

TENDER DOCUMENTATION

under Act No 134/2016, the Public Procurement Act, as amended (hereinafter "*the PPA*" or "*the Act*")

PUBLIC CONTRACT

"Supply of a Concert Organ for the New Concert Hall in Brno"

above-limit public supply contract awarded in a negotiated procedure with publication pursuant to Section 60 of the Public Procurement Act

Statutory City of Brno

Registered office: Dominikánské náměstí 196/1, Brno-město, 602 00 Brno

Company ID No: 44992785

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1 IDENTIFICATION DETAILS OF THE CONTRACTING AUTHORITY AND OTHER PERSONS

1.1 Contracting Authority

Name of the Contracting Authority	Statutory City of Brno
Registered office of the Contracting Authority	Dominikánské náměstí 196/1, Brno-město, 602 00 Brno
Identification number of the Contracting Authority	44992785
Profile of the Contracting Authority	https://ezak.brno.cz/

1.2 Representative of the Contracting Authority

The representative of the Contracting Authority in matters related to the award of this public contract is MT Legal s.r.o., law firm, with registered office at Jana Babáka 2733/11, 612 00 Brno, ID No. 28305043 e-mail: vz_brno@mt-legal.com. Under Section 43 of the PPA, the representative of the Contracting Authority is authorised to perform contracting activities relating to this procurement procedure and is also authorised to receive any objections from suppliers under Section 241 et seq. of the PPA (this is without prejudice to the authorisation of the statutory body or other authorised person of the Contracting Authority). The representative of the Contracting Authority shall also handle communication on behalf of the Contracting Authority under Art. 2.

1.3 Information on the procurement procedure

The public contract is awarded in a negotiated procedure with publication under Section 60 et seq. of the PPA.

The negotiated procedure with publication will be conducted in several stages: first the submission of applications for participation (proof of compliance with the qualification requirements), after the assessment of which the Contracting Authority will then invite selected qualified bidders to submit preliminary bids. A preliminary bid may only be submitted by a participant in the procurement procedure that has been invited by the Contracting Authority to submit a preliminary bid (a participant in the procurement procedure that has demonstrated compliance with the qualification requirements and, if applicable, has been successful in the process of reducing the number of participants in the procurement procedure, if this mechanism is used).

The Contracting Authority will then negotiate with the participants in the procurement

procedure on their preliminary bids (the Contracting Authority may change or supplement the terms of reference during the negotiations, except for the minimum technical conditions under Art. 3.3 of the Tender Documentation and under Section 61(10) of the PPA).

At the end of the preliminary bid negotiations, the Contracting Authority will invite the bidders to submit their (final) bids. A bid may only be submitted by a participant in the procurement procedure who has been invited to submit a bid.

Where the term "**bid**" is used in the text of this Tender Documentation, it is understood to mean both the preliminary bid under Section 61(5) of the PPA and the (final) bid under Section 61(11) of the PPA, unless stated otherwise.

The Tender Documentation does not contain information resulting from a preliminary market consultation.

The following parts of the Tender Documentation have been prepared by a person other than the Contracting Authority:

Parts of the Tender Documentation prepared by a person other than the Contracting Authority	Name of the person
Organisational and legal parts of the Tender Documentation	MT Legal s.r.o., law office, with its registered office at Jana Babáka 2733/11, 612 00 Brno, ID No: 28305043
Specification of the concert organ, which forms Annex 2 to the Tender Documentation	<p>"Ateliér Brno & spol.", which comprises the following companies:</p> <ul style="list-style-type: none"> • KONIOR STUDIO TOMASZ KONIOR, with its registered office at Mariacka 7, 40-014 Katowice, Poland, REGON (ID No): 272680739; • Architekti Hrůša & spol., Ateliér Brno, s.r.o., with its registered office at Slepá 919/16, Zábrdovice, 61300 Brno, ID No: 25517562, and • Nagata Acoustics International, Inc., with its registered office at 1990 S. Bundy Drive, Suite 795, Los Angeles, CA 90025, USA, registration No: C3125172. <p>Filharmonie Brno, contributory organisation, with its registered office at Komenského náměstí</p>

	<p>534/8, Brno-město, 602 00 Brno, ID No: 00094897.</p> <p>Aart Bergwerff, with its registered office at Dorpsstraat 25-4181 Bm Waardenburg, Netherlands, registration number: NL001333827.</p> <p>Zdeněk Nováček, 614 00 Brno.</p> <p>Christian Schmitt, with his registered office at Tübingerstr. 85, Stuttgart, Germany, registration number: DE245770326.</p>
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2 COMMUNICATION BETWEEN THE CONTRACTING AUTHORITY AND SUPPLIERS

The public contract is awarded electronically in its entirety via the certified electronic tool E-ZAK (hereinafter "***the Electronic Tool***"), available at <https://ezak.brno.cz/>.

All action taken within the framework of this procurement procedure as well as all communication between the Contracting Authority (or its representative) and the supplier shall be carried out via electronic means, in particular via the Electronic Tool.

All correspondence sent via the Electronic Tool shall be deemed to have been duly delivered on the date it is delivered to the addressee's user account in the Electronic Tool. The service of a document is not affected by whether the document has been read by its addressee, or whether the Electronic Tool has sent a notification to the addressee's contact email address that a new message has been delivered to their user account in the Electronic Tool or not.

The Contracting Authority informs the supplier that, in order to make full use of all the features offered by the Electronic Tool, it is **essential** to register as a supplier (to be able to log into the E-ZAK system, it is necessary to register in the Central Supplier Database (CSD) of the FEN.cz system at <https://fen.cz/#/registrace>, where all the details and instructions for registration can be found). **The supplier registration manual** in the Electronic Tool is included in the user guide entitled "*E-ZAK, Version 5 - Electronic Procurement Tool and Electronic Auction Room - User Guide for E-ZAK Suppliers*". The Contracting Authority points out that the registration process is not instant and is subject to acceptance by the system administrator within 48 hours on business days; registration may be refused if the registration request contains errors.

