

Procedure number: OL/2/000861/25

**LICENSE and Basic DEsign package (BDP)**

**FOR Steam generation using heat pump and MVR technology basic design**

BIDding documents (RFP)

**Section II: INSTRUCTION TO BIDDERS**

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## GENERAL INFORMATION

* 1. Akcinė bendrovė “ORLEN Lietuva” located at Mažeikių St. 75, Juodeikiai village, LT-89453 Mažeikiai District Municipality, Lithuania (hereinafter referred to as the “**OWNER**”) presents this INSTRUCTION TO BIDDERS (“**ITB**”) as part of the BIDDING DOCUMENTS (RFP) which sets out requirements for the submission of a binding offer for the provision of license and basic engineering design for the PROJECT (as defined in Clause 2 below) (the “**BID**”) in the bidding process for the selection of a licensor and award of a license and basic engineering design agreement (the “**LICENSE AGREEMENT**”) (the “**BIDDING PROCESS**”).
  2. The OWNER informs that there are third parties involved in the BIDDING PROCESS, being commercial, technical, legal and IP advisors to the OWNER and acting on the OWNER’s behalf such as:

1. [●]

All above mentioned advisors shall hereinafter collectively be referred to as the “**ADVISORS**”. In case there are any new advisors appointed to participate in the BIDDING PROCESS, then the OWNER will notify the BIDDERS about them without undue delay.

The BIDDER shall submit a statement (signed by authorised persons) that the BID (including draft of LICENSE AGREEMENT) can be forwarded to the ADVISORS. If there is any additional NDA required, the BIDDER shall inform the OWNER within 2 weeks after issuance of these BIDDING DOCUMENTS at the latest.

## INFORMATION ABOUT THE PROJECT AND SCOPE OF WORK

* 1. The OWNER is planning to build Steam generation using heat pump with a capacity and MVR technology at its Mažeikiai Refinery in Lithuania (the “**PROJECT**” or “**UNIT**”).
  2. For the purpose of implementing the PROJECT, the OWNER intends to conclude the LICENSE AGREEMENT with the selected BIDDER. The LICENSE AGREEMENT shall cover all licensor’s services necessary for the OWNER to execute and operate the UNIT, in particular:
     1. granting of licence and other rights for the OWNER to use BIDDER´s technical information, patents and other intellectual property rights for the purpose of designing, engineering, construction, putting into operation, operation, maintenance, overhaul, repair, reconstruction, modification, extension, and revamping of the UNIT, as well as for the application, implementation and use of and MVR technology in the UNIT, License shall also cover manufacturing, using and selling, offering for sale, exporting and putting on the market the products produced in the UNIT in the whole world without any restrictions, whether temporal, quantitative or other, by ORLEN itself or through third parties, conducting research activities concerning the UNIT.
     2. basic engineering services, including the delivery of basic design package;
     3. providing engineering and technical services during the execution phase (EPC) of the PROJECT; and
     4. delivery of proprietary equipment and catalysts/adsorbents (if applicable).
  3. The terms and conditions of granting the license as well as providing services and deliveries for the PROJECT by the successful BIDDER to OWNER will be subject of the LICENSE AGREEMENT to be concluded between OWNER and the successful BIDDER based on the BIDDING PROCESS pursuant to and in compliance with terms and conditions of these BIDDING DOCUMENTS.
  4. It is the principal technical requirement to install an efficient technology and equipment based on proven design with minimum maintenance requirements and low operational costs.
  5. All needed technical details are included in SECTION IV of these BIDDING DOCUMENTS.
  6. No securities for payment to be made by the OWNER under the LICENSE AGREEMENT nor other securities such as letters of credit, bank guarantee etc. will be provided by the OWNER.

## PRELIMINARY SCHEDULE OF THE BIDDING PROCESS

* 1. The OWNER assumes the following schedule of the BIDDING PROCESS:

|  |  |  |
| --- | --- | --- |
| 1 | Publication of this RFP on the CONNECT platform |  |
| 2 | Submission of BID PART I: FORMAL / TECHNICAL PROPOSAL / COMMERCIAL UNPRICED PROPOSAL |  |
| 3 | Submission of BID PART II: COMMERCIAL PRICED PROPOSALNegotiations |  |
| 4 | Signing of LICENSE AGREEMENT |  |

* 1. The above schedule of the BIDDING PROCESS is preliminary only and may be modified by the OWNER at any time, at the OWNER’s sole discretion through CONNECT platform.

## CONTENT OF THE BIDDING DOCUMENTS

* 1. The BIDDING DOCUMENTS define:

1. the scope of license, basic engineering services, other services and deliverables required by the OWNER;
2. the BIDDING PROCESS;
3. the HEADS OF TERMS of the LICENSE AGREEMENT to be concluded between the OWNER and the selected BIDDER.
   1. A set of the BIDDING DOCUMENTS (RFP) consists of the following parts:

SECTION Description

I INVITATION FOR BIDS

II INSTRUCTION TO BIDDERS (ITB) including appendices

III HEADS OF TERMS

IV BASIS OF DESIGN (BoD) – *to be provided upon signing of* Non-Disclosure Agreement *(Appendix 12)*

* 1. The BIDDER is expected to review and examine carefully any and all instructions, forms, terms and specifications included in the BIDDING DOCUMENTS. It is an obligation and sole responsibility of the BIDDER to furnish all documents and information required by the BIDDING DOCUMENTS and submit a BID which is in all aspects prepared and submitted in accordance with and pursuant to the BIDDING DOCUMENTS.

