

INVITATION FOR SUBMISSION OF THE BID AND NEGOTIATIONS

and

PROCUREMENT DOCUMENTATION

for an above threshold public contract for supplies called:

„3D Atom Probe Tomography – design, manufacture and delivery of the system”

(hereinafter the “*Procurement Documentation*”, “*Public Contract*” and “*Procurement Procedure*”)

awarded in an *negotiated procedure without publication* pursuant to Section 64 (a) and 63/3 (b) of the Act No. 134/2016 Coll., on Public Procurement, as amended (hereinafter the „*Act*“),

**Funding source:
Programme Johannes Amos Comenius**

Contracting authority:

Institute of Thermomechanics of the Czech Academy of Sciences, public research institution

with its registered office at Dolejškova 1402/5, 182 00 Praha 8, identification No.: 613 88 998

hereinafter the “*Contracting authority*”

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1. Basic data on Contracting authority and Procurement Procedure

1.1. Basic data on Contracting Authority

Contracting authority	Ústav termomechaniky AV ČR, v. v. i. <i>Institute of Thermomechanics of the Czech Academy of Sciences, public research institution</i>
Registered Office:	Dolejškova 1402/5, 182 00 Praha 8, Czech Republic
Identification No.:	613 88 998
Tax Identification No.:	CZ61388998
Person authorised to act on behalf of the Contracting authority:	doc. Ing. Miroslav Chomát, CSc., Director
Representative of the Contracting authority pursuant to Section 43 of the Act:	Advokátní kancelář Volopich, Tomšíček & spol., s.r.o. registered in the Commercial Register kept by Regional Court in Plzeň, Section C, File 29293, with its registered office at Vlastina 602/23, Severní Předměstí, 323 00 Plzeň, Id. No.: 024 76 649 <u>Contact person:</u> JUDr. Tomáš Tomšíček, attorney tel.: +420 377 519 999 email: zakazky@akvt.cz
Type of Public contract:	Pursuant to Section 14 (1) of the Act the Public Contract is an above threshold public contract for supplies. Pursuant to Section 56 of the Act the Contracting authority carries out the Procurement Procedure as a negotiation procedure without publication pursuant to Sec 64 (a) and 63/3 (b) of the Act.

1.2. Access to Procurement Documentation

This Procurement Documentation was published on the profile of the Contracting authority: <https://www.e-zakazky.cz/Profil-Zadavatele/ae137fae-7cf5-4aef-8f8c-599414cf5249>

The information and data listed in this Procurement Documentation and its annexes define the minimum technical and other mandatory requirements of the Contracting authority for the submission of bids and the fulfilment of the Public Contract. The participants are obliged to respect these requirements in their bids.

1.3. Preliminary market consultations

The Contracting authority conducted a preliminary market consultation with the following company:

- **CAMECA Instruments, Inc.**, 5470 Nobel Drive, Madison, WI 53711, USA

to gain all the information necessary for the correct and objective preparation of the procurement procedure, to assess whether the subject-matter of the Public Contract is worldwide unique and thus whether the negotiated procedure without publication is admissible, and finally to gain all the information necessary for preparation of the business conditions. The purpose of the preliminary market consultation was to verify that economic operator CAMECA Instruments, Inc. can fulfil requirements of the Contracting authority within the available budget and that the award criteria are not impossible to be fulfilled.

The following information/requirements included in this Procurement Documentation were subject to the market consultation with the above identified company:

Annex no. 1 to this Procurement Documentation - Purchase Contract (subject-matter of the Public Contract, liability clauses) and its Annex 1 – Summary of Deliverables, Schedule and Payments.

1.4. Invitation for submission of the bid

The Contracting authority according to Sec. 67 (1) of the Act hereby notifies an intention of the Contracting authority to award a public contract for supplies in the form of a negotiated procedure without publication pursuant to Sec. 64 (a) and sec. 63/3 (b) of the Act and therefore the Contracting authority

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the economic operator **CAMECA Instruments, Inc., 5470 Nobel Drive, Madison, WI 53711, USA, or any its branch office** to submit the bid and eventually to negotiate in negotiated procedure without publication.