The terms and conditions and information on the Electronic Tool, including information on the use of electronic signatures, are available at <https://ezak.e-tenders.cz/manual.html>.

It is always the supplier's responsibility to ensure that any correspondence sent by the Contracting Authority via the Electronic Tool is read in a due and timely manner and that the contact details provided by the supplier are correct.

For answers to any questions regarding use of the E-ZAK Electronic Tool, please contact user support (tel.: +420 538 702 719, email: podpora@ezak.cz, **usually available on business days from 8:00 a.m. to 5:00 p.m.**).

3 INFORMATION ON THE SUBJECT OF THE PUBLIC CONTRACT

3.1 Subject of the public contract

The subject of the public contract is the supply and installation of a concert organ for the Janáček Cultural Centre, in accordance with the specification drawn up in Annex 2 to the Tender Documentation.

A detailed definition of the subject of the public contract, including details of the technical conditions necessary for the preparation of a bid, is set out in the annexes to this Tender Documentation.

3.2 Classification of the subject of the public contract (CPV)

CPV code 37311300-4 | Musical organs

3.3 Minimum technical conditions

Under Section 61(4) of the PPA, the Contracting Authority defines the following requirements as the minimum technical conditions that are mandatory during the procurement procedure and that cannot be changed or supplemented during the negotiation phase of the procurement procedure under Section 61(10) of the PPA.

The minimum technical requirements are as follows:

- a symphonic universal instrument,
- 4 manuals,
- two consoles (one mechanical and one electric).

3.4 Estimated value of the public contract

The estimated value of the public contract, determined in accordance with the procedure laid down in Section 16 et seq. of the PPA is CZK 80,000,000 excluding VAT. At the same time, the Contracting Authority stipulates that the maximum bid price, which may not be exceeded in a participant's bid, is CZK 100,000,000 excluding VAT, otherwise it constitutes failure to comply with the tender conditions.

3.5 Other requirements

All bidders that prove compliance with the qualification requirements and are not excluded during the (possible) process of reducing the number of participants under Art. 9 of the Tender Documentation will be invited to submit a preliminary bid under Section 61(5) and (6) of the

PPA, and their preliminary bids must take account of the above minimum technical conditions stated in paragraph 3.3. The Contracting Authority states that further conditions and details regarding the terms of performance will be discussed with the qualified bidders submitting preliminary bids at the next stage of the procurement procedure (during the negotiations on the preliminary bids), and that the Contracting Authority will be entitled, under Section 61(10) of the PPA, to set other binding tender terms during the negotiations, which the bidders must take into account in their bids. This is without prejudice to the Contracting Authority's option to proceed under paragraph 22.2 of the Tender Documentation.

The time, place and method for the submission of preliminary bids will be specified in the next stage of the procurement procedure, i.e. in the invitation for qualified participants to submit preliminary bids under Section 61(5) of the PPA, while Art. 14 and 15 of the Tender Documentation shall further apply to the submission of preliminary bids and bids.

The Contracting Authority stipulates that suppliers who have their registered office elsewhere than in a Member State of the European Union, the European Economic Area or the Swiss Confederation, or in a State which has concluded an international treaty with the Czech Republic or the European Union guaranteeing access to the public procurement market for suppliers from those States, and to this public contract, shall be excluded from the procurement procedure.

4 TIME AND PLACE FOR THE PERFORMANCE OF THE PUBLIC CONTRACT

The Contracting Authority assumes that the performance of the public contract will commence after the contract for the performance of the public contract with the selected supplier comes into effect in accordance with the specific rules contained in the contract. Further details are set out in Annex 1 to the Tender Documentation.

The place of performance is the building of the Janáček Cultural Centre in Brno, on land plots No 593/2 and 601, cadastral territory of the City of Brno.

5 INSPECTION OF THE PLACE OF PERFORMANCE

Given the nature of the public contract, the Contracting Authority will not organise an inspection of the place of performance.

6 CONTRACTING AUTHORITY'S QUALIFICATION REQUIREMENTS

Under Section 73 et seq. of the PPA, a supplier that demonstrates compliance with the following requirements is qualified to perform the public contract:

- a) [basic](#) qualification under Sections 74 and 75 of the PPA (paragraph 6.1),
- b) [professional](#) qualification under Section 77 of the PPA (paragraph 6.2),
- c) [economic](#) qualification under Section 78 of the PPA, if required (paragraph 6.3), and
- d) [technical](#) qualification under Section 79 of the PPA (paragraph 6.4).

6.1 Basic qualification under Section 74 of the PPA

An eligible supplier is a supplier that	Method used to prove compliance with the basic qualification requirements (documents)
<p>(a) has not been lawfully convicted of a criminal offence listed in Annex 3 to the PPA or a similar offence under the law of the country in which the supplier has its registered office during the last five years prior to the commencement of the procurement procedure; expunged convictions are not taken into account;</p> <p>In the case of a legal entity, this condition must be met by the legal entity and by each member of its statutory body.</p> <p>If a legal entity is a member of the supplier's statutory body, this condition must be met by that legal entity, by each member of the legal entity's statutory body and by the person representing that legal entity on the supplier's statutory body;</p> <p>Proof of compliance with the qualification requirements through a branch of a business is subject to Section 74(3) of the PPA.</p> <p>A branch of a business that has its registered office in the Czech Republic is considered to be a supplier with its registered office in the Czech Republic under Section 5 of the PPA.</p>	<p><i>Excerpt from the Criminal Records Office for</i></p> <ul style="list-style-type: none"> - each legal entity and - each natural person, <p><i>for whom it is required under the PPA and the terms of reference.</i></p>
<p>(b) has no tax arrears payable in the Czech Republic or in the country in which the supplier has its registered office;</p>	<ul style="list-style-type: none"> - <i>Confirmation from the competent tax authority</i> <i>and</i> - <i>An affirmation from the supplier concerning excise duty, clearly showing compliance with this qualification requirement.</i>