## BID SUBMISSION REQUIREMENTS

* 1. The OWNER will accept only a complete BID compliant with the BIDDING DOCUMENTS. The OWNER does not allow submitting partial, variant nor alternative bids and any such bids will be rejected.
  2. A BIDDER may submit its BID individually or jointly with another party (parties) (as a CONSORTIUM) – in each case for the whole scope of the LICENSE AGREEMENT. Wherever in this ITB the term "CONSORTIUM” is used, it shall mean a consortium, joint venture or other unincorporated grouping of two or more entities as partners, which submit one BID as a collective body.
  3. BIDS submitted by CONSORTIUM shall comply with the following requirements:
     1. the BID shall be signed so as to be legally binding on all partners in full extent;
     2. one of the partners shall be nominated as CONSORTIUM leader and this authorisation shall be evidenced by submitting a power (or powers) of attorney signed legally by all the partners (authorised signatories);
     3. CONSORTIUM leader shall be authorised to incur liabilities and receive instructions for and on behalf of any and all partners of the CONSORTIUM and entire execution of the LICENSE AGREEMENT including payment; such authority shall be included in the power (or powers) of attorney provided by the other partners to the CONSORTIUM leader;
     4. all partners of CONSORTIUM shall be liable jointly and severally for the execution of the LICENSE AGREEMENT and their BID and relevant statement to this effect shall be included in the authorisation mentioned under Clause 5.3.2 above as well as in the LICENSE AGREEMENT.
     5. a copy of the CONSORTIUM agreement entered into by and between the CONSORTIUM members shall be submitted along with BID.
     6. the OWNER may consider that a change in CONSORTIUM members or adding new CONSORTIUM member(s) during the BIDDING PROCESS, with the exception of change of the CONSORTIUM leader, does not constitute a change in the collective BID submitted by the CONSORTIUM members, and will be approved to further stages of the BIDDING PROCESS. Extension in the CONSORTIUM members by a new entity or any changes in CONSORTIUM members require the written consent of the OWNER and signing of a Non-Disclosure Agreement by each new CONSORTIUM partner. The OWNER may accept the change in the CONSORTIUM composition at the OWNER’s discretion.

## RULES GOVERNING THE BIDDING PROCESS AND NEGOTIATIONS OF THE BID

* 1. The BIDS are submitted as part of the purchasing procedure carried out by the OWNER Despite reaching consensus on all the clauses which were the subject matter of the negotiations with the BIDDER(s), the LICENSE AGREEMENT shall be deemed as validly concluded (executed) at the moment of signing the relevant documents containing the negotiated text of the LICENSE AGREEMENT by duly authorised representatives of the OWNER and the licensor.
  2. The BIDDER shall bear all costs and expenses which the BIDDER has incurred arising from or associated with the BIDDING PROCESS, including costs and expenses arising from or associated with the preparation and submission of its BID, attendance in site visits, meetings or interviews. The OWNER shall not be responsible nor liable for such costs and expenses and shall not reimburse the BIDDER for any such costs and expenses, regardless of the conduct or outcome of the BIDDING PROCESS and whether the BIDDING PROCESS is changed or cancelled by the OWNER for any reason or without stating a reason. For the avoidance of doubt, the BIDDER shall not be entitled to any claims towards the OWNER in the case of considering its BID as noncompliant with the BIDDING DOCUMENTS, changing or cancelling the BIDDING PROCESS.
  3. The BIDDING PROCESS may include several-stage negotiations with the BIDDERS in various forms – e.g. direct negotiations (real-time or by means of electronic communication) or negotiations with the use of an electronic auction system. The revised (updated) BIDS obtained via the electronic auction system may be subject to further negotiations with the BIDDERS.
  4. The OWNER may negotiate with the BIDDER or BIDDERS a part or whole of the submitted BIDS, pre-select the preferred BIDDER or BIDDERS, select the successful BIDDER, and conclude/execute the LICENSE AGREEMENT with the successful BIDDER.
  5. The OWNER may conduct negotiations with BIDDER(S) who have submitted BID(S) and whose BID(S) meet the requirements for further negotiations. The OWNER may decide to conduct multiple negotiations. The negotiations, if applicable, may be followed by a request to submit revised (updated) BID(S) or to provide additional information/documentation by one or more BIDDER(S). The OWNER shall have no obligation to justify to any of the BIDDER(S) the qualification of the BID(S) by the OWNER for further evaluation or negotiations.
  6. If a decision is made to conduct the negotiations, the OWNER shall invite the BIDDER(S) to participate, notifying the BIDDER(S) on the rules of their conduct, including the date, time and venue.
  7. The OWNER may at any time: (i) discontinue the negotiations with any or all BIDDER(S); or (ii) commence or recommence negotiations with one or more BIDDER(S) previously not invited to take part in such negotiations, or with whom the negotiations have previously been closed and without the obligations to give any reasons. Any BIDDER not invited shall remain bound by its submitted BID and terms and conditions of the BIDDING DOCUMENTS, in particular provisions on the BID validity period, until the end of the BIDDING PROCESS.
  8. After signing the LICENSE AGREEMENT with the BIDDER whose BID was qualified as the most advantageous, the OWNER shall notify the other BIDDERS of the closure of the BIDDING PROCESS.
  9. The OWNER may at its discretion cancel the BIDDING PROCESS or change its terms and conditions, either in whole or in part, including withdrawing from the negotiations, in whole or in part, at any time, without the need to provide any justification thereto. The OWNER shall immediately notify the BIDDERS of such actions and the BIDDERS shall not be entitled to any claims towards the OWNER resulting therefrom. The BIDDING DOCUMENTS shall not oblige the OWNER to take any specific action.
  10. The OWNER shall not be responsible nor held liable for the contents of tender announcements published on websites other than the official website of the ORLEN Capital Group Purchasing Platform – CONNECT (http://connect.orlen.pl).
  11. Should any of the BIDDER fail to observe the technical or formal requirements set forth in the BIDDING DOCUMENTS, the OWNER may dismiss its BID without analysing the commercial part of such BID.
  12. The Owner may reject an application for a reference without giving any reason.
  13. The LICENSE AGREEMENT will be concluded only if signed by the OWNER and the selected BIDDER. Any representation about selection of a BID shall not be understood as acceptance of the BID and is not sufficient to assume the LICENSE AGREEMENT is concluded.
  14. The LICENSE AGREEMENT may be signed on the part of the OWNER solely by persons duly entitled to represent it or persons duly authorised thereto based on a relevant power of attorney provided by the persons entitled to represent the OWNER.
  15. The OWNER may, at its full discretion, at any time exclude a BIDDER from the BIDDING PROCESS and dismiss its BID without providing any justification thereto.

