



Orkuveitan



LJÓSLEIÐARINN

ON: þessi litur

Veitur: þessi litur

OR: þessi litur

LL: þessu litur

## Invitation to Tender

ONIK-xxxx-xx

VEIK-xxxx-xx

ORIK-xxxx-xx

LLIK-xxxx-xx

**(Heiti útboðs)**

**## Mánuður og ár #**

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## 1. TENDER AND CONTRACT TERMS AND CONDITIONS

### 1.1 Tender Information

#### 1.1.1 Purchaser

Veitur ohf. ID no. 501213-1870 / Orka náttúrunnar ohf., ID no. 471119-0830/ Orkuveita Reykjavíkur, ID no. 521213-0190, Ljósleiðarinn ehf, ID no. 691206-3780

Bæjarhálsi 1, 110 Reykjavík

The Purchaser requests tenders for **## (mjög almenn lýsing) ##** in accordance with these tender documents.

Tenders shall include everything that is needed to deliver the goods in accordance with the terms and conditions defined in these tender documents. The tender shall made by filling in the in all the relevant sections of the TRF.

The procurement department of Orkuveita Reykjavíkur is the tender administrator for this tender. The entity submitting a tender under the described procurement procedures in these tender documents is referred to as the Tenderer.

#### 1.1.2 General Description and Delivery Dates

Please note that it is not permitted to offer equipment made in Russia or Belarus or sold by Russian or Belarussian entities.

Tenderers must be able, if requested, to provide certificates of origin for the offered equipment or otherwise demonstrate that the above condition is met.

*# Hér kemur lýsing á þeim búnaði sem útboðið nær til. Sami texti skal notaður í auglýsingu. Nefna skal m.a. tegund búnaðar, fyrirhugaðri notkun hans, fjölda og afhendingardagsetningar.#*

*Skiladagar, og tafabætur ef búnaður er ekki afhentur á réttum tíma, eru eftirfarandi:*

Equipment	Delivery date	Liquidated damages
<b>## Equipment ##</b>	<b>##XX weeks/days##</b> form the time that the Purchaser places the purchase order	0,2% of the quoted price for the equipment per day that the delivery is delayed
<b>## Equipment ##</b>	<b>##XX weeks/days##</b> form the time that the Purchaser places the purchase order	0,2% of the quoted price for the equipment per day that the delivery is delayed
<b>## Equipment ##</b>	<b>##XX weeks/days##</b> form the time that the Purchaser places the purchase order	0,2% of the quoted price for the equipment per day that the delivery is delayed

**See details on liquidated damages in section 2.6.**

Full compliance shall be kept with all applicable design codes and standards as listed in the requirements of the third-party certifying authority (Notified Body – NoBo), and overall good practice. The Tenderer is responsible for obtaining certification from the third-party certifying authority.

Transportation and cost thereof to #xxxxxx# shall be included in the tender. **Installation is not in the scope of supply.**

**1.1.3 Procurement Procedure Summary**

Important Dates and other details:

- EEA tender: –Yes/no
- Procurement procedure: Open procedure
- Inquiry deadline: **xxxx**, at 16:00 Hours, local time.
- Delivery and opening of tenders: **xxxxx** Hours, local time.
- The tenders shall be valid for 8 weeks after opening day.

Tenders containing changes or additional terms and conditions to the tender documents can be considered invalid, see section 1.3.2.

This procurement procedure is carried out with fully electronic means. All communication during the procurement procedure; i.e. delivery of tender documents, reception and response to enquiries, delivery and reception of Tenders, opening of Tenders, will be performed through Reykjavik energy tender website: <https://in-tendhost.co.uk/reykjavikenergy> (here after The Website), see further information in section 1.3.9 - 1.3.12.

**1.1.4 Procurement procedure**

**#(Innkaupa velja ákvæði)#**

**Undir viðmiðunarfjárhæðum**

This procurement procedure is an open invitation to tender and is thus specified as a general tender procedure in accordance with Act no. 65/1993 on the implementation of invitation to tender.

**eða ef EES útboð**

This is a general tender procedure in accordance with Act no. 65/1993, regulation no. 340/2017 on procurement by entities operating in the water, energy, transport, and postal services sectors, and XI and XII section of Act. no. 120/2016 on public procurement.

**eða ef OR útboð**

This is a general tender procedure in accordance with Act no. 120/2016 on public procurement.

**1.1.5 Criteria for qualitative selection**

The Tenderers must fulfill all criteria for qualitative selection laid down in this chapter. All Tenderers that fulfill the qualitative selection criteria will be considered qualified for the procurement procedure. The Tenderers are advised to provide all necessary information concerning the criteria for qualitative selection so that the Purchaser can evaluate qualifications of tenderers. If the Tenderer does not provide adequate information in relations to the criteria for qualitative selection it may lead to rejection of tender.

#### **1.1.5.1 General provisions**

General information on Tenderer shall accompany his tender.

Should a tender be made on behalf of another party the Tenderer shall turn in a special form for that purpose.