An eligible supplier is a supplier that		Method used to prove compliance with the basic qualification requirements (documents)
(c)	has no arrears on insurance premiums or public health insurance penalties payable in the Czech Republic or in the country in which the supplier has its registered office;	<i>An affirmation from the supplier clearly showing compliance with this qualification requirement.</i>
(d)	has no arrears on social security contributions or social security penalties payable in the Czech Republic or in the country in which the supplier has its registered office;	<i>Confirmation from the relevant territorial social security administration.</i>
(e)	is not in liquidation, is not the subject of a bankruptcy order, has not been placed under receivership under another legal provision and is not in a similar situation under the law of the country in which the supplier has its registered office.	<i>- Excerpt from the Commercial Register, or</i> <i>- an affirmation by the supplier concerning compliance with this requirement if the supplier is not registered in the Commercial Register.</i>
<p>The documents proving compliance with the basic qualification requirements must prove that the required qualification requirement was met not later than three months before the date of the start of the procurement procedure (i.e. they must be not more than three months old by the start of the procurement procedure).</p> <p>The supplier may also demonstrate basic qualification by submitting an excerpt from the list of qualified suppliers under Section 228 of the PPA or a certificate issued under the certified supplier system under Section 234 of the PPA.</p>		

6.2 Professional qualification under Section 77 of the PPA

Compliance with the professional qualification requirements is proven by a supplier that submits		Method used to prove compliance with the professional qualification requirements (documents)
(a)	excerpt from the Commercial Register or other similar register.	<i>Excerpt from the Commercial Register or an excerpt from another similar register if another legal regulation requires entry in such a register.</i>
<p>The supplier may also demonstrate compliance with the professional qualification requirements by submitting an excerpt from the list of qualified suppliers under Section 228 of the PPA or a certificate issued under the certified suppliers system under Section 234 of</p>		

Compliance with the professional qualification requirements is proven by a supplier that submits	Method used to prove compliance with the professional qualification requirements (documents)
the PPA to the extent that the data in the excerpt from the list of qualified suppliers or the certificate prove compliance with the professional qualification requirements.	

6.3 Economic qualification under Section 78 of the PPA

Not applicable to this procurement procedure.

6.4 Technical qualification under Section 79 of the PPA

Compliance with the technical qualification requirements is proven by a supplier that submits	Method used to prove compliance with the technical qualification requirements (documents)
(a) list of significant supplies made in the 10 years prior to the start of the procurement procedure;	<p><i>Submission of a list of significant contracts containing at least the following information:</i></p> <ul style="list-style-type: none"> <i>a) the name of the client,</i> <i>b) the subject of the significant contract,</i> <i>c) the period of performance of the significant contract,</i> <i>d) the financial value of the significant contract, if further required,</i> <i>e) a contact person of the client who can verify the implementation of the significant contract, including a contact email address and telephone number.</i> <p><i>The list of significant supplies must clearly show that the supplier made at least two significant supplies during the period in question (i.e. in the 10 years prior to the start of the procurement procedure), the subject (for each of them) of which was the supply (manufacture and assembly/installation) of a new pipe, symphonic universal organ with at least four manuals and a pedal.</i></p>

Compliance with the technical qualification requirements is proven by a supplier that submits	Method used to prove compliance with the technical qualification requirements (documents)
	<p><i>Unless specified otherwise, the qualification requirements are also met by the supplier in the case of significant supplies started earlier than in the 10 years prior to the start of the procurement procedure, provided that they were completed (i.e. assembly/installation duly completed) in those last 10 years, or if they were still in progress after the start of the procurement procedure, or if they are still in progress, provided that the above conditions are met by the deadline for proving compliance with the qualification requirements (i.e. proper completion of the relevant part of the significant supply that complies with the reference requirements of the Contracting Authority).</i></p>

7 COMMON QUALIFICATION-RELATED PROVISIONS

7.1 Authenticity and language of documents proving compliance with the qualification requirements by the deadline for proving compliance with the qualification requirements

In all cases, the supplier shall demonstrate compliance with the qualification requirements by submitting plain copies (e.g. scans) of documents. In order to ensure the proper conduct of the procurement procedure, the Contracting Authority may require the submission of the original document or an officially certified copy of the document in electronic form under the procedure laid down in Section 46(1) of the PPA. Under Section 86(2) of the PPA, the Contracting Authority will not allow a bidder to submit a written affirmation as a substitute for the qualification documents.

The supplier may also comply with the obligation to submit a document by making reference to the corresponding information held in a public administration information system under Act No 365/2000, on public administration information systems and on amendments to certain other laws, as amended, or in a similar system held in another Member State that allows unrestricted remote access. Such a reference must contain the Internet address and the details

needed to log in and retrieve the required information, if such details are necessary. In the Czech Republic, this particularly means

- an excerpt from the Commercial Register,
- an excerpt from the public part of the trade register, or
- an excerpt from the list of qualified suppliers

The supplier may also replace the required documents with a European Single Procurement Document under Section 87 of the PPA, however this only applies to information/documents that clearly follow from the European Single Procurement Document and show compliance with the given eligibility or qualification requirements.

In the case of documents **in a language other than** the language allowed by the Contracting Authority for the submission of bids (see paragraph **14.2** of the Tender Documentation), the bidder shall attach a (plain) **translation** into Czech or English with the documents. If the Contracting Authority has any doubts about the accuracy of the translation, it may request the submission of an officially certified translation of the document into Czech or English. The obligation to attach a Czech or English translation to the documents does not apply to documents in the Slovak language. Education-related documents (e.g. university diplomas) can also be submitted in Latin.