## CONFIDENTIALY

* 1. The BIDDER undertakes to respect the confidential nature of all information resulting from this BIDDING PROCESS.
  2. These BIDDING DOCUMENTS are to be used by the BIDDER solely for the purpose of preparation and submission of the BID.
  3. The information included in these BIDDING DOCUMENTS must be kept confidential at all times. These BIDDING DOCUMENTS are provided solely for the purpose of the BID preparation and submission on the expressed condition that neither the BIDDING DOCUMENTS nor the information contained therein shall be disclosed to others or used for any other purpose without the expressed prior written consent of the OWNER.
  4. The BIDDER undertakes to treat as confidential these BIDDING DOCUMENTS and any and all of the information pertaining to this BIDDING PROCESS. The fact of inviting the BIDDER for participation in the BIDDING PROCESS, the fact of BID submission, conduct of commercial negotiations and conclusion of LICENSE AGREEMENT may not be provided by the BIDDER without a written permission of the OWNER for disclosing to third parties or publication of such information. Any breach of this confidentiality obligation by the BIDDER may result in rejection of the BID or other actions deemed appropriate by the OWNER.
  5. Should the BIDDER require special confidentiality arrangement before BID submission then the BIDDER shall specify such requirement in detail as soon as possible after receipt of these BIDDING DOCUMENTS however not later than 2 weeks after issuance of these BIDDING DOCUMENTS. The OWNER will at its own discretion respond to such requirement and inform the BIDDER accordingly.
  6. The submitted BID will not be returned to the BIDDER, unless otherwise agreed upon in writing. The content of the rejected or unsuccessful BIDS will remain confidential and will only be made available to OWNER’s employees, agents, advisors or representatives in relation to evaluation of BIDS and awarding of the LICENSE AGREEMENT.

## COMMUNICATION AND CLARIFICATIONS

* 1. The BIDDER may communicate with the OWNER exclusively in the electronic form using the CONNECT platform.
  2. The BIDDER may request the reasonable clarification of the particular provisions of the BIDDING DOCUMENTS or submit other reasonable questions regarding the BIDDING PROCESS. The purpose of such a request or question is to enable the OWNER to clarify the provisions of the BIDDING DOCUMENTS to the extent that they are ambiguous for the BIDDER. At the BID preparation stage, questions shall be sent on the form attached hereto Appendix 9. After submission of BIDS, the form in the Appendix 10 shall be used.
  3. The BIDDER may send any requests and questions to the OWNER **no later than 10 (ten) calendar days before** the deadline for submitting particular parts of the BID. In the case of requests and questions sent after this deadline, the OWNER shall not be obliged to consider the BIDDER’s requests or questions nor to provide clarifications or answers thereto.
  4. The BIDDER’s request for clarification or answer shall:
     1. indicate which specific part of the BIDDING DOCUMENTS the question refers to; and
     2. specify what the BIDDER’s concern that requires the OWNER’s clarification consists of.
  5. The OWNER may refuse to provide a clarification or answer without the need to provide a reason thereto.
  6. The OWNER’s clarifications and answers to the submitted requests shall be binding for the BIDDER(S) and implemented by the BIDDER(S) into the BID(S). Any possible changes and specifications introduced through such clarifications and answers shall become an integral part of BIDDING DOCUMENTS.
  7. Clarifications and answers shall be notified to the BIDDERS using the CONNECT platform.
  8. The OWNER shall not be responsible nor held liable for clarifications regarding the provisions of BIDDING DOCUMENTS, provided to the BIDDERS by third parties, not authorised to contact the BIDDERS, with the exception of the representatives listed in Clause 8.10 below or persons replacing such representatives, who are providing information through the CONNECT platform.
  9. All statements, applications, notifications or information shall be exchanged by the OWNER and the BIDDERS using the CONNECT platform. It is required that all statements and declarations of the BIDDER are submitted in the form of a scanned copy containing the signatures of the authorised representatives of the BIDDER or signed electronically (a qualified signature is required). The above does not apply to the ongoing communication on the CONNECT platform.
  10. The OWNER’s representatives authorised to contact the BIDDERS and provide all information on this BIDDING PROCESS are: Donatas.Svedas@orlenlietuva.lt, or upon their absence at work – another person designated by the OWNER or designated as replacement on the CONNECT platform.
  11. The OWNER’s clarifications and answers to BIDDER(S) questions will be provided to all BIDDERS participating in the BIDDING PROCESS. Should the content of the question refer to a unique solution proposed by the BIDDER, which should not be disclosed with the answer to the remaining BIDDERS, then it shall be clearly marked by the BIDDER, the OWNER reserves the right to provide an answer only to the BIDDER who asked the question.

