



P O L S K I E  
L N G

## **Rules**

for the award of contracts in connection with the preparation,  
execution and financing of the LNG terminal investment

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## PREAMBLE:

**These Rules have been developed in order to comply with the provision set forth in Article 31.1, second and third sentence, of the Act on investments regarding the Liquefied Natural Gas regasification terminal in Świnoujście of April 24, 2009. Pursuant to the said provision, the Contracting Entity shall not apply the Public Procurement Law of January 29, 2004, in particular to contracts connected with the preparation, execution and financing of the investment regarding the Liquefied Natural Gas regasification terminal in Świnoujście. Such contracts shall be awarded in accordance with these Rules, i.e. in a fair and transparent manner, respecting the rights of entities participating in the procedures and enabling the conclusion of agreements without undue delay, abiding by the terms of fair competition – in an open, equitable, transparent and non-discriminatory procedure.**

**ARTICLE 1: DEFINITIONS AND ABBREVIATIONS**

The following terms used in these Rules shall have the meanings ascribed to them below:

- a) **Supplies** – acquisition of assets, rights and other goods, in particular under sales, supply, tenancy, lease and leasing agreements;
- b) **Authorising Officer** – the Company's Management Board or a person holding the relevant authorisations and powers of attorney;
- c) **Tender Committee** – a Committee appointed to prepare and conduct the Contract Award procedure, pursuant to the provisions of the *Rules of Procedure of Tender Committees at PLNG Sp z o.o.*;
- d) **Rules** – these rules;
- e) **Construction Works** – execution or design and execution of construction works within the meaning of the Act of July 7, 1994 - Construction Law, as well as the completion of a civil structure within the meaning of the Act of July 7, 1994 – Construction Law by any means, in accordance with the requirements specified by the Contracting Entity;
- f) **TOR** – Terms of Reference;
- g) **Company** or the **Contracting Entity** - Polskie LNG Sp. z o.o.;
- h) **Services** – any services not involving Construction Works or Supplies;
- i) **Tenderer** – a natural person, legal person or unincorporated organisational unit with legal capacity and the capacity to perform legal acts, interested in the Contract Award, in particular a person or entity which submitted a tender or an application for admission to the procedure;
- j) **Contract** – an agreement referred to in Article 31.1 of the Act on investments regarding the Liquefied Natural Gas regasification terminal in Świnoujście of April 24, 2009, concluded between the Contracting Entity and the Tenderer, whose subject matter are Services, Supplies or Construction Works connected

with the preparation, execution and financing of the Terminal investment;

- k) **Contract Award** – carrying out the procedure governing the conclusion of the agreement and the conclusion thereof;
- l) **Terminal** – the Liquefied Natural Gas regasification terminal in Świnoujście, including the installations, equipment and facilities necessary for its commissioning and operation.

#### **ARTICLE 2: APPLICATION OF THE RULES**

- 1) The Rules specify the Contract Award principles, procedures and forms in force at the Company.
- 2) Subject to item 3 below, the Rules shall not apply to Contracts whose value is lower than the equivalent in Polish zlotys of the following amounts:
  - a) for Construction Works - EUR 5,150,000,
  - b) for Supplies and Services – EUR 412,000.
- 3) If the Contracts specified in item 2 above may be of significance for the European Common Market, the Contracting Entity shall also apply the Rules to the Contract Award procedure. However, certain items thereof may be excluded or applied with modifications, provided it ensures sufficient compliance with the requirements stipulated by the Treaty establishing the European Community.

#### **ARTICLE 3: AUTHORISING OFFICER. TENDER COMMITTEE**

- 1) The Authorising Officer shall be responsible for preparing and conducting the Contract Award procedure, in particular:
  - a) supervising the correctness of the Contract Award procedure;
  - b) deciding on the launch of the procedure;
  - c) performing activities reserved for the competence of the Authorising Officer by the Rules;
  - d) approving the result of the procedure.
- 2) The Authorising Officer shall appoint the Tender Committee, which serves as an auxiliary body in the conduct of the procedure. The organisation, composition, working methods and the scope of duties of the Tender Committee are specified in the applicable provisions of the *Rules of Procedure of Tender Committees at PLNG Sp z o.o.*

#### **ARTICLE 4: CONTRACT AWARD PROCEDURES**

The Contracting Entity may award Contracts by way of the following procedures:

- a) open tender;

- b) restricted tender;
- c) negotiations.