7.2 Documents to be submitted by the selected supplier

The Contracting Authority will request that the supplier identified as the **selected supplier** (i.e. after submission of the final bids) submit the original or certified copies of the documents proving compliance with the qualification requirements, if not already submitted in this form in the procurement procedure, in **electronic form** (see Article 2). If the selected supplier has submitted a European Single Procurement Document as a substitute for the documents proving compliance with the eligibility or qualification requirements in the procurement procedure, it does not need to submit the individual documents replaced by that certificate, provided that it informs the Contracting Authority in which other procurement procedure it has already submitted those documents and that they are still acceptable (including in terms of age, which applies to the proof of compliance with the basic qualification requirements referred to in paragraph 6.1 of the Tender Documentation).

To avoid any doubt, the Contracting Authority states that a **scan** of a document issued by a public authority (even one subsequently electronically signed by the supplier) **is not classed** as an original in electronic form.

The Contracting Authority may stipulate in the invitation that the selected supplier must submit documents proving compliance with the basic qualification requirements under Section 74 of the PPA **after the delivery of the invitation** or a written affirmation stating that the information relevant for the assessment of compliance with the qualification requirements contained in the qualification documents available to the Contracting Authority has not changed, or new documents if the relevant information in these documents has changed.

7.3 Proof of qualifications obtained abroad

If a qualification was obtained abroad, it must be proven by documents issued under the legal system of the country in which it was obtained, to the extent required by the Contracting Authority and the PPA.

Documents confirming that suppliers abroad have no arrears in the Czech Republic are issued in relation to

- tax arrears by the Tax Office for Prague 1,
- arrears on insurance premiums and penalties for social security and contributions to the state employment policy by the Social Security Administration for the City of Prague and the Central Bohemian Region (Prague Social Security Administration).

7.4 Proof of compliance with certain qualification requirements through other persons

If the bidder is unable to demonstrate full compliance with the professional qualification, economic qualification or technical qualification requirements stipulated by the Contracting Authority, and the Tender Documentation does not specify otherwise, the bidder may prove such compliance through another person (this does not apply to professional qualification under paragraph 6.2 (a) of the Tender Documentation).

The term 'another person' means a person with a different ID number, even if, for example, that person is part of the same concern as the bidder.

In such a case, the bidder shall provide the Contracting Authority with

- a) documents proving compliance with the **basic** qualification requirements under paragraph 6.1 of the Tender Documentation (Section 74 and Section 75 of the PPA) by another person,
- b) documents proving compliance with the **professional** qualification requirements under paragraph 6.2 (a) of the Tender Documentation (Section 77(1) of the PPA) by another person,
- c) documents demonstrating compliance with the **missing part of the qualification and/or qualification requirements** by another person, and
- d) an **agreement** or **confirmation** of the existence of an agreement **signed** by another person, whereby the content of the agreement is a written commitment by the other person to provide **specific** performance intended for the performance of the public contract or to provide goods or rights that the supplier will be entitled to use in the performance of the public contract, at least to the **extent** that the other person has proven compliance with the qualification requirements on behalf of the supplier; if the other person has proven compliance with the qualification requirements under paragraph 6.4 (a) of the

Tender Documentation, the agreement must indicate an obligation on the part of that other person to carry out the construction work and/or services to which the relevant qualification criterion relates. See also Section 83(2) and (3) of the PPA.

7.5 Joint proof of compliance with the qualification requirements

In the event of a joint bid submitted by more than one supplier, compliance with the basic qualification requirements (paragraph 6.1 of the Tender Documentation) and the professional qualification requirements (paragraph 6.2 (a) of the Tender Documentation) must be proven by each of those suppliers separately in full.

In addition, the joint proof of compliance with the qualification requirements must be made under the following conditions:

- a) One of the suppliers shall be specifically identified as the lead participant designated to communicate with the Contracting Authority during the procurement procedure;
- b) The documents proving compliance with the qualification requirements must include a document (such as an agreement) that makes it clear that all the suppliers are jointly and severally liable for the performance of the public contract.

7.6 Consequence of failure to comply with the qualification requirements

A bidder that fails to prove that it complies with the qualification requirements stipulated by the PPA and the Tender Documentation may be excluded from participation in the procurement procedure by the Contracting Authority. The selected supplier must be excluded from the procurement procedure for the following reasons under Section 48(8) of the PPA; this is without prejudice to the Contracting Authority's option to proceed under Section 46(1) of the PPA (even in relation to the selected supplier).

7.7 Activities reserved exclusively for the bidder

The bidder is entitled to have the subject of the public contract performed through a subcontractor.

8 CONDITIONS AND REQUIREMENTS FOR THE PREPARATION AND SUBMISSION OF THE APPLICATION FOR PARTICIPATION

8.1 Conditions for the submission of applications in electronic form

Applications for participation may only be submitted in electronic form, via the Electronic Tool referred to in Art. 2 of the Tender Documentation. Applications for participation must be encrypted under the requirements of legislation and those of the Electronic Tool.

Applications for participation shall be submitted at: <https://ezak.brno.cz/>

8.2 Other details concerning the application for participation (language, content)

All parts of the application for participation must be prepared in Czech, Slovak or English; this is without prejudice to any obligation under Czech law to have a particular document translated.

8.3 The Contracting Authority recommends that the application for participation be structured as follows:

- cover sheet containing the identification details of the supplier (Section 28(g) of the PPA);
- the content of the application for participation;
- documents to prove that the supplier complies with the qualification requirements, including documents necessary to prove compliance with the qualification requirements through other persons pursuant to Art. 6 of the Tender Documentation;
- any other documents that the bidder deems appropriate.

8.4 Deadline for the submission of applications for participation

The deadline for the submission of applications for participation is set out in the Notice on the Opening of the Procurement Procedure.