#### **1.1.5.2 The personal circumstances of the Tenderer**

Any Tenderer who has been the subject of a conviction by final judgment for the following offences shall be excluded from participation in a public contract:

- a. Participation in a criminal organization,
- b. corruption,
- c. fraud,
- d. Terrorist Offences or offences linked to terrorist activities,
- e. Money laundering or terrorist financing; or
- f. Child labor and other forms of trafficking in human beings.

The obligation to exclude an economic operator shall also apply where the person convicted by final judgment is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control therein.

An economic operator shall be excluded from participation in a procurement procedure where the contracting authority is aware that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions and where this has been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of the country in which it is established.

Furthermore, contracting authorities may exclude from participation an economic operator where the contracting authority can demonstrate by any appropriate means that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions. This shall no longer apply when the economic operator has fulfilled its obligations by paying or entering into a binding arrangement with a view to paying the taxes or social security contributions due, including, where applicable, any interest accrued or fines.

Any economic operator may be excluded from participation in public contracts if one of the following applies:

- a. Violation of the obligations in relation to environmental, social and labor law,
- b. The economic operator is bankrupt, or is being wound up, where he has entered into an arrangement with creditors, or has entered into another similar situation.
- c. Grave professional misconduct which renders its integrity questionable,
- d. Entering into agreements with other economic operators aimed at distorting competition,
- e. Where there is a conflict of interest which cannot be remedied,
- f. A distortion of competition from prior involvement of the economic operator which cannot be remedied,
- g. The economic operator had shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity or a prior concession contract which lead to early termination of that prior contract, damages or other comparable sanctions,
- h. Serious misrepresentation in supplying information in the procurement; or

- i. The economic operator has undertaken to unduly influence the process or obtain confidential information or has negligently provided misleading information.

In assessment the contracting authority shall consider whether the economic operator in case is the same entity, with the same or almost the same owners or almost the same economic activity in the same market, regardless of whether the economic operator has changed its registration number or has been re-established. Contracting authorities can in connection with this investigation look into business history of the economic operator's management and shareholder.

### 1.1.5.3 *Financial standing of Tenderers*

The financial standing of Tenderers shall be sufficiently secure so that commitments to the contracting authority may be fulfilled. The tenderer shall fulfill the following criteria:

**Dæmi - ekki tæmandi talning:**

- Tenderer's equity ratio according shall be at least XX. This shall be shown by submitting the latest annual accounts or newer documents.
- Tenderer's average annual turnover in accordance with the last three annual accounts shall be at least XXXX (Ekki meira en kostnaðaráætlun x2).

The Tenderer shall submit his annual accounts for the past three (3) years. Further information can be requested to evaluate whether Tenderer's financial standing is sufficiently secure.

### 1.1.5.4 *Professional qualifications*

**Dæmi –ekki tæmandi talning:**

- The Tenderer shall have been in operation for at least the last three years.
- Tenderers must provide, if requested, adequate information on that their companies are a registered business in their home state by oath or certificate.

### 1.1.5.5 *Technical ability*

The technical ability of the Tenderer shall be sufficiently secure so that commitments to the contracting authority may be fulfilled.

**Dæmi – ekki tæmandi talning:**

Tenderer's principal manufacturer shall have a documented experience of at least 3 similar projects **within the last five (5) years**. Similar projects are projects where the manufacturer has delivered goods of similar standard and quantities as requested in these tender documents, where the value of each project was at least 50% of the Tenderer's price and delivery was on time.

The Tenderer himself shall have a documented experience of at least three (3) similar contracts within the last five (5) years, that have been successfully completed on time and are comparable to the proposed contracts. Similar contracts are contracts where the Tenderer has delivered goods of similar standard and quantities as requested in these tender documents, where the value of each contract was at least 50% of the Tenderer's price and delivery was on time.

If requested the Tenderer shall provide (x) letters of recommendation, where it is stated that the Tenderer fulfilled all requirements, including delivery time, design, and material quality, in accordance with the contract.

#### 1.1.5.6 Requirements for quality system

Tenders shall include the following information as regards quality management systems in use by Tenderer:

- Information as to whether Tenderer is operated according to a quality management system. In case there is an accredited or authorized quality management system, the Tenderer shall specify which system or standard he is employing and enclose verifying documentation.
- If Tenderer is not operated according to an accredited quality management system, information must be supplied as to how Tenderer intends to ensure full product and service quality.
- Tenderer shall specify which individual (incl. position) will be responsible for operating the respective systems.
- In case the Tenderer is not the manufacturer of the product, he is requested to include information about the manufacturer and to provide the necessary verifying documents.

## 1.2 Tender Documents

The following documents constitute the tender documents:

- Addenda to Tender Documents No. XXXX-XXXX-XX
- These tender documents No. XXXX-XXXX-XX
- Tender Response Form No. XXXX-XXXX-XX
- Drawings/blueprints
- ##Önnur gögn##

After a contract has been finalized the order of precedence of contractual documents shall be in the order above, where number one has the most weight and so on. The terms and conditions of the tender documents shall supersede other terms and conditions provided for in other contract documents unless specifically stated. If at any time during the contract period, an inconsistency is found to be between the terms and conditions in the Tender Documents and other contract documents, the terms and conditions in the tender documents shall apply.