## AMENDMENT TO THE BIDDING DOCUMENTS

* 1. The OWNER may for any reason whatsoever on its own initiative, amend or modify the BIDDING DOCUMENTS by the issuance of an addendum to the BIDDING DOCUMENTS (“**ADDENDUM**”). The ADDENDUM shall form a part of the BIDDING DOCUMENTS and shall be binding as of the day of its issuance by the OWNER on the CONNECT platform, and all provisions hereof referring to “BIDDING DOCUMENTS” shall be understood to refer to the BIDDING DOCUMENTS as amended or supplemented by the ADDENDUM.
  2. The ADDENDUM, if any, will be notified via CONNECT platform to the BIDDERS.
  3. For the avoidance of doubt, under no circumstances shall amending or supplementing the BIDDING DOCUMENTS in any way by the OWNER be interpreted by any BIDDER as an action in bad faith on the part of the OWNER.

## LANGUAGE OF THE BIDDING PROCESS AND THE BID

* 1. The BIDDING PROCESS shall be carried out in the English language.
  2. The BID prepared by a BIDDER and any correspondence and documents related to the BID, exchanged between the BIDDER and the OWNER, shall be in English language.
  3. Any documents related to the BID submitted by the BIDDER may be prepared in another language as long as these documents are accompanied with an English translation of their pertinent passages, in which case the English translation shall prevail for purposes of interpretation of the BID.
  4. All formal documents regarding possible foreign subcontractors, submitted by the BIDDER with the BID must be drawn up or translated into English as well, as stipulated by Clause 10.3.

## PRE-BID MEETING AND SITE INSPECTION

* 1. The OWNER may organize a pre-bid meeting with the BIDDERS in premises of ORLEN Lietuva in Juodeikiai, Lithuania or any other locations as indicated by the OWNER. The purpose of the pre-bid meeting (which can be alternatively held in the form of tele/videoconference) is to provide the BIDDER with clarifications and to answer any questions that may be raised in connection with the BIDDING DOCUMENTS and preparation and submission of the BID. The date of the pre-bid meeting will be mutually determined by the OWNER and the BIDDER.
  2. As a result of the pre-bid meetings, the OWNER may introduce modifications to the BIDDING DOCUMENTS in accordance with Clause 9 above.
  3. The BIDDER is obliged to carry out site inspection if it is indicated in the SECTION IV. The BIDDER shall obtain for itself at its own cost and risk all information that may be necessary for preparing the BID and entering into the LICENSE AGREEMENT.
  4. The date of site inspection shall be agreed with the OWNER at least 10 days before the scheduled date of carrying out such site inspection, however not later than 2 weeks before submission of BID PART I: FORMAL, TECHNICAL and COMMERCIAL UNPRICED PROPOSALS.
  5. The OWNER shall give the requirements to be fulfilled by the BIDDER to get access to the site. Not later than 6 (six) business days before the scheduled date, the Bidder shall submit to the OWNER a list of its participants specifying ID characteristics (name, surname, nationality, company, passport number), and vehicle’s reference (brand, plate numbers), personal computers (serial number) and other documents required by the OWNER.
  6. Taking photos or video recording during site inspection shall be forbidden.
  7. Attending the pre-bid meeting and carrying out site inspection shall be at the BIDDER’s own cost and expense. In particular, the BIDDER shall make its own travel arrangements and bear the costs of fares, local transportation, accommodation, and other out-of-pocket expenses.

## FORM OF THE BID

* 1. The BID shall consist of the two main parts:
     1. **PART I:** FORMAL, TECHNICAL AND COMMERCIAL UNPRICED PROPOSAL which shall contain the following components:

**VOLUME 1:** COVER LETTER

**VOLUME 2:** FORMAL PROPOSAL according to Clause 13.3

**VOLUME 3:** COMMERCIAL UNPRICED PROPOSAL according to Clause 13.4

**VOLUME 4:** BASIS OF DESIGN – STATEMENT according to Clause 13.5

**VOLUME 5:** TECHNICAL PROPOSAL according to Clause 13.6

* + 1. **PART II:** COMMERCIAL PRICED PROPOSAL which shall be presented in strict accordance with the provisions of this SECTION II of the BIDDING DOCUMENTS and shall include:

**VOLUME 6:** COMMERCIAL PRICED PROPOSAL according to Clause 14

## DOCUMENTS COMPRISING PART I OF THE BID

* 1. Individual volumes of PART I: FORMAL, TECHNICAL and COMMERCIAL UNPRICED PROPOSALS shall be prepared in compliance with the provisions specified herein below.
  2. **VOLUME 1: COVER LETTER** shall include:
     1. Subject of the BID,
     2. Name, registered seat address of the BIDDER and tax identification number,
     3. List of persons dedicated for contact with OWNER during the BIDDING PROCESS,
     4. Names of persons authorized to act in the BIDDER´s name in matters related to the BIDDING PROCESS (including address for correspondence, if it differs from registered address of BIDDER, telephone and e-mail addresses); a power of attorney shall be attached, if applicable (Appendix F1 to FORMAL PROPOSAL),
     5. List of exhibits (Volumes) which constitute the BID,
     6. Period of the BID validity.
  3. **VOLUME 2: FORMAL PROPOSAL** shall contain formal statements and appendices required in accordance with Appendix 3 to the ITB.
  4. **VOLUME 3: COMMERCIAL UNPRICED PROPOSAL** shall contain:
     1. Proposal of the complete wording of the LICENSE AGREEMENT (including basic design package), supply Agreement for proprietary equipment (if applicable), supply Agreement for catalyst – including attachments – **UNPRICED**