Given the fact that conditions stated in Sec. 64 (a) and sec. 63/3 (b) of the Act are fulfilled, the Contracting Authority, hereby invites the economic operator as the sole participant to attend the above-mentioned negotiation procedure.

2. Subject-matter of the Public Contract

2.1. Specification of the subject-matter of the Public Contract

The Subject Matter of the Public Contract is to elaborate the design, manufacture, test, transport to and install in the laboratory of the Contracting authority of 3D Atom Probe Tomography as specified bellow.

Detailed requirements on the Subject Matter of the Public Contract are stipulated in **Annex no. 1 Purchase Contract** hereto including its annexes.

The economic operators shall prepare the bid in accordance with all requirements of the Contracting authority and in accordance with this Procurement Documentation and all its Annexes.

The Contracting authority awards this Public Contract based on the

- i) Section 64 letter a) of the Act because the procured products are for the research and development purposes only;
- ii) Section 63/3 letter b) of the Act because due to the technical reasons (the subject-matter of the Public Contract is unique and offered solely by the invited economic operator) the economic competition does not exist.

2.2. Classification of the subject matter of the Public Contract in accordance with Common Procurement Vocabulary

CPV Code	Description
38000000-5	Laboratory, optical and precision equipment (excl. glasses)
38433100-0	Mass spectrometer

2.3. Time and place of delivery of the subject-matter of the Public Contract

Expected initiation of performance:	immediately after effectiveness of the Purchase Contract
Expected ending of performance:	as specified in the Annex no. 1 Purchase Contract
Place of delivery:	Registered Office of the Contracting authority Dolejškova 1402/5, 182 00 Praha 8, Czech Republic

2.4. Maximum permissible total bid price

Maximum permissible total bid price is 3 720 014,- EUR without VAT. The bid price must also include any and all costs even those not explicitly specified but about which the participant knew or should and could have known considering its professional knowledge, exercising all professional care.

The maximum permissible total bid price cannot be exceeded by the participant in its bid. Should the participant's total bid price exceeds the referred-to maximum value, then the participant shall be excluded for the reason of its failure to meet the award criteria.

2.5. Technical conditions

Technical conditions for the subject matter of the Public Contract are in detail specified in **Annex no. 1 – Purchase Contract** of this Procurement Documentation and its annexes.

The technical parameters stated in the above-mentioned document are defined as maximal/minimal requirements, i.e. the economic operator is entitled to offer more advantageous product.

If the technical conditions are set by a direct or indirect reference to the economic operators or products, or patents for inventions, utility models, industrial designs, trademarks or designations of origin, the economic operator may offer another equivalent solution.

The Contracting authority draws attention of the participant to the fact that if a participant fails to meet all the requirements given by Annex no. 1 of this Procurement documentation, such a participant may be excluded for the reason of its failure to meet the requirements stated in the Procurement Documentation and its Annexes.

2.6. Business conditions

Business conditions for the performance of the Public Contract are specified in **Annex no. 1 - Purchase Contract** and its Annexes hereto.

The participant is obliged to fill only the places labelled as follows: [to be filled in by economic operator] or [redacted] within the Purchase Contract.

The participant is not entitled to make any other changes in the Purchase Contract unless otherwise provided.

The draft of the Purchase Contract must be signed by an authorised person of the participant (either its director or a person empowered or in other way authorised thereto). In the latter case the power of attorney or authorisation must be included in the bid.

The economic operator is entitled to include simple copies of the signed contract and potentially of the power of attorney into the bid.

2.7. Funding of the Public Contract

The Contracting Authority is the recipient of the grant from the Programme Johannes Amos Comenius titled "Excellent research".

2.8. Social, ecological and innovative aspects

The Contracting authority will award the Public Contract in accordance with the principles of socially and environmentally responsible procurement. Socially and environmentally responsible procurement also takes into account the related impacts of the Public Contract, especially in the areas of employment, social and labour rights and the environment.