9 REDUCTION IN THE NUMBER OF PARTICIPANTS

Under Section 61(5) of the PPA, in conjunction with Section 111 of the PPA, the Contracting Authority reserves the right to reduce the number of participants (at the stage after the submission of applications for participation and before the issue of the invitation for the submission of preliminary bids), so that the invitation for the submission of preliminary bids can be sent to three participants if a sufficient number of applications for participation is submitted and a sufficient number of participants demonstrate compliance with the qualification requirements (otherwise, the number of participants will not be reduced).

9.1 Rules for reducing the number of participants

The Contracting Authority has the option to reduce the number of participants to three at the stage after the submission of applications for participation and before the issue of the invitation for the submission of preliminary bids, if a sufficient number of participants demonstrate that they meet the relevant conditions for participation in the procurement procedure. In such a case, the number of participants will be reduced under the following criterion:

Number of significant supplies involving the supply of an organ for a concert hall

For the purposes of reducing the number of participants under this criterion, bidders shall provide a list of significant supplies as part of their application for participation, containing the same details as required in paragraph 6.4(a) of the Tender Documentation (method used to prove compliance with the technical qualification requirements). However, these must be significant supplies other than those through which the bidder demonstrates compliance with the technical qualification requirements under paragraph 6.4(a) of the Tender Documentation.

The criterion for reducing the number of participants shall take into account **significant supplies**, the subject (for each of them) of which was the supply (manufacture and assembly/installation) of a new pipe **symphonic universal** organ with **at least four manuals and a pedal, within the 10 years before the deadline for the submission of applications for participation**.

For each significant supply that meets these criteria, the bidder shall be awarded **one point**.

9.2 Maximum number of significant supplies taken into account

The maximum number of significant supplies evaluated in this way for each bidder **is 7 (i.e. a maximum of 7 points)**. Each significant supply will be considered only once for a bidder when the number of participants is being reduced.

9.3 Determining the specific number of participants when reducing the number of participants

If the number of participants is reduced, the first three bidders with the highest total points will be successful. Participants who are unsuccessful (ranked below these) will be excluded from the procurement procedure. However, if more than one participant is ranked third in the reduction process with the same score, all such participants will go through to the next phase (i.e. the number of participants after the reduction will be higher than the minimum number defined in this case, and all those participants will be invited to submit preliminary bids).

10 NUMBER OF PARTICIPANTS IN THE PRELIMINARY BID NEGOTIATIONS

The Contracting Authority shall exclude from the procurement procedure any participants who have not proven compliance with the qualification requirements. The Contracting Authority shall send an invitation for participants not excluded from the procurement procedure to submit preliminary bids, all at the same time.

11 CONDITIONS AND REQUIREMENTS FOR THE PREPARATION AND SUBMISSION OF PRELIMINARY BIDS

11.1 The invitation for the submission of preliminary bids is preceded by a phase in which the applications for participation serve as the basis for assessing the participants' compliance with the qualification requirements.

11.2 A preliminary bid may only be submitted by a participant in the procurement procedure who has been invited to submit a preliminary bid. Invited bidders may not submit a joint preliminary bid.

11.3 The same language rules apply for the submission of a preliminary bid as for the submission of an application for participation under paragraph 8.2 of this Tender Documentation.

11.4 Preliminary bids may only be submitted in electronic form via the Electronic Tool referred to in Art. 2 of the Tender Documentation. Preliminary bids must be encrypted under the requirements of legislation and those of the Electronic Tool. The address for the submission of electronic preliminary bids, as well as other content, will be specified in the invitation for the submission of preliminary bids under Article 61(5) of the PPA.

12 PRELIMINARY BID REQUIREMENTS

In addition, a preliminary bid submitted as a joint bid by multiple suppliers must meet the following requirements:

- (a) One of the suppliers shall be designated as the lead participant responsible for the contract, and this designation shall be confirmed by the submission of a power of attorney to represent all the other suppliers.
- (b) The preliminary bid submitted by the suppliers must indicate the specific division of activities (but not responsibilities) for the performance of the contract. This is without prejudice to the fact that suppliers submitting a joint application for participation are jointly and severally liable under paragraph 7.5 of the Tender Documentation.

Further conditions, including the required structure of documents for the preliminary bid, will be set out in the invitation for the submission of preliminary bids under Section 61(5) of the PPA.

13 DEADLINE FOR THE SUBMISSION OF PRELIMINARY BIDS

The deadline for the submission of preliminary bids will be set in the invitation for the submission of preliminary bids under Section 61(5) of the PPA.

The preliminary bid must be submitted not later than by the end of the deadline set in the invitation for the submission of preliminary bids under Section 61(5) of the PPA. Bidders are responsible for ensuring the timely delivery of their preliminary bids.

14 PRELIMINARY BID NEGOTIATIONS

- 14.1** **The Contracting Authority will discuss the preliminary bids with the bidders, mainly with a view to improving the preliminary bids to the benefit of the Contracting Authority. The negotiations may concern be any terms of performance contained in the preliminary bid that are negotiable according to the terms of reference (i.e. not only terms that the Contracting Authority assumes are negotiable - see red text in the draft contract), at the discretion of the Contracting Authority.** Negotiations will be conducted with participants in the order determined by the Contracting Authority.
- 14.2** The Contracting Authority will conduct negotiations with the participants in the procurement procedure in Czech, Slovak or English.
- 14.3** During the course of the negotiations, the Contracting Authority is entitled to amend or supplement the terms of reference, with the exception of the minimum technical conditions under paragraph 3.3 of the Tender Documentation, and with the exception of the rules for the evaluation of bids. The Contracting Authority shall inform the bidders in writing (in the form of a report or by other appropriate means during the course of the negotiations) of any such supplement or amendment to the terms of reference, and shall allow the bidders a reasonable time to modify their preliminary bids, unless the Contracting Authority does not require modification until the final bid.
- 14.4** The participant will be duly invited to each negotiation session at least five days in advance, unless the date of the next session is agreed during the course of the negotiations. The participant shall be invited to each negotiation session through a letter of invitation, which shall specify at least the date and place of the session and at least broadly define the subject matter. The invitation may include an invitation to more than one session at the same time. The obligation to issue a participant with an invitation to a session does not apply if the participant took note of the date and

place of the next session at the previous session. The Contracting Authority reserves the right to change the date of a session. The Contracting Authority may split a single session into several rounds or phases.