## 1.3 Tenders

The tender shall be constructed in accordance with the tender documents.

The Tenderers shall fill out the Tender response form (TRF), which is a part of the tender documents, and submit all the documentation defined in section 1.3.8. If the submitted documentation is incomplete, the Purchaser reserves the right to determine that the tender is invalid.

All sections of the TRF shall be filled out as specified in the tender documents, including the Bill of Quantities (BOQ). If the BOQ is not fully completed, the items where the price is not stated are considered to be included in other parts of the tender. If other parts of the TRF are



not filled out the Purchaser reserves the right to reject the relevant tender. The Tenderers shall, in their tenders, calculate the quantities specified in the BOQ.

### **1.3.1 The Bill of Quantities**

The BOQ can be found in the TRF and shall be filled in with the understanding that the unit price quoted and the total tender amount in the BOQ include all offered equipment. All quoted unit prices in the BOQ shall **include/not include** value added tax. If unit prices are not specified for a particular item in the BOQ, their cost is considered to be included in other items within the BOQ. All quoted unit prices are binding. All calculation formulas are the responsibility of the Tenderer.

If calculation errors are identified in a delivered BOQ, appropriate corrections to the BOQ shall be made.

### **1.3.2 Non-conformant tenders**

As previously stated, this tender procedure is conducted in accordance with Act no. 65/1993 on the Implementation of Invitation to Tender. Article 12 of The Act states that: "A bid lacking to a considerable extent conformity with the terms of Invitation to Tender shall not be accepted". In accordance with this, a tender that lacks to a considerable extent conformity with the terms and conditions in these tender documents will not be accepted. Tenders can be non-conformant if they e.g. contain material deviations, alterations, additions or changes to the terms and conditions of the tender documents. The Purchaser reserves the right to reject any non-conformant tender without providing an opportunity to clarify the non-conformant deviations from the Tender Documents in the relevant tender.

The Purchaser reserves the right to accept any tender as valid and in conformity with the Tender Documents provided that the Tenderer declares and confirms that all non-conformant terms and conditions in his tender are waived and become null and void.

If Tenderers have any questions or observation concerning the tender documents, they shall submit an inquiry to the Purchaser before the deadline for inquiries, see Section 1.1.3.

### **1.3.3 Joint Ventures**

If two or more parties intend to submit a tender in a joint venture, each party shall provide detailed information about the company. A joint venture agreement between the parties shall be accompanied by a tender. One party of the joint venture shall act as a representative to the Purchaser and that party shall as the representing party be authorized to exercise all rights and obligations towards the Purchaser on behalf of the joint venture. Members of a joint venture shall be jointly and severally liable; in solidum, of all obligations under contract, without any reservation whatsoever. The representative shall prove that he / she has full authority and authority to act on behalf of all the partners and each of them individually, so as to be fully binding on all of them on the basis of the aforementioned principle.

All parties who are a part of the joint venture must submit documents concerning qualitative selection. In addition, parties to the joint venture must submit documentation regarding their qualifications and experience in accordance with which part of the Contract they intend to fulfill, see further in section 1.1.5.

### 1.3.4 Language

Tenders and supporting documents shall be submitted in Icelandic and/or English. The Icelandic or English language shall be exclusively used at the execution of the Contract.

### 1.3.5 Variants

Variants are not allowed. *#hafa samband við innkaupaþjónustu ef verkefnastjóri óskar eftir að skoða þennan möguleika – tilboð verða að vera samanburðarhæf#*

### 1.3.6 Optional additional procurement

**[Vill kaupandi eiga heimild til að kaupa samabúnað á grundvelli útboðsins?]**

The Purchaser shall have the right to order the following additional units for up to [Number] years after the opening of tenders.

Equipment	Delivery date	Liquidated damages
## Equipment ##	##XX weeks/days## form the time that the Purchaser places the purchase order	0,2% of the quoted price for the equipment per day that the delivery is delayed
## Equipment ##	##XX weeks/days## form the time that the Purchaser places the purchase order	0,2% of the quoted price for the equipment per day that the delivery is delayed
## Equipment ##	##XX weeks/days## form the time that the Purchaser places the purchase order	0,2% of the quoted price for the equipment per day that the delivery is delayed

### 1.3.7 Price

The Tenderer shall submit unit prices in the BOQ. All quoted prices must be in **EUR/ISK/USD**.

Tender price quoted shall include all cost, charges and expenses of any kind for resulting from the purchase/the contract as described in these tender documents, including all taxes and statutory payments imposed on the Tenderer, subcontractors, employees and the tenders operation, **excluding value added tax (VAT)**.

The unit prices quoted in the Tender are final and will not change for the quantities described in these Tender Documents.

**## ef það eru valkvæð kaup, hvernig reiknast verð fyrir þann búnað ##**

**Verðbreyting 1:** If the Purchaser decides to purchase optional additional units in accordance with section 1.3.6 the quoted price shall be revised based on the changes in the European Harmonized Index of Consumer Prices (HIPC), published by the European Central Bank, form [Month] [Year] to the month that the purchase order is placed by the Purchaser.