#### **Article 4.1. Open tender**

- 1) An open tender is a Contract Award procedure where, in response to a public Contract Notice, tenders may be submitted by all interested Tenderers. The time limit for submitting tenders should be sufficient to enable tender preparation. At the Tenderers' request, the said time limit may be extended by the Contracting Entity.
- 2) The Contracting Entity shall launch the open tender Contract Award procedure by publishing a Contract Notice on the Company's website, in the Polish nationwide press and in the international press. The notice shall be published in Polish and English language versions. The Contracting Entity may additionally publish information about the launch of the procedure in another manner.
- 3) The Contract Notice shall specify, at least:
  - a) the name and address of the Contracting Entity;
  - b) the type of the Contract Award procedure;
  - c) the object of the Contract;
  - d) the time limit for Contract execution (if required);
  - e) the venue, date and rules for obtaining the TOR;
  - f) the description of the conditions for participation in the procedure, together with the description of the manner in which compliance with said conditions shall be assessed, in particular, a list of declarations and documents to be submitted as proof of compliance, as well as a website address where the Rules are available;
  - g) the description of requirements regarding the security deposit (if required);
  - h) the tender validity period;
  - i) the award criteria, their weights and significance levels;
  - j) the venue and date for submitting and opening the tenders;
  - k) other significant details regarding the procedure;
  - l) the reservation of the right to modify the TOR in the course of the procedure,
  - m) the reservation of the right to invalidate the procedure without stating any reasons.
- 4) The Contracting Entity shall provide the TOR at the Tenderer's request, immediately upon the receipt of such request.
- 5) The Contracting Entity may charge a fee for the TOR in the amount covering

the cost of print and postage.

#### **Article 4.2. Restricted tender**

- 1) A restricted tender is a Contract Award procedure where, in response to a public Contract Notice, the Tenderers file applications for admission to the procedure, while tenders may be submitted by the Tenderers invited to do so. The time limit for filing applications for admission to the procedure and the time limit for submitting tenders shall be sufficient to enable application and tender preparation. At the Tenderers' request, the said time limits may be extended by the Contracting Entity.
- 2) The Contracting Entity shall launch the restricted tender Contract Award procedure by publishing a Contract Notice on the Company's website, in the Polish nationwide press and in the international press. The notice shall be published in Polish and English language versions. The Contracting Entity may additionally publish information about the launch of the procedure in another manner.
- 3) The Contract Notice shall specify, at least:
  - a) the name and address of the Contracting Entity;
  - b) the type of the Contract Award procedure;
  - c) the object of the Contract;
  - d) the time limit for Contract execution (if required);
  - e) the description of the conditions for participation in the procedure, together with the description of the manner in which compliance with said conditions shall be assessed, in particular, a list of declarations and documents to be submitted as proof of compliance, as well as a website address where the Rules are available;
  - f) the maximum number of Tenderers who shall be invited to submit their tenders;
  - g) the description of requirements regarding the security deposit (if required);
  - h) award criteria, their weights and significance levels accompanied by information that both the award criteria, as well as their weights and significance may be modified;
  - i) the venue and date for filing applications for admission to the procedure;
  - j) other significant details regarding the procedure;
  - k) the reservation of the right to modify the TOR in the course of the procedure,
  - l) the reservation of the right to invalidate the procedure without stating any reasons.
- 4) In response to the Contract Notice, the Tenderers shall file their applications for

admission to the procedure.

- 5) The Contracting Entity shall request tenders from those Tenderers that meet the conditions for participation in the procedure. The number of invited Tenderers shall ensure competition and shall not be less than three. If such conditions are not met by the specified number of Tenderers, all