- 14.5** No more than five persons (representatives of the participant) may attend a single session on behalf of a participant, at least one of whom must be demonstrably authorised to represent the participant at the session (such as through a power of attorney), unless the Contracting Authority (in particular at the participant's request) allows a higher number in a particular case.
- 14.6** Not later than five days before each subsequent session (unless another time limit is agreed with the participant), the Contracting Authority is entitled to state that the next session is the last session. After the last session, the Contracting Authority shall send the participants an invitation to submit their final bids.
- 14.7** In addition to a face-to-face meeting, individual sessions may, at the discretion of the Contracting Authority, be held remotely by electronic means, in particular using the Electronic Tool or video conferencing (using suitable software).
- 14.8** The Contracting Authority will negotiate with the participants separately or jointly, at its discretion. The invitation will inform the bidders of whether the sessions will be held separately or jointly.
- 14.9** The Contracting Authority shall take minutes or a record of each face-to-face meeting with a participant, i.e. a meeting at which the representatives of the Contracting Authority and the participant are physically present. The minutes shall include the arrangements made during the meeting, the date of the meeting, the subject of the meeting and its outcome. The record of a physical meeting will always be accompanied by a list of the participants at the meeting (attendance sheet), drawn up at the beginning of each meeting. The minutes of the meeting will be drawn up by the Contracting Authority, normally at the place where the meeting is held, but always not later than seven business days from the date of the meeting. Participants are entitled to read the minutes of the meeting and take excerpts or copies thereof. Participants are entitled to request a copy of the minutes of the meeting.
- 14.10** In the case of a remote meeting, an electronic recording of the communication or a recording of the video conference between the participant and the Contracting Authority or its representative will serve as a record of the session, being classed as documentation pursuant to Section 216 of the PPA, the validity of which requires no further authorisation.

- 14.11** The Contracting Authority reserves the right not to negotiate further with a participant that fails to appear at a meeting on at least two occasions (in which case a combination of the following reasons is acceptable), or that fails to respond properly to the request for a written response on at least two occasions, or that is not present at a meeting with a person authorised to act on the participant's behalf, or that is manifestly unprepared for a meeting.
- 14.12** The Contracting Authority reserves the right to set additional conditions for negotiations with the participants.
- 14.13** The outcome of the preliminary bid negotiations shall be binding for the submission of the final bid, unless specified otherwise by the Contracting Authority. However, a bidder may offer more favourable terms in its bid.

15 REQUIREMENTS FOR THE PREPARATION AND SUBMISSION OF A FINAL BID

A final bid may only be submitted by a participant in the procurement procedure that has been invited to submit a final bid. Invited bidders may not submit a joint final bid.

The bidder must submit the complete **electronic version of the final bid** via the Electronic Tool referred to in Article 2 of the Tender Documentation. **The final bid must be encrypted under the requirements of legislation and those of the Electronic Tool.**

The requirements for the language of the final bid are the same as those stipulated for the language of the participation application (paragraph 14.2 of the Tender Documentation).

Further terms and conditions for the bid will be set out in the invitation for the submission of final bids.

16 DEADLINE FOR SUBMISSION OF FINAL BIDS

The deadline for the submission of bids will be set in the invitation for the submission of final bids under Section 61(12) and Section 62(4) of the PPA.

The final bid must be submitted not later than the end of the deadline set in the invitation to submit bids under Section 61(12) of the PPA. Bidders are responsible for ensuring the timely delivery of their final bids.

17 EVALUATION OF BIDS

17.1 Evaluation criterion:

Bids will be evaluated under Section 114 et seq. of the PPA according to their economic advantageousness. The most economically advantageous bid is that which, in aggregate, best fulfils the following evaluation criteria:

	Evaluation criteria	Weighting
A.	Bid price	30%
B.	Alternative organ layout	70%

17.2 Evaluation method:

A. Bid price

Under this evaluation criterion, the Contracting Authority will evaluate the bid prices in CZK excluding VAT as offered by the participants. The bid with the lowest price will be deemed the most suitable. The requirements for the preparation of the bid price shall be defined not later than in the invitation for the submission of final bids. The bids shall be evaluated under this criterion with scores assigned under the following formula:

$$\frac{\text{value of most suitable bid}}{\text{value of evaluated bid}} * 30$$

B. Development of an alternative to the specified layout

I. Description of the criterion

Under this evaluation criterion, the Contracting Authority will evaluate the alternatives (modifications and changes) offered by the participants to the layout of the organ submitted by the Contracting Authority (this layout can be found in Annex 2 to the Tender Documentation (hereinafter "**the Default Layout**").

Participants may (but are not obliged to) prepare one (!) proposal for an alternative to the layout submitted by the Contracting Authority. This alternative must meet the minimum technical conditions specified in paragraph 3.3 of the Tender Documentation (hereinafter "**Alternative Layout**").

For the proposals for an Alternative Layout, the Contracting Authority shall evaluate the **uniqueness and individuality of the instrument and its optimised sound** compared to the **sound of the instrument** in the Default Layout, also taking account of the fact that the instrument's versatility (i.e. the fact that it can be used for as many compositions and musical styles as possible) should be maintained as much as possible.