Aspects of socially and environmentally responsible procurement procedure are taken into account in particular in this Procurement Documentation and in the text of the Purchase Contract.

3. Qualification of participants

The economic operator is required to prove the following qualification criteria:

1. Basic qualification criteria
2. Professional qualification criteria
3. Technical qualification criteria

3.1. Basic qualification criteria

An economic operator shall not be qualified if it:

- a) was convicted by final judgement in the country of its registered seat of a crime specified in Annex No. 3 to the Act or another similar crime pursuant to the law of the country of its registered office in the in the past five years preceding the commencement of the procurement procedure; expunged convictions are disregarded,
- b) has outstanding tax arrears registered in tax records in the Czech Republic or in the country of its registered office,
- c) has outstanding arrears in respect of payments and penalties of public health insurance in the Czech Republic or in the country of its registered office,

- d) has outstanding arrears in respect of payments and penalties of social security contributions and contribution to the national employment policy in the Czech Republic or in the country of its registered office,
- e) is in liquidation, has been declared insolvent, in respect of whom the receivership has been imposed under another legal regulation or is in a similar situation pursuant to the law of the country of its registered office.

The economic operator shall prove that it fulfils the basic qualification requirements in relation to the Czech Republic by submitting:

- a) a copy of an entry in the Criminal Records in respect of Article 3.1 (a) of this Procurement Documentation; if the economic operator is a legal person, **both this legal person and every member of its governing body** shall meet the condition specified in Article 3.1 (a) hereof. Where a legal person is a member of the governing body of the economic operator, the condition specified in Article 3.1 (a) hereof shall be met by (i) this legal person, (ii) every member of the governing body of this legal person, and (iii) the person representing this legal person in the governing body of the economic operator;
- b) a confirmation from a relevant tax office in respect of Article 3.1 (b) of this Procurement Documentation,
- c) a written affirmation regarding excise duty in respect of Article 3.1 (b) of this Procurement Documentation,
- d) a written affirmation in respect of Article 3.1 (c) of this Procurement Documentation,
- e) a confirmation from a relevant district social security administration in respect of Article 3.1 (d) of this Procurement Documentation,
- f) a copy of an entry in the Commercial Register, or a written affirmation in the event that the economic operator is not incorporated in the Commercial Register, in respect of Article 3.1 (e) of this Procurement Documentation.

If a participant in the Procurement procedure is a branch of a business of

- a) a foreign legal person, the condition specified in Article 3.1 (a) hereof shall be met by **this legal person as well as the head of the branch**,
- b) a Czech legal person, the condition specified in Article 3.1 (a) hereof shall be met by (i) this legal person, (ii) every member of the governing body of this legal person, and (iii) the person representing this legal person in the governing body of the economic operator and (iv) the head of the branch.

3.2. Professional qualification criteria

The economic operator shall prove its professional qualification criteria in relation to the Czech Republic by submitting:

a copy of an entry in the Commercial Register or other similar records provided that registration in such records is required pursuant to another legal regulation.

3.3. Technical qualification criteria

The Contracting authority sets following technical qualification criterion in order to prove experience that is necessary for the Public Contract to be performed to an appropriate level of quality.

The economic operator shall prove its technical qualification by submitting:

- a) **according to Section 79 (2) paragraph b) of the Act: a list of important supplies provided by the economic operator in the past 5 years before the commencement of the Procurement Procedure:**

Minimal extent and specifications of significant supplies:

At least one supply consisting in supply of Atom Probe Tomography system with value exceeding EUR 1 800 000 excl. VAT.

The economic operator shall prove that it fulfils this technical qualification requirement by submitting the list of the significant supplies including the identification of clients (including their functional contact data), prices and dates of delivery (month and year of delivery) of the supplies and a brief description of the supplies (it is recommended to use a form of an affirmation that is attached hereto as **Annex No. 5 – List of Important Supplies**).