**Verðbreyting 2:** If the Purchaser decides to purchase optional additional units in accordance with section 1.3.6 the quoted price shall be revised based on the changes in the Icelandic

Index of Consumer Prices, published by Statistics Iceland, form [Month] [Year] to the month that the purchase order is placed by the Purchaser.

### **1.3.8 Supporting documents**

The Tenderer is the party specified on the tender bid-sheet in the TRF.

If two or more parties intend to submit a tender in a joint venture a joint venture agreement between the parties shall be accompanied by a tender, see section 1.3.3

The Purchaser reserves the right to request additional information if needed.

Tenderers are urgently requested to submit required data together with their tenders. Non-compliance may result in rejection of tenders.

#### **1.3.8.1 Documents that shall be provided with the tender**

- Filled out and signed tender bid-sheet (part of TRF)
- Filled out and signed tender bill of quantities (part of TRF)
- Filled out and signed qualitative selection sheet (part of TRF)
- Filled out and spare part catalogue (part of TRF)
- Filled out TRF
- Annual accounts, or other documents approved by the Purchaser, which show that the tenderer meets the financial requirements in section **Error! Reference source not found.**, shall be submitted with tenders.
- Information/documentation that shows that the tenderer fulfills requirements concerning professional qualifications and technical ability according to section **Error! Reference source not found.** and **Error! Reference source not found.**
- Description of the manufacturer's quality assurance system according to sub-clause 1.1.5.6
- Information about subcontractors (if applicable)
  - Declaration on exclusion grounds
  - Declaration on payment of taxes and social security
- Detailed information about offered equipment
- Annað....

#### **1.3.8.2 Documents that shall be provided at the request of the Purchaser**

Before deciding on award of contract, the Tenderer shall submit the following documentation to the Purchaser at his request. This documentation must be returned within 5 business days of the Purchasers request:

- Confirmation of payment of taxes from the relevant authority.
- Confirmation of payment of statutory social security contributions.

### **1.3.9 Communications during the tender invitation period**

In the event that the Tenders requests further information, or additional clarification of the Tender documents, or the Tenderer becomes aware of inconsistencies in the documents that may influence the content of the Tender documents and the Tender, or the Tenderer has any observations concerning the documentation he shall then submit an inquiry or observation to the Purchaser before the specified deadline for inquiries, see section 1.1.3. The Purchaser

reserves the right to reject inquiries that are received later than on the specified deadline for inquiries.

Inquiries/observations shall be delivered through The Website.

Replies to inquiries will be posted on The Website. All additional information replies to inquiries and addenda will be published on The Website.

### ***1.3.10 Delivery and presentation of tenders***

Tenders along with all additional documents in section 1.3.8.1 must be submitted electronically on The Website. Tenders must be delivered before the specified deadline has expired, see section 1.1.3.

The Purchaser reserves the right to reject tenders that are not constructed in accordance with the tender documents.

### ***1.3.11 The cancellation of a tender***

Tenderers may revoke their tenders on the website before opening of tenders.

This has no effect on the Purchaser's duty to release information due to legal obligations.

### ***1.3.12 Opening of tenders***

Tenders will be opened electronically on the website at the time specified in section 1.1.3.

### ***1.3.13 Tender participation fee***

The Purchaser will not pay for participation in the tender procedure.

### ***1.3.14 Limitation of liability concerning the tender procedure***

The Purchaser's liability for this tender procedure is fully limited to direct costs that the tenderer can demonstrate that he has verifiably incurred in participating in the tender procedure. By submitting a solution proposal and/or final tender in this tender procedure, the tenderer accepts this restriction on his potential right to compensation.

## **1.4 Evaluation and award of contract**

The qualification of Tenderers will be evaluated in accordance with section 1.1.5 based on the information they submit with their tenders, as well as other information the Purchaser may request. Only tenders from qualified Tenderers will be considered for the evaluation and award of contract.

The Purchaser will award the Contract based on the most economically advantageous tender. The most economically advantageous tender is the one best fulfilling the Purchaser's needs, in accordance with the criteria set out in these tender documents.

The Purchaser reserves the right to reject tenders if such rejection can be objectively justified. The Purchaser has objective justification e.g. if a cost estimate of the Purchaser is at hand and the tenders are more than 20% over the cost estimate.

**## Ath. Þetta fer eftir því hvaða fjárhæð er samþykkt fyrir útboð. Ef kostnaðaráætlun er samþykkt án svigrúms þá er það bara kostnaðaráætlunin sem gildir hér. Þá þarf að gæta að því að kostnaðaráætlun sé ítarlega unnin og innihaldi óvissuálag.##**

Only valid tenders will be evaluated according to the defined evaluation criteria.

**Verkefnastjóri velur á milli eftirfarandi aðferða í samráði við Innkaup. #**

- Aðferð 1.** Price + environmental criteria, procedure, sjá aðferð 1 að neðan.
- Aðferð 2.** Price 100%. Contract will be awarded based on total tender price, sjá aðferð 2 að neðan
- Aðferð 3.** Additional quality criteria based on for example delivery time, equipment warranty time, service level, experience etc. The weight of each item shall be stated and the criteria for grading shall be stated clearly, sjá aðferð 3 að neðan.