In evaluating an Alternative Layout to the Default Layout, the Contracting Authority shall give preference to designs that:

- a. **feature new registers and/or an alternative division of registers, if they offer greater variability of sound combinations,**
- b. **include exceptional registers that are not common,**

- c. **offer a more suitable tonal range of sound in line with the nature of the instrument (concert, symphonic universal organ),**
- d. **enable the production of sound effects that cannot easily be reproduced on other organs (also taking into account the concert hall in which the organ will be installed),**
- e. **offer a more suitable (as regards individualisation of the instrument and optimisation of its sound) technical solution of air supply and windchest,**
- f. **offer more modern or flexible control (such as in the keyboard or action) leading to greater individualisation of the organ's sound.**

II. Scoring system:

The uniqueness of the alternative to the specified layout shall be evaluated under the following points scale:

- a. **10 points** shall be awarded for an **exceptional Alternative Layout**, i.e. an alternative that offers an **exceptional degree of uniqueness** compared to the Default Layout (e.g. one that offers significantly greater variability in sound combinations, contains more exceptional registers, offers an exceptionally suitable tonal range, enables the production of a wide range of sound effects that cannot be produced on other organs, has controls enabling extensive customisation of the organ's sound).
- b. **5 points** will be awarded for an **above-average Alternative Layout**, i.e. an alternative that offers an **above-standard degree of uniqueness** compared to the Default Layout (e.g. offers greater variability in sound combinations, contains a smaller number of exceptional registers, offers a more appropriate tonal range, enables the production of a limited range of sound effects that cannot be produced on other organs, has controls enabling greater customisation of the organ's sound).
- c. **0 points** will be awarded for an **Alternative Layout** that offers the same degree of uniqueness of the organ as the Default Layout.
- d. **-5 points** will be awarded for a **below-average Alternative Layout**, i.e. an alternative that **makes the organ less unique** compared to the Default Layout.
- e. **-10 points** will be awarded for a **wholly inadequate Alternative Layout**, i.e. an alternative that makes the organ substantially less unique compared to the Default Layout.

If the bidder does not submit an Alternative Layout, **0 points will be awarded. In such a case, the bidder shall offer an instrument designed under the Default Layout**

The assigned score will then be weighted using the weighting of this evaluation criterion, i.e. under the following formula:

$$\frac{\text{value of evaluated bid (point value for quality of solution)}}{10} * 70$$

17.3 Determination of bidder rankings:

The bidders will be ranked on the basis of the sum of the scores achieved under the individual evaluation criteria. A higher total score means a higher ranking. The bidder with the highest total score comes first in the ranking.

The scores will always be rounded to two decimal places for each evaluation criterion under the rounding rules.

18 BINDING NATURE OF THE CONTRACTING AUTHORITY'S REQUIREMENTS

The information and data provided in the Tender Documentation define the Contracting Authority's binding requirements for the performance of the public contract. However, the Contracting Authority points out that, apart from the minimum technical conditions referred to in paragraph 3.3 of the Tender Documentation and the rules governing the evaluation of bids, these may be subject to change at the stage when the bidders' preliminary bids are discussed. The requirements resulting from the invitation for the submission of final bids shall be fully and unconditionally met by the bidders in the preparation of their final bids. Failure to accept the requirements of the Contracting Authority shall be considered as failure to comply with the terms of reference.

If the terms of reference contain references to trading companies, trade names or names and surnames, specific designations of goods and services that are characteristic of a particular entity or its organisational unit, patents for inventions, utility models, industrial designs, trademarks or designations of origin, the Contracting Authority expressly allows the use of other solutions similar in qualitative and technical terms that offer the functionality required by the Contracting Authority or obvious to the expert (unless otherwise stated in the case in question).

19 CLARIFICATION, AMENDMENT OR SUPPLEMENTATION OF THE TENDER DOCUMENTATION

Suppliers may request clarification of the terms of reference.

The request must be delivered to the Contracting Authority within the time limit pursuant to Section 98(3) of the PPA in conjunction with Section 98(6) of the PPA (eight business days before the end of the relevant time limit in the relevant ongoing phase of the procurement procedure - e.g. the deadline for the submission of applications for participation or bids), or the deadline for the submission of objections to the terms of reference under Section 242(5) of the PPA.

The Contracting Authority draws attention to the fact that all communication with the Contracting Authority relating to the procurement procedure for this public contract shall be via electronic means, in particular via the Electronic Tool, or possibly also via a data box or sent to the email address of the Contracting Authority's representative under paragraph 1.2 of the Tender Documentation.

The Contracting Authority shall publish clarification of the Tender Documentation, including the exact wording of the request, on the Contracting Authority's profile not later than three business days after such request, as required by law.

The Contracting Authority is entitled to publish an explanation of the Tender Documentation on its own initiative on the Contracting Authority's profile under the terms of Section 98(1) of the PPA. Pursuant to Section 99 of the PPA, it may also publish an amendment or supplement to the Tender Documentation.

20 CONDITIONS GOVERNING THE CONCLUSION OF AN AGREEMENT WITH THE SELECTED SUPPLIER

The supplier identified by the Contracting Authority (the committee) as the selected supplier shall provide, at the request of the Contracting Authority and under the terms of Article 2 of the Tender Documentation (i.e. in electronic form)

- a) an affirmation stating that the information relevant for the assessment of compliance with the qualification requirements contained in the documents referred to in paragraph 7.2 of the Tender Documentation, which the Contracting Authority has available, or contained in new documents if the relevant information in these documents has changed, has not changed;
- b) any further information and documents specified at a later stage of the procurement procedure (in particular in the invitation to submit bids).

The Contracting Authority notes that the requirements under point (b) may be modified (including through the addition of requirements) following the negotiation of the draft agreement during the preliminary bid negotiation phase (the final form of these requirements shall be set out in the invitation for the submission of final bids).

If the selected contractor is a Czech legal entity, the Contracting Authority shall ascertain the details of its beneficial owner in the register of beneficial owners kept under Act No 37/2021, on the registration of beneficial owners. If it is not an entity covered by a statutory exemption, the details of the beneficial owner shall be entered in the register of beneficial owners. A selected supplier that is a Czech legal entity with a beneficial owner shall be excluded from the procurement procedure if the details of its beneficial owner cannot be ascertained from the register of beneficial owners. An entry made accessible in the register of beneficial owners only

after the supplier's exclusion notice has been sent shall not be taken into account. A selected supplier that is a foreign legal entity shall be subject to Section 122(6) of the PPA.