- b) **according to Section 79 (2) paragraph k) of the Act: a technical description of the products to be supplied.** The economic operator will provide in its bid sufficiently detailed descriptions of the offered subject-matter of the Public Contract (e.g. data sheet, catalogue sheet). The economic operator shall also specify the brand of the product and the manufacturer.

3.4. Submission of qualification documents

Where the Contracting authority requires a document to be submitted, the economic operator shall submit a copy of the document. Before the contract is concluded, the Contracting authority may request the selected economic operator to submit the originals or certified copies of the qualification documents, unless they have already been submitted during the Procurement Procedure.

Where the Contracting authority requires a document to be submitted, the economic operator shall submit it in Czech, Slovak or English language or it shall be submitted along with its translation into one of these languages.

The documents demonstrating basic qualification under Section 74 of the Act shall demonstrate the fulfilment of the required qualification criterion **not later than three months before the date of the commencement of the Procurement Procedure**.

With the exception of the documents according to the Article 3.3 of this Procurement Documentation, the economic operator may substitute the submission of qualification documents in its bid by an affirmation indicating the fulfilment of the required qualification criteria. It is recommended to use a form of an affirmation that is attached hereto as an **Annex No. 3 – Affirmation on Qualification Criteria**. The economic operator may also substitute the submission of qualification documents in its bid by a European Single Procurement Document pursuant to Section 87 of the Act. However, before the contract is concluded, the Contracting authority is entitled to request the selected economic operator to submit the originals or certified copies of the qualification documents, unless they have already been submitted during the Procurement Procedure.

Where qualification has been obtained abroad, it shall be proved by documents issued under the law of the country in which it has been obtained and to the extent required by the Contracting authority.

In case of joint participation of economic operators, the basic and professional qualifications pursuant to Section 77 (1) of the Act shall be proved by each economic operator separately.

An economic operator may prove the technical qualification through other persons. In that case, the economic operator is obliged to submit to the Contracting authority:

- a) documents proving that the professional qualification pursuant to Section 77 (1) of the Act has been fulfilled by the other person,
- b) documents proving that a missing part of the qualification has been fulfilled by the other person,

- c) document proving that the basic qualification was fulfilled pursuant to Section 74 of the Act by the other person, and
- d) a contract or the other person signed confirmation about its existence, which contains a written commitment of the other person to provide performance of the Public Contract or to provide things or rights which the economic operator is entitled to use when performing the Public Contract, at least to the extent to which the other person has proved its qualification instead of the economic operator.

4. Requirements for processing the bid price

The economic operator is **required to state the Total bid price in EUR net of VAT in the signed draft of the Purchase Contract (Art. 7.1 of the contract). The Total bid price = the Purchase price + the price for post-warranty service.**

Value added tax shall be paid in accordance with the applicable legal regulations.

The Total bid price is the maximum price that cannot be exceeded during performance of the Public Contract and shall include all fees and any other costs that the economic operator will incur during performance of the Public Contract. The Total bid price must also include any and all costs even those not explicitly specified but about which the economic operator knew or should and could have known considering its professional knowledge, exercising all professional care.

The prices stated by the selected participant in the Price bid table shall be binding. The price may only be modified in connection with any changes to tax regulations regarding the VAT or in cases compliant with the Czech public procurement law.

Payment conditions are specified in the Purchase Contract that is as an **Annex No. 1** of this Procurement Documentation.

5. Bid processing conditions and requirements

5.1. Conditions for the submission of bids

The Contracting authority shall only accept bids in electronic form. Bids in another form are not permitted.

The time limit for submission of bids:

Bids shall be submitted not later than 10 June 2024 at 10:00 AM.

Bids shall be submitted electronically using the profile of the Contracting authority ezakazky which is available at www.ezakazky.cz. Economic operators may find at this link also a guide for using the ezakazky electronic tool (via link “*Manual for the supplier*” in footer) and helpdesk contacts.

Bid shall be submitted in electronic form only using the ezakazky electronic tool within the time limit for the submission of bid.

If the bid is not delivered to the Contracting authority within the time limit for the submission of bids or in the manner required in this Procurement Documentation, it shall not be considered as submitted and it shall not be taken into consideration in the procurement procedure.