**Aðferð 1:**

The following criteria will be used to evaluate valid tenders:

- Price 88 points
- Environmental criteria
  - Environmental plan 2 points
  - Information about carbon footprint 10 points
  - EPD carbon footprint scoring #Meta hvort gefa eigi stig#

**The assessment of the defined evaluation criteria will be in accordance with the following methodology. Please note that in order to receive scoring for the evaluation criteria's, sufficient documents must accompany the tender. The Purchaser will not call for additional documents or clarifications regarding the evaluation of said criteria's after the opening of tenders.**

**1.4.1 Price**

The tenderers will receive points according to the following formula:

Points for price = (Lowest valid total tender price / offered tender price) \* 88

**1.4.2 Environmental criteria**

**1.4.2.1 Environmental plan**

If the tenderer submits an environmental plan for his operation with his tender, he will receive 2 points.

The environmental plan shall include at least the following content:

- a) Carbon footprint: Information shall be provided on how the tenderer intends to reduce its carbon footprint by 2030.
- b) Energy consumption: An overview of the tenderer's energy consumption and a plan for how to reduce the use of fossil fuels.
- c) Garbage and waste sorting: A description of how the tenderer handles the sorting of waste together with information on how much of the waste generated by the tenderer's activities is recycled and not.

**1.4.2.2 Information about carbon footprint**

If the tenderer submits information on the carbon footprint of all equipment offered in the form of a report from an independent third party based on ISO 14040 and 14044, he will receive 5 point. If a tenderer submits an environmental declaration from an approved certification body with all offered products according to ISO 14025 (Environmental Product Declaration), he will receive 10 points. This item provides a maximum of 10 points for evaluating bids.

Reports based on ISO 14040 and 14044 shall include at least the following items:

- Goal and scope definition. This requires information about the functional unit, lifetime and system boundaries. It is also necessary to analyze which methodology is used in the calculation of environmental impact (impact assessment method).
- Life cycle inventory information and handling
- Life cycle impact assessment results, which provide information on the climate impact of a product per unit of operation.

**1.4.2.3 EPD Carbon footprint scoring #Taka út ef ekki á að nota#**

X points are awarded to the tenderer with the smallest carbon footprint in the production process according to the EPD (result category A1-A3). If there is only one bidder with EPD, he gets a maximum points under this criteria. The carbon footprint points to be awarded will be calculated as follows:

Points for carbon footprint = (Lowest carbon footprint in EPD of offered products / carbon footprint of product from bidder) \* X

**Aðferð 2:**

Price 100%. Contract will be awarded based on total tender price.

**Aðferð 3:**

The following criteria will be used to evaluate valid tenders:

- Price x%
- Environmental factors y%
- Product delivery time z%
- Product warranty period u%
- #Other criteria#

**The assessment of the defined evaluation criteria will be in accordance with the following methodology. Please note that in order to receive scoring for the evaluation criteria's, sufficient documents must accompany the tender. The Purchaser will not call for additional documents or clarifications regarding the evaluation of said criteria's after the opening of tenders.**

## 2. CONTRACTUAL TERMS AND CONDITIONS

### 2.1 Contract

A Contract is established based on the tender documents and the submitted tender from the Tenderer when the Purchaser has issued a formal purchase order. After a Contract has been established the Tenderer shall be referred to as the Contractor.

A formal order will be made for the delivery of, and payment for, the supplies as defined in the tender documents.

The Contract period commences on the date of final acceptance of tender and lasts until the warranty time for all supplies provided under the Contract have expired.

### 2.2 Governing law and regulations

This invitation to tender and prospective Contract shall be governed, construed, and enforced in accordance with the laws of Iceland.

### 2.3 Payments

#### 2.3.1 Payment

Payment will be provided when the equipment has been delivered.

#### 2.3.2 Payment procedure

Approved invoices shall be paid by the Purchaser no later than 30 days after receipt of the invoice. The final due date shall be the same as the payment due date. Invoices shall be delivered to the Purchaser no later than 30 days before payment due date.

Contractors can use bank payment slips to manage payments for their convenience. Terms of payment: SWIFT TRANSFER 30 DAYS NET.

All invoices for the purchases of goods or services shall be issued according to technical specifications of the Icelandic Standards: TS-136 for invoices and TS-137 for credit invoices (or succeeding editions). The specification can be accessed on the website of Icelandic Standards, free of charge: <http://stadlar.is/stadlastarf/fagstadlarad-i-upplysingataekni/taekniforskriftir/rafraenar-taekniforskriftir.aspx>

If an invoice is not paid on the due date, the Purchaser shall pay penalty interest, as determined in accordance with III. Section of the Act on Interest and Indexation no. 38/2001.

#### 2.3.3 Payment withheld

The Purchaser may withhold the whole or any part of any payment to such extent as may be necessary to protect himself from loss on account of, defective material not remedied or guarantees not met and amounts due as liquidated damages, including price revision thereof.

When the grounds for withholding payment are removed, payment will be made without interest of the amount withheld.

## 2.4 Transport and Delivery

The goods shall be delivered **DAP**, as defined by Incoterms 2020, **Eimskip Warehouse, Reykjavík** Iceland. The delivery by the Contractor shall include all transport cost and insurance for transport to the place of delivery. The goods shall be suitably packed for sea transport.

The delivery is not considered fulfilled until all items and associated documentation and certificates have been received by the Purchaser. The Contractor shall prepare and load all materials and equipment in such a manner as to protect them from damage in transit, be responsible for and replace any materials or equipment damaged or lost in transit under Contractor's responsibility, whether resulting from improper packing or not, and bear the cost for the repair or replacement of such materials or equipment.

Each transport item shall be prepared in accordance with the transportation used. All packing materials needed shall be provided by the contractor and shall after use remain the property of the Purchaser. The Contractor shall also ensure that all slings or any lifting equipment remain to ease unloading of the containers and this equipment remains the property of the Purchaser. All materials shall be packed and transported in conformity with the loading limitations and dimensions applicable from point of dispatch to the place where the transportation shall terminate. In case of deviation from such limitations the Contractor shall, prior to packing, submit packing plans to Purchaser 's representative allowing a reasonable time for his study and approval thereof. All material appertaining to this contract shall be packed and protected for sea transport.

Each case, box, crate, bundle or single item shall be clearly marked with identification for the project. Marks shall be impressed or stenciled with good quality waterproof ink or paint, to be clearly visible. The marking shall include:

Billing address:

Veitur / Orka náttúrunnar / Orkuveita Reykjavíkur / Gagnaveita Reykjavíkur

**ORKA NATTURUNNAR / VEITUR / ORKUVEITA REYKJAVÍKUR**

BÆJARHALSI 1

REYKJAVÍK

ICELAND

Delivery place of goods:

**Eimskip Warehouse/Vöruhótel Eimskipta**

**Sundagröar 4**

**104 Reykjavík**

**ICELAND**



One copy of applicable documentation shall be enclosed with any overseas shipment. The respective number of copies to be sent to the Purchaser by mail will be made known to the Contractor after award of contract.

Should the Contractor be prevented from dispatching any material in adequate time by a cause outside the Contractor's control, he shall arrange for proper storing and shall insure the goods against all risks during the storage period.

## 2.5 Quality and guarantees

### 2.5.1 Quality of Materials

All materials shall be new **or less than two years old from the date of manufacturing. If the material is not new and has been stored in a yard the Contractor shall prove that the material has been maintained according to standards.** Both workmanship and materials shall be of first-class commercial quality and of the classifications and grades designated in the tender and contract documents and in accordance with Purchaser's representatives' instructions.

Materials not specifically designated shall be subject to approval, be suitable for the purpose and, as far as practicable, and comply with appropriate standards.

### 2.5.2 Quality Control

The Contractor is required to ensure the quality of all aspects of the project through internal controls. These shall be systematic, organized and documented, and all management and division of responsibility shall be defined. The party responsible for management, what aspects are subject to whose authority, which is empowered to make decisions and who is responsible for what shall be registered. The Contractor shall ensure that all supplies for the project meet established requirements. This shall be done systematically, and the results documented.

Delivered products shall comply with the requirements set forth in the tender documents.

Contractor shall present valid quality certificates for all products which he intends to deliver.

### 2.5.3 Testing of Materials

The Purchaser reserves the right to carry out a third-party inspection at Contractors facilities without any additional cost.

**The Purchaser will notify the Contractor with at least 10 working days before an upcoming visit. Notice will include information regarding what is to be inspected.**

The Purchaser's inspection does not limit in any way the Contractor's obligation to maintain quality management and to deliver the product in accordance with these tender documents.

The Contractor shall analyze or test at the place of manufacture or fabrication such parts of the work and materials in such manner and at such time as may be required by the contract documents or the Purchaser's representative.

The Contractor shall provide any assistance, instruments, machines, labor and materials which are normally required for examining, measuring and testing any work and the quality, weight or quantity of any material used.

All sampling and testing of materials shall be done by the Contractor at his own cost.

#### **2.5.4 Guarantees and failure to meet guarantees**

The Contractor shall guarantee all material furnished by him under these tender and contract documents against all defects in materials during the life of the contract and for a period of two years from delivery of goods.

The contractor shall according to this guarantee make all such replacements and repairs of materials and parts as deemed necessary by the Purchaser 's representative in order to comply in full with the requirements of the tender documents.

If, after proper notice, the Contractor shall refuse or persistently neglect to make said correction, the Purchaser may proceed at his own expense to make such corrections as may be required, and deduct from the payment due the contractor, or recover under the performance bond, an amount equal to the actual expense incurred. The Purchaser may alternatively elect to accept an equitable reduction in price.

Any materials or parts replaced or repaired under the provision of this section, shall be subject to a new period of guarantee of 365 calendar days, starting with the date of such replacement or repair.

If any defects, imperfections or faults appear after the expiration of the guarantee period, the Contractor may be held liable if such defects, imperfections or faults can be attributed to any deception, disregard or neglect on the part of the Contractors or his employees. Such liability will be derogated according to Icelandic law.

#### **2.6 Liquidated damages**

##### **# Þarf að meta hverju sinni – verkefnastjóri fyllir inn #**

Should the Contractor fail to deliver the goods on the stated delivery times, damage will result to the Purchaser. Since the exact amount of such damage would be difficult to ascertain, it is agreed that the Purchaser is entitled to certain amounts as liquidated damages, and not as penalty. Said amounts are shown in section 1.1.2 and will be payable by the Contractor to the Purchaser for each calendar day that delivery of the goods is delayed beyond the specified delivery date. The liquidated damages are, at the discretion of the Purchaser, deductible from the payments due to the Contractor as well as from any other amounts payable by the Purchaser to the Contractor. The amount of liquidated damages for each equipment defined in section 1.1.2 shall not exceed 10% of the quoted value for that equipment.

#### **2.7 Personal data protection**

When constructing his tender and when working for the Purchaser after a contract is concluded, the Contractor is responsible for informing his employees and, where appropriate, obtaining their consent, for personal information that he provides to the Purchaser. In addition, the Contractor shall provide his employees with appropriate training in accordance with the provisions of the GDPR at any given time.

The above also applies to subcontractors that the Contractor has been authorized to use. The Contractor must ensure that the subcontractors fulfill the above-mentioned obligations towards their staff.

#### **2.8 Interpretation of contract terms**

If there is an inconsistency between any of the provisions of these terms and conditions, the newest provisions shall apply, unless otherwise provided in the Contract.

## 2.9 Confidentiality

The Contractor and his employees and subcontractors shall maintain the utmost confidentiality of about any data, information and other things which they will acquire while working for the Purchaser and shall remain confidential in accordance with any laws, regulations or the nature of a case. These include contract information, financial information, personal information and other comparable data.

The Contractor shall disclose to his staff and subcontractors his duty of confidentiality.

The obligation of confidentiality shall continue in full force indefinitely.

The Contractor and its employees are not permitted to access any data or information, copy, edit, deliver or otherwise use, in any other way than specifically stated in the Contract.

The Purchaser may not disclose information submitted by the Contractor as confidential information. Such information includes in particular; technical and business secrets, as well as the items in the tender that must be kept secret. This does not affect the obligation of public bodies to provide information under legal obligations.

Notwithstanding the above confidential undertaking by the Purchaser, the Purchaser is permitted to disclose to its advisers and consultants, information submitted by the Contractor as confidential information, provided always that such advisers and consultants undertake the obligation to keep such information as confidential information, which they shall not disclose unless obliged to do so by law.

## 2.10 Information security

The Contractor realizes that official regulatory authorities, e.g. Data Protection Authority, may require information about the Contractors security measures or access to the information it stores.

If the Contractor becomes aware of a security vulnerability or other weaknesses of the Purchaser, he must immediately notify the Purchasers contract personnel.

The Contractor must protect personal information that he may be aware of in connection with the tender procedure and subsequent Contract.

### 2.10.1 Security incident

A security incident is an incident such as a security breach, invasion into computer systems or housing, a malicious act, unauthorized access to or weakness in a system.

If a security incident occurs with the Contractor or his subcontractor which is believed to affect the security of the information of the Purchaser, he shall immediately notify the Purchase. If the Purchaser so desires, the Contractor must submit a written report on the incident stating a more detailed description of the incident, information on what actions will be taken to prevent the incident from recurring and within what time period the actions will take effect. The Contractor shall, at any time, at the request of the Purchaser, provide him with information on his procedures and / or measures to ensure information security.

## 2.11 Communication during the contract period

When a contract is awarded the Purchaser shall appoint its representative to communicate with the Contractor during the contract period. Its role shall be to supervise on behalf of the Purchaser that the project is carried out according to the provisions of the contract.

All communications e.g. notices, information requests and approvals shall be in writing. A notification or communication is considered to have been delivered when the contact person of the Contractor has received it by e-mail, has been sent via mail or has been personally delivered.

The Purchaser is allowed request minor changes of the project based on price adjustments agreed by both parties. All changes, new assignments or cancelling of projects the parties shall provide a written statement in advance describing the changes. Similarly, the Contractor can request changes if they have no effect on the operation the Purchaser.

Any agreements during the Contract period between the parties concerning changes, new projects or cancelling of project shall be documented and signed by both parties.

Contractor is obligated to inform the Purchaser of the execution progress of the Contract biweekly throughout the duration of the Contract. This report shall include at least information regarding production process phase as well as confirmation that delivery is on schedule.

## **2.12 Force Majeure**

Neither the contractor nor the Purchaser will be liable for damages due to unpredictable event beyond the control of either party, such as, but not limited to, war, fire, natural disasters, strikes, lockouts which in each case directly causes either party to be unable to comply with all or a material part of its obligations under this agreement. The parties shall always take all reasonable steps within their respective powers and consistent with good operating practices try to mitigate the effect of any force majeure event and comply with its obligations under this agreement.

As soon as reasonably practicable following the date of commencement of a force majeure event, and within a reasonable time following the date of termination of a force majeure event, any party invoking it shall submit to the other party reasonable proof of the nature of the force majeure event and of its effect upon the performance of the party's obligations under this agreement.

In case that a force majeure events duration is longer than 100 days either party can terminate the contract.

## **2.13 Breach of contract and cancellation**

The Contractor shall carry out his contractual obligations in accordance with the terms and conditions of the tender documents, his tender and the Contract thereto. Should the Purchaser suffer damages, as the result of the Contractor's default, the Contractor is fully liable for compensation pursuant to Icelandic law.

In the event of default, the Purchaser may cancel payments, call for a discount or resort to other lawful remedies of contract law.

Upon receiving the material, the Purchaser reserves the right to have the shipment inspected and to withhold payments for any defective material.

The withheld payment will be paid when the Contractor has replaced or repaired the defective material. Payment will be made to according to section 2.3.3.

The Purchaser may terminate the contract without a notice, should the Contractor seek a composition or an arrangement with creditors, or he is declared bankrupt or seizure of his property proves unsuccessful.

The Purchaser can terminate the Contract by giving one month's notice in case of the Contractor's repeated or large-scale neglect of his obligations according to the contract.

## **2.14 Termination of contract**

The Purchaser is can unilaterally terminate the Contract under the following conditions:

- a) -If a significant change has been made to a Contract that should have led to a new procurement process.
- b) If a company initially awarded the Contract should have been excluded from the procurement process.
- c) If the Contract should not have been concluded with a Contractor in the light of a serious violation of Regulation no. 340/2017.
- d) If the conditions of the Contractor during the term of the contract become such that if they had existed prior to the award of contract, then the Purchaser would have been obligated or permitted to exclude the Contractor from participation in the procurement process.

No rights to damages or other compensation arise on the part of the Contractor due to the termination of Contract based on this provision.

## **2.15 Assignment of rights**

The contractor's rights under the terms of this invitation to tender and contract are non-assignable and may not be pledged without the written consent of the Purchaser.

The contractor's right to assign rights to another party, partly or wholly, is prohibited without the written consent of the Purchaser. Should the contractor be assigned that right, the duties of the Contractor towards the Purchaser shall remain unchanged.

## **2.16 Subcontractors**

The Contractor may not, without the approval of the contracting authority, appoint any other party to take over or undertake any of the obligations in his place, in part or in whole. If the Contractor is granted such authorization, the obligations of the Contractor with respect to the contracting authority shall in no way be altered.

The contractor shall specify which parts of the contracts he intends to have a third party carry out as subcontractor, and such information shall be at hand before an agreement is signed. The contractor shall inform the Purchaser on what subcontractors he intends to use and seek the agreement of the Purchaser before the subcontractor begins work. The information from the contractor on subcontractors shall not have an influence on the warranty of the contractor towards the Purchaser. A subcontract shall in all instances be based on a written work contract.

## **2.17 Dispute resolution**

### **2.17.1 Claims**

If the Contractor intends to claim an additional payment under any provision of the Contract or otherwise in connection with the Contract, he shall notify the Purchaser of his intention within 28 days from the occurrence causing the claim.

The Contractor shall keep contemporary records which may be considered necessary to support any claim he may wish to make. Without acknowledging liability, the Purchaser shall,

upon receipt of a claim, review such contemporary records. The Contractor shall allow the Purchaser to view all such contemporary records and provide a copy thereof at the request of the Purchaser.

Within 28 days of the notification of the claim, the Contractor must send the Purchaser an invoice detailing the amount claimed and the criteria on which the claim is based. If the occurrence on which the claim is based has a continued effect, then the invoice shall be deemed to be a provisional invoice and the Contractor shall, at one month intervals, submit additional provisional invoices specifying the cumulative amount of the claim and any further grounds on which the claim is based. In cases where provisional invoices are sent to the Purchaser, the Contractor must send a final invoice within 28 days from the day that the continued effect of the occurrence has ceased

If the Contractor fails to comply with the aforementioned provisions, without material and objective reasons, for claims he seeks to make, his right to payment for the claims shall not exceed the amount that the Purchaser, or a court under section 2.17.4, assesses the claim to be proven with regard to contemporary records.

#### ***2.17.2 Response to claims***

Within 42 days from the claim being delivered to the Purchaser or providing additional information to support the previous claim, or within any other period proposed by the Purchaser and approved by the Contractor, the Purchaser shall respond to the claim with acceptance or rejection and detailed comments. The Purchase may also request the necessary additional information but shall nevertheless provide his or her reply on the essential merits of the claim within that time.

#### ***2.17.3 Claims based on instructions***

In the event that the Contractor claims that instructions in drawings or other media issued after the effective date of the Contract include additional costs which the Contractor should not bear, the Contractor must in all instances notify the Purchaser in writing of its intention to claim additional payment before continuing to execute the Contract except in case of emergency where life or objects are at risk.

#### ***2.17.4 Resolution by a court of law***

If any disputes should arise in concern with the tender process or the Contract, they shall be referred to and resolved by the district court of Reykjavík.

### **3. TECHNICAL SPECIFICATION**