21 AWARD PERIOD AND SECURITY

The Contracting Authority does not set a requirement for an award period (Section 40 of the PPA) or for the provision of security (Section 41 of the PPA).

22 RESERVATIONS OF THE CONTRACTING AUTHORITY

22.1 The participants bear the costs associated with their participation in the procurement procedure.

22.2 The Contracting Authority reserves the right to change, supplement or modify the terms of reference, with the exception of the minimum technical conditions under Section 61(4) of the PPA and the rules for the evaluation of bids.

22.3 The Contracting Authority reserves the right to cancel the procurement procedure under the relevant provisions of the PPA.

22.4 The Contracting Authority will not accept multiple bids submitted by a single participant.

22.5 The Contracting Authority reserves the right to proceed under Section 46 of the Public Procurement Act if it requires an application for participation or a preliminary bid to be clarified or supplemented, in which case the participant is entitled to modify the application for participation or preliminary bid to meet the Contracting Authority's requirements.

22.6 The Contracting Authority may check the veracity and authenticity of all provided data, documents, models and/or samples (if required), and may also obtain them itself, such as from third parties or publicly available sources. The participant shall provide the Contracting Authority with all the necessary assistance in this respect.

22.7 The Contracting Authority reserves the right to exclude from the procurement procedure a participant that, directly or through a subcontractor through which it proves compliance with the qualification requirements, violates Section 4b of Act No 159/2006, on conflict of interest, as amended.

22.8 If some figures in the participant's documents/information are stated in a currency other than CZK, without this contradicting the Tender Documentation, the exchange rate declared by the Czech National Bank as of the date the procurement procedure was initiated (i.e. the date on which the form on the

initiation of the procurement procedure was sent for publication in the Public Procurement Bulletin and the Official Journal of the European Union - TED) shall be used for their conversion to CZK.

22.9 The Contracting Authority stipulates that objections to the terms of reference under Section 242(4) of the PPA may be submitted not later than 72 hours before the end of the deadline for the submission of bids. Objections to the qualification conditions under Article 242(3) of the PPA may be filed not later than 72 hours before the deadline for the submission of applications for participation.

23 INFORMATION ON THE PROCESSING OF PERSONAL DATA

23.1 The Contracting Authority, in its capacity as personal data controller, hereby informs the participants in the procurement procedure that personal data are processed for the purpose of the procurement procedure under the PPA under Article 13 of Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (hereinafter "*the GDPR*") and Act No 110/2019, on the processing of personal data, as amended.

23.2 Within the framework of the procurement procedure, the Contracting Authority may process the personal data of suppliers and their subcontractors (natural persons engaged in business), members of the statutory bodies and contact persons of suppliers and their subcontractors, persons through whom the supplier proves compliance with the qualification requirements, members of the supplier's implementation team and beneficial owners of the supplier.

23.3 The Contracting Authority shall process personal data solely to the extent necessary for the implementation of the procurement procedure and solely for the period of time stipulated by legislation, in particular the PPA. Data subjects are entitled to exercise their rights under Articles 13 to 22 of the GDPR in writing by sending a letter to the Contracting Authority's registered office.

23.4 The Contracting Authority transmits personal data for processing to the representative of the Contracting Authority as personal data processor for the purpose of administering the procurement procedure pursuant to Section 43 of the PPA.

24 SANCTIONS AGAINST RUSSIA AND BELARUS

24.1 By submitting a bid, the participant confirms that, if it enters into an agreement with the Contracting Authority, it will not provide payments made by the Contracting Authority in connection with the implementation of the public contract directly or indirectly, in full or in part, to persons or entities subject to individual

financial sanctions under Article 2(2) of Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, Council Regulation (EU) No 269/2014 of 17 March 2014 on restrictive measures in view of activities that undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, and Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus, and which are included in the so-called sanctions lists (under Annex 1 to these Regulations, the current list can be found e.g. here <https://www.financnianalytickyurad.cz/blog/rusko-a-belorusko-seznam-sankcionovanych-subjektu>).

24.2 By submitting a bid, the participant further confirms that the conditions set out in Council Regulation (EU) 2022/576 of 8 April 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's activities destabilising the situation in Ukraine are not met, i.e. in particular that the supplier is not:

- a Russian national, or a natural or legal entity established in Russia,
- a legal entity which is more than 50% owned, directly or indirectly, by any of the persons or entities referred to in the preceding point, or
- a natural person or legal entity acting on behalf of, or at the direction of, any of the persons referred to in the preceding points.

In the case of a joint bid, the above applies for each of the associated suppliers, as well as in cases where the participant intends to use a subcontractor (or other person proving compliance with the qualification requirements on behalf of the participant) in the performance of the public contract, for whom any of the above points apply and who will participate in the performance of more than 10% of the value of the public contract (calculated from the bid price in CZK excluding VAT).

24.3 If a participant is in doubt as to whether the conditions set out in paragraphs 24.1 or 24.2 of the Tender Documentation are met, the participant shall state the relevant circumstances and identify any such person or persons in the application for participation, the preliminary bid and the final bid. The participant may also, at its discretion, provide information and evidence in a credible manner to dispel the doubts referred to in the previous sentence, or evidence of measures taken by the participant.

24.4 If the participant is subject to the sanctions referred to in paragraphs 24.1 or 24.224.1 or 24.2 of the Tender Documentation, the Contracting Authority shall proceed under Section 48a of the PPA.

25 LIST OF ANNEXES

The following annexes form part of the Tender Documentation:

Annex 1 - Draft Contract of Work

Annex 2 - Technical Specification

In Brno, dated as per the electronic signature

Statutory City of Brno

legally represented by

MT Legal s.r.o., law office