For the submission of bids in electronic form the bids must be encrypted with a certificate provided at the ezakazky electronic tool; the certificate is attached to the Procurement Documentation at www.ezakazky.cz. In the case of encryption with other certificates, such a bid will be considered not delivered to the Contracting authority in the manner laid down in this Procurement Documentation and such a bid will not be considered as submitted to the Contracting authority. The bid encryption with a

certificate is carried out automatically in the ezakazky electronic tool before the bid is submitted to the ezakazky electronic tool using public certificate provided by the Contracting authority.

The Contracting authority points out that the Contracting authority bears no responsibility for any technical conditions on the economic operator's side. The Contracting authority recommends the economic operator to consider especially the speed of its Internet connection when submitting bids so that bids are submitted within the time limit for submission. This means uploading all attachments of the bid and final submission of the bid to the ezakazky electronic tool.

The bid submitted in electronic form must include identification details of the participant, in particular the following: commercial name of the company, registered office, ID No., legal form, person authorised to act on behalf of the participant or a person authorised to represent the participant, contact address for correspondence between the participant and the Contracting authority.

The bid must be written **in Czech, Slovak or English**.

If the bid is submitted jointly by more participants (joint bid), the participant shall specify a person in the bid who shall be empowered to represent these participants for communicating with the Contracting authority during the Procurement Procedure.

Simple copies (scans) of the signed documents provided in the bids are sufficient.

The participant shall submit the bid containing the following documents and parts, whereas the following structure is only recommended:

a) **Cover Bid Note**

The cover bid note shall include the following details: Public Contract name, basic identification details of the Contracting authority and the participant (including persons empowered to be involved in further proceedings and stating an enterprise categorisation in accordance with the Recommendation 2003/361/ES), participant shall state the contact e-mail address for electronic communication with the Contracting authority (the address will be used for the Service of the Contracting authority's electronically signed documents concerning the assessment and evaluation of the bids during this Procurement Procedure), date and signature of the person authorised to act on behalf of the participant.

The cover bid note shall also include the statement of the economic operator that the economic operator fully and without reservations accepts the business and technical conditions stated in the draft of Purchase Contract, which were the integral parts of the Procurement Documentation.

The participant may use **Annex No. 2** hereto.

b) **Documentation proving qualifications prerequisites** in line with Article 3 hereof (the participant may use **Annex No. 3** and **Annex No. 5** hereto).

c) **Purchase Contract – Annex No. 1 hereto (signed by a person authorized to act on behalf of the economic operator) including all its annexes including a draft of the Factory and Site Validation Test.**

The economic operator is entitled to include simple copies of the signed contract and potentially of the power of attorney (see Art. 2.5 hereof) **into the bid**.

d) **Filled Affirmation of the Economic Operator** (on grounds of the Conflicts of Interest Act ad EU Sanctions Regulation) (**Annex No. 4** hereto).

In case that the Act or the Contracting authority requires to submit a document in compliance with the Czech law, participant is entitled to submit a similar document issued pursuant to the legal code of the country where the document has been issued. The document shall be submitted in Czech, Slovak or English language.

The document may be substituted by an affirmation in the case that the document is not being issued pursuant to the legal code of the country of participant's registered office.

5.2. Opening of bids

In accordance with section 109 of the Act, the opening of bids will be carried out in electronic form only. Opening a bid in electronic form shall be understood as granting access to the content of the bid to the Contracting authority. The Contracting authority shall open bids in electronic form after the expiry of the time limit for the submission of bids. When opening bids in electronic form, the Contracting authority shall check whether the bids were submitted within the prescribed time limit, whether they are authentic and whether the data message containing the bid has not been tampered with before the opening.

6. Manner and form of negotiation

The negotiation should be primarily carried out in writing form with the Participant. Negotiation languages will be Czech or English.

Organization of negotiations:

Should the economic operator wishes make changes in the draft of Purchase Contract or other document provided by the Contracting authority (tender documentation), the economic operator is entitled to insert comments or make changes in the regime of track changes.

