Appendix 2 – "Tender" form
- Appendix 3 – Draft Contract
- Appendix 4 – Commitment to make resources available
- Appendix 5 – List of contracts