or

The mark-ups or comments to the Heads of Terms

* + 1. The BIDDER shall incorporate into the proposal of the complete wording of the LICENSE AGREEMENT all selected terms and conditions prepared by the OWNER and included in SECTION III – Heads of Terms as well as other terms and conditions included in SECTION II of the BIDDING DOCUMENTS.
    2. Potential modifications/deviations as well as acceptance of provisions of Section III of BIDDING DOCUMENTS – Heads of Terms shall be reflected in table of compliance - Appendix 1 (with reference to the LICENSE AGREEMENT) as described in Clause 13.7.
  1. **VOLUME 4: BASIS OF DESIGN – STATEMENT** shall contain:

The following statement of the BIDDER:

**"Provisions of SECTION IV – BASIS OF DESIGN of the BIDDING DOCUMENTS are clear to the BIDDER and they are accepted without reservation by the BIDDER/with reservations (with reference to list of deviations/reservations)."**

Any requirements for deviations/reservations from the wording of the BIDDING DOCUMENTS SECTION IV – BASIS OF DESIGN have to be included by the BIDDER in BID. The BIDDER is obliged to specify such requirement in detail and to propose the wording of such required change **(list of deviations – Appendix 2 to ITB**); it must be clear whether acceptance of such requirement by the OWNER is an indispensable condition for participation of the BIDDER in the project.

The BIDDER must also specify which requirements, terms, specifications, drawings and other data and information contained or referred to in SECTION IV of the BIDDING DOCUMENTS are considered by it to be incorrect or missing and propose a solution.

* 1. **VOLUME 5: TECHNICAL PROPOSAL OF THE BIDDER** shall contain annexes from 1 to … in accordance with Appendix 4.
  2. **TABLES OF COMPLIANCE**

Any deviations/reservations from the wording of the BIDDING DOCUMENTS SECTION III and IV have to be specified in the form of the table of compliance using templates attached hereto.

* + 1. SECTION III

Any deviations/reservations proposed by BIDDER to the wording of the BIDDING DOCUMENTS SECTION III have to be noted in Appendix 1. BIDDER shall complete in his BID the table as attached (Appendix 1) by referring to each clause of Heads of Terms, for sharp orientation of OWNER, by symbols “X” or “Rem” in columns and with reference to proposed LICENSE AGREEMENT. The symbols shall be used according to following code:

Symbol "X" will be used in column "RESPECTED" only if BIDDER respects specification or OWNER´s requirement without any reservations.

Symbol "rem." will be used in column "RESPECTED" only if BIDDER respects specification or OWNER´s requirement with a small modification or divergence and it is briefly specified in added remark (s) in column “Remarks”.

Symbol "X" will be used in column "UNACCEPTABLE" if BIDDER does not respect specification or OWNER´s requirement. Brief explanations shall be noted in column “Remarks”.

* + 1. SECTION IV

Any deviations/reservations proposed by BIDDER to the wording of the BIDDING DOCUMENTS SECTION IV have to be noted in Appendix 2. BIDDER shall complete in his BID the table as attached (Appendix 2) by referring to each clause of BoD, for sharp orientation of OWNER, by symbols “X” or “Rem” in columns and with reference to BoD. The symbols shall be used according to following code:

Symbol "X" will be used in column "RESPECTED" only if BIDDER respects specification or OWNER´s requirement without any reservations.

Symbol "rem." will be used in column "RESPECTED" only if BIDDER respects specification or OWNER´s requirement with a small modification or divergence and it is briefly specified in added remark (s) in column “Remarks”. In addition BIDDER shall proposed the alternative wording in track check mode in editable file of BoD .

Symbol "X" will be used in column "UNACCEPTABLE" if BIDDER does not respect specification or OWNER´s requirement. Brief explanations shall be noted in column “Remarks”. In addition BIDDER shall propose the alternative wording in track change mode in editable file of BoD .

## DOCUMENTS COMPRISING PART II OF THE BID

* 1. Individual volumes of PART II: COMMERCIAL PRICED PROPOSAL shall be prepared in compliance with the provisions specified herein below.
  2. **VOLUME 6: COMMERCIAL PRICED PROPOSAL**
     1. The BIDDER shall submit VOLUME 6 (in accordance with Appendix 5) and quote the lump sum amount (further on referred to as “Maximum Agreement Price”) in consideration for, without limitation, all costs and expected fees related to granting of license for the MVR technology and all activities related to preparation of basic design package and other documents as per LICENSE AGREEMENT, including but not limited to the rights granted to OWNER under the LICENSE AGREEMENT, and the mandatory services the BIDDER is providing under the LICENSE AGREEMENT, and such Maximum Agreement Price shall be quoted (in accordance with Appendix 7) separately for:

1. **License Fee** as defined by the SECTION III,

**Engineering Fee** as defined by the SECTION III,

(for avoidance of doubts Engineering Fee shall also include costs of all BIDDER´s home office activities, cost of the participation in the kick-off meeting at ORLEN Lietuva premises, necessary review meetings (PFD, P&ID review etc.) at the Basic Design execution stage in BIDDER’S  office, EPC Contractor’s Document’s Review, costs of required revisions of Basic Design Packages and documents delivery),

1. **Service Fee** to be quoted as a maximum amount as defined by the SECTION III and shall in particular include the following costs:

Services specified as mandatory by the BIDDER as per Annex 14 of the Volume 5 of the BID and not included in the Engineering Fee

Training of the OWNER´s personnel

Services specified as recommended by the BIDDER as per Annex 14 of the Volume 5 of the BID and not included in the Engineering Fee

*Proprietary Equipment Fee as defined by the SECTION III (if applicable)*

*First supply and loading of the catalyst/adsorbents/materials (if applicable)*

* + 1. In addition to the price quotation as specified above, the BIDDER shall provide with billing rates for services and activities not covered by the Maximum Agreement Price (e.g. for change order valuation) and which shall be rendered to OWNER based on billing rates, in accordance with Appendix 8 (Billing rates for services).
    2. The rates and prices, quoted by the BIDDER, shall be the fixed rates and prices for the period of 1 year after scheduled time of delivery of the basic design package. BIDDER shall provide escalation formula for subsequent period.
    3. The Maximum Agreement Price shall be deemed to be the full amounts payable to the BIDDER for fulfilment of the License Agreement and all activities of the BIDDER according to the terms and conditions of the LICENSE AGREEMENT, except services explicitly specified by the LICENSE AGREEMENT to be provided to OWNER based on billing rates in excess of the Maximum Agreement Price.
    4. The BIDDER shall price the project in EURO.
    5. Payment schedule shall be prepared based on the milestones. Basis for issuance for each invoice will be protocol of taking over performed work signed by both parties. Invoices shall be transferred to the OWNER for payment as soon as possible, however not later than 3 months from the date of approval of the respective protocol. All invoices shall be paid within 90 days upon receipt of invoice and the protocol of acceptance signed by both parties, whichever is later.
    6. Any duties, taxes (including withholding tax (‘WHT’)) and other levies payable by the BIDDER according to the SECTION III – Heads of Terms or for any other cause, shall be included in contractual remuneration, submitted by the BIDDER, and the evaluation and comparison of BIDS by the OWNER shall be made accordingly. All prices given in the bid shall be net prices (exclusive of VAT) for the OWNER.
    7. If the BIDDER receives from the OWNER income, which, in accordance with the applicable regulations, is subject to withholding taxation (*withholding tax*, WHT) in Lithuania (interest, dividends, royalties, etc.), the BIDDER shall distinguish such amounts of income from CONTRACT PRICE and shall indicate them in the invoice separately. In such cases OWNER shall have the right to deduct from the payable amounts taxes payable in Lithuania according to the applicable regulations.
    8. If, in accordance with applicable regulations, the BIDDER’s activity (performance of the works) in the site of the OWNER may be treated as permanent establishment for the tax purposes, the BIDDER shall bear all the obligations (registration with tax payer register, submission statement/declarations, etc.) and consequences (taxes, duties, penalties, default interest, etc.) which may arise due to such activity.
    9. The OWNER possesses the BIDDER’S valid certificate of tax residency.

## PERIOD OF VALIDITY OF BIDS

* 1. The OWNER requires a **6 month** validity period of the BID from the date of submission of the COMMERCIAL PRICED PROPOSAL, with the option of extending the term.
  2. The BIDDER is entitled to extend the validity period independently of the BID.
  3. Upon request of the OWNER, the BIDDERS shall undertake to extend the validity period of the BID for another **3 months** following the date of the expiry of the BID’s initial validity period. Such request can be made by the OWNER to the BIDDERS via CONNECT platform by the end of the BID’s initial validity period.
  4. A BIDDER who refuses to extend the validity period of the BID may be excluded from the BIDDING PROCESS by the OWNER, and its BID may be qualified as rejected.

## FORMAT AND SIGNING OF THE BID

* 1. These BIDDING DOCUMENTS and their provisions apply to the BID submitting procedure. Each BIDDER shall thoroughly familiarize itself with the provisions of the BIDDING DOCUMENTS, which must be read and interpreted together with their possible modifications and amendments made by the OWNER under Clause 9.
  2. The BID constitutes a set of documents prepared in accordance with these BIDDING DOCUMENTS and explanations given by the OWNER to the BIDDER in the course of the BIDDING PROCESS.
  3. Particular parts of the BID should be drawn up in accordance with templates included in appendices to these BIDDING DOCUMENTS. The OWNER will not accept partial BIDS, which means proposals for the execution of a part of the LICENSE AGREEMENT.
  4. The BID shall be submitted via the CONNECT platform in two versions: (i) in the form of scanned copies of documents signed by the authorised representatives of the BIDDER (marked as original) or electronically signed documents (a qualified signature is required); and (ii) in editable version (word, excel) wherever possible. In case of any inconsistencies between these documents, the original in the form of scanned copies shall prevail. Particular documents comprising the BID must be properly ordered and their order must be clearly marked.
  5. All pages of the BID, including all pages of appendices, should be numbered in order.
  6. The BID document must be signed by and sealed with the personal stamps of the authorized representative(s) of the BIDDER, entitled to perform all legal activities and to make liabilities on its behalf, as stipulated by pertinent regulations, or entitled, at least with respect to the subject of the LICENSE AGREEMENT, to make declarations of will for and on behalf of the BIDDER (if a seal is not possible, the documents must include a printed or manually entered: full name and position of the signatory).
  7. Any changes to the BID (amendments, write offs, supplements) should be signed or initialled by the BIDDER – or shall not be accepted.
  8. All provisions of the BID must be made in a continuous and legible manner.
  9. The BID must include a power of attorney (Appendix F1 to FORMAL PROPOSAL) declaring the authorization to sign the BID, unless the right to sign the BID results from other documents submitted with the BID. The text of the power of attorney must expressly define the activities the representative is authorized to perform.

## SUBMISSION OF THE BIDS

* 1. Particular parts of the BID (PART I and PART II) must be submitted solely via the CONNECT platform.
  2. The deadlines of submitting particular parts of the BID are specified on the CONNECT platform. The OWNER may reject the BIDS submitted after the deadline for submitting BIDS. Any changes of the deadlines for submitting particular parts of the BID shall be notified by the OWNER using the CONNECT platform.
  3. A complete BID shall consist of the parts listed in the Clause 12.
  4. Anticipated deadlines for the submission of the particular parts of the BID are specified in Clause 3.
  5. The OWNER shall not be responsible for incorrectly submitted BIDS or their incorrect marking.

## MODIFICATION AND WITHDRAWAL OF THE BIDS

* 1. The BIDDER may modify or withdraw its BID after its submission on the CONNECT platform. Such modification or withdrawal shall be received by the OWNER on the CONNECT platform not later than on the BID submission deadline.
  2. Any changes regarding the terms of the BID must be made as revisions indicating the amended provision(s), and a reference to corresponding pages and sections of the BID. Such amendments must be prepared and submitted in an identical manner to the BID itself.
  3. No BID may be unilaterally modified or withdrawn by the BIDDER after the deadline for submission of BID.

## EXAMINATION OF THE BIDS, DETERMINATION OF COMPLIANCE

* 1. In the course of examination of BIDS the OWNER will examine "PART I: FORMAL, TECHNICAL AND COMMERCIAL UNPRICED BID" and "PART II: COMMERCIAL PRICED PROPOSAL" to determine whether they are complete, whether the documents are properly signed and do not contain any impermissible deviations from the BIDDING DOCUMENTS or are in any other way substantially noncompliant with the BIDDING DOCUMENTS, i.e. the OWNER will in particular examine:
     1. whether the submitted BID contains all required documents and information and whether these documents and information have the form and content as specified in the BIDDING DOCUMENTS;
     2. whether the proposed technical solution and design of the UNIT meets the technical requirements set out in the BIDDING DOCUMENTS or whether it does not contain any impermissible deviations therefrom, whether it does not influence the scope and quality of the technology and whether the technology proposed by the BIDDER meets the general requirements prescribed in the BIDDING DOCUMENTS and serves the required purpose;
     3. whether the submitted BID contains any reservations noncompliant with the BIDDING DOCUMENTS, limiting substantially the OWNER´s rights or BIDDER’s obligations under the LICENSE AGREEMENT.

## EVALUATION OF THE BIDS, CLARIFICATION AND REVISION OF THE BIDS

* 1. The BIDDERS are not entitled to participate in the opening or evaluation of the BIDS by the OWNER. The opening and evaluation of the BIDS will be carried out by the OWNER and its ADVISORS.
  2. In order to facilitate the BID evaluation, the OWNER may, at its discretion, request BIDDERS to provide clarifications of the submitted bid, or supplementary information or documents to the BID, or to extend or revise (update) the BID at any time from the date of the opening of the BIDS until the expiry of their validity.
  3. Should the BIDDER fail to respond to the OWNER’s query or request for clarification or supplementary information in a timely manner, the OWNER may, at the OWNER’s sole discretion, consider such BIDDER’S BID as non-compliant with the BIDDING DOCUMENTS.
  4. The OWNER will evaluate and compare only the BIDS previously determined to be substantially compliant with the requirements of the BIDDING DOCUMENTS pursuant to Clause 19.
  5. Evaluation Criteria
     1. Primarily, the OWNER will evaluate BIDS on the basis of formal requirements, contractual and technical criteria 0/1. Non-observance of any of formal requirements, contractual or technical criteria 0/1 authorizes the OWNER to reject the BID. BIDS shall be evaluated in terms of fulfilling / failing to fulfil the OWNER’s requirements. The BID shall be rejected if it fails to fulfil at least one of 0/1 criteria presented within BIDING DOCUMENTS in the CONNECT platform.
     2. BIDS which meet the 0/1 criteria will be evaluated on the basis of score criteria.
     3. In evaluating BIDS, the OWNER will evaluate and compare: commercial conditions (including legal issues regarding the LICENSE AGREEMENT), technical merits of the BIDS, commercial-priced as well as the economic conditions of the offered technology with particular consideration of:

FORMAL:

- Completeness and correctness of the FORMAL PROPOSAL

TECHNICAL:

* Completeness and correctness of the TECHNICAL PROPOSAL
* Completeness data required for Capex estimation
* All elements covered by technical warranties and guarantees e.g. capacity, conversion, products qualities, energy consumption, period of unit/s interrupted stable operation

COMMERCIAL UNPRICED:

* Scope and terms of granted license and other rights
* Payment terms – conformity with payment schedule proposed in SECTION III of the BIDDING DOCUMENTS
* Warranties and guarantees
* Representations
* Project control and execution
* Governing law of the LICENSE AGREEMENT
* BIDDER’s total limit of liability
* Exclusions from BIDDER’s total limit of liability
* OWNER’s total limit of liability
* BIDDER’s responsibility for costs arising from BIDDER’s omissions/mistakes/changes in BDP – participation in engineering, deliveries and installation costs
* Limits of liquidated damages
* Performance Guarantees and Performance Standard Period

COMMERCIAL PRICED:

- Maximum Agreement Price

* Economic evaluation of the PROJECT – NPV model results.
  + 1. The OWNER will also evaluate BIDDER's financial standing. The result of OWNER analyses could be basis for disqualification of the BIDDER. The OWNER reserves the right not to share with BIDDERS any details regarding such analyses.

## INVITATION FOR FINAL NEGOTIATION

* 1. Prior to the expiration of the period of BID validity, the OWNER will invite the selected BIDDER(S) in writing (via CONNECT or e-mail) for the final negotiations. The agenda of such meeting may cover any aspect of the submitted BID including submitted prices.
  2. The refusal to attend such final negotiations by the notified BIDDER shall be understood as a breach of the BIDDING PROCESS conditions, refusal to sign the LICENSE AGREEMENT and as sufficient grounds for disqualification of such BIDDER from the BIDDING PROCESS.
  3. The OWNER will inform the BIDDERS on an individual basis about the results of the BIDDING PROCESS and decision on selecting the successful BIDDER. The OWNER shall not be required to disclose the name of the successful BIDDER.

## LICENSE AGREEMENT AWARD

* 1. Subject to Clause 22.6, the OWNER will award the LICENSE AGREEMENT to the BIDDER whose BID has been determined to be compliant with the BIDDING DOCUMENTS and has been determined as the most advantageous (best evaluated) BID.
  2. Concluding the LICENSE AGREEMENT requires internal corporate approvals within the OWNER’s organisation, pursuant to effective corporate regulations applicable in the OWNER’s organisation.
  3. Should the OWNER fail to obtain the required internal corporate approvals or for whatever other reason fail to conclude the LICENSE AGREEMENT, the BIDDER whose BID was selected shall not be entitled to any claims nor payments towards the OWNER, related to the BIDDING PROCESS, and particularly any claims for compensation or execution of LICENSE AGREEMENT.
  4. If the BIDDER whose BID was selected evades executing the LICENSE AGREEMENT, the OWNER may select the most advantageous (best evaluated) BID from the remaining BIDS and award the LICENSE AGREEMENT to such BIDDER.
  5. The BIDDER hereby consents to the execution of the LICENSE AGREEMENT by, or to transfer all of the rights and obligations stipulated in the LICENSE AGREEMENT made with the OWNER to, the OWNER’s legal successor or other subsidiary of ORLEN S.A.
  6. The OWNER reserves the right, at its sole discretion, to accept or reject any BID and reject all BIDS at any time prior to award of LICENSE AGREEMENT, if the project circumstance require to do so, without any compensation to the affected BIDDER or BIDDERS or any obligation to inform the affected BIDDER or BIDDERS of the reason for the OWNER’s decision.

## SIGNING OF THE LICENSE AGREEMENT

* 1. Prior to the expiration of the validity period of BID and after the successful completion of final negotiations pursuant to Clause 21, the OWNER may invite the successful BIDDER in writing (via CONNECT or e-mail) to sign the LICENSE AGREEMENT. In order to sign the LICENSE AGREEMENT, the successful BIDDER may be asked to meet at the OWNER's premises within a specified time or to sign all copies of the LICENSE AGREEMENT and send them back to the address indicated by the OWNER within 5 days after the receipt of such notice.
  2. If the final negotiations with such BIDDER are not successful (for whatever reason) or if after notification the selected BIDDER refuses to sign the LICENSE AGREEMENT, the OWNER is entitled to reject such selected BID without any compensation to the selected BIDDER.

## BONA FIDE BID

* 1. Each BIDDER undertakes and agrees that it shall be a condition of being awarded the LICENSE AGREEMENT, that its BID is a bona fide bid, intended to be competitive and that the BIDDER has not fixed or adjusted the amount of the BID by or under or in accordance with any agreement or arrangement with any other Person. The BIDDER also certifies that the BIDDER has not done, and undertakes that the BIDDER will not do any of the following:

1. prior to the submission of the BID, communicate to any Person the amount or approximate amount of the proposed BID;
2. enter into any agreement or arrangement with any other Person to reveal the amount of any BID submitted, or reveal the details of any supplementary or revised BID(S);
3. offer to pay or give, or agree to pay or give, any sum of money or consideration directly or indirectly to any Person for doing or having done or causing or having caused to be done in relation to any other BID or proposed BID any act or thing of the sort described above.
   1. In this Clause 24, “Person” includes any natural or legal person or entity, corporate or incorporate and “any agreement or arrangement” includes any such transaction formal or informal, whether legally binding or not.

## GOVERNING LAW AND SETTLEMENTS OF DISPUTES

* 1. This BIDDING PROCESS and any OWNER’S and BIDDERS’ rights and obligations arising in connection with it shall be governed by, construed and interpreted in accordance with the laws of Lithuania.
  2. All disputes arising from or in relation to the BID or the ITB shall be resolved by the court competent for the OWNER’s registered office.

## APPENDICES

1. Table of compliance – HoT
2. Table of compliance – BoD
3. “FORMAL PROPOSAL” form
4. “TECHNICAL PROPOSAL” form
5. “COMMERCIAL PRICED PROPOSAL” form
6. Table with the data to NPV model (\*.xls file with the table)
7. Price Breakdown template (\*.xls file with the table)
8. Billing rates for services (\*.xls file with the table)
9. Communication Form template – bids preparation stage (\*.xls)
10. Communication Form template – negotiation stage (\*.xls)
11. Beneficial Owner Statement
12. Non-disclosure AGREEMENT