If the participant considers that negotiation in verbal form is necessary to clarify or discuss certain issues, it shall notify the Contracting authority and shall suggest form (through electronic means or otherwise), date and time of such a meeting.

The Contracting authority reserves the right to set organizational deadlines during the negotiations (e.g. deadline for commenting on the draft of the Purchase contract).

The Contracting authority may accept the changes proposed by the participant or send the tender documentation with own comments and reactions and other changes to the participant in writing for its assessment, even repeatedly, until the agreement is reached. The Contracting authority reserves the right to refuse any change proposed by the participant to the tender documentation. The Contracting authority reserves the right to change any of the tender conditions that were originally submitted to the participant.

After the Contracting authority announces the end of the negotiations phase to the participant the Contracting authority shall invite the Participant to submit the final bid via the Contracting authority's profile. The conditions for the submission of the bid set out in Article 5 of this Procurement Documentation shall mutatis mutandis apply on submission of the final bid.

7. Other conditions

In accordance with Section 39 (5) of the Act, the Contracting authority may verify the credibility of the data, documents, samples or models provided by the participant and may also acquire them itself.

7.1. Identification of the real owner of the selected economic operator

In relation to the determination of the real owner of the supplier, if the supplier is a legal entity, the Contracting Authority will proceed according to the rules contained in Section 122 (5) of the Act, or Section 122 (6) of the Act should the supplier be a foreign legal entity. In the latter case, the supplier may be requested to submit the following:

- 1) an extract from foreign evidence of beneficial owners; or
- 2) identification data of all persons that are its beneficial owners, **and**
documents that demonstrate the relation of persons under paragraph 2) to the economic operator; such documents include, but are not limited to:
 - a copy of an entry in the Commercial register or other similar records,
 - a list of shareholders,
 - a decision made by the governing body regarding payment of share in profit,
 - a memorandum of association, a letter of formation or articles of association.

The selected economic operator shall submit the aforementioned information and documents in the language stipulated by Article 5.1 hereof.

7.2. Exclusion of a participant on the grounds of its legal form

The Contracting authority draws attention of the economic operator that in accordance with Section 48 (7) and (9) of the Act, the Contracting authority may exclude from the Procurement Procedure a participant that is a joint-stock company or has a legal form similar to a joint-stock company and has issued other than exclusively booked shares. If the selected economic operator has its registered office abroad and is a joint-stock company or has a legal form similar to a joint-stock company, the Contracting authority shall require it to submit an affirmation in writing within a reasonable time limit showing which persons are holders of shares whose aggregate nominal value exceeds 10 % of the registered capital of the participant and indicating the source on which the information on the amount of the share of shareholders is based.

7.3. Explanation to the Procurement documentation

The Contracting authority shall provide explanations of procurement documents based on a written request of participants pursuant to Section 98 of the Act. The requests for explanation of the procurement documents must be delivered in to the following address: zakazky@akvt.cz and in a copy of the e-mail mysikova@it.cas.cz or in the system ezakazky. The requests must be delivered in time, which means in the deadline pursuant to Section 98 (3) of the Act.

8. Final provisions

The Contracting authority is entitled to cancel the Procurement Procedure pursuant to Section 127 (3) of the Act.

The Contracting authority does not allow variants of bids.

The economic operator shall treat all information provided to him during the Procurement Procedure as confidential (except for the information that is publicly available).

The Contracting authority shall not reimburse the participants for the costs incurred in connection with their participation in the Procurement Procedure, even if the Procurement Procedure has been cancelled by the Contracting authority.

The list of the annexes:

- 1. Purchase Contract**
- 2. Cover Bid Note**

- 3. Affirmation on Qualification criteria – Basic and Professional Qualification Criteria**
- 4. Affirmation of the Economic Operator**
- 5. List of Important Supplies**

On behalf of the Contracting authority:

.....
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*Institute of Thermomechanics
of the Czech Academy of Sciences,
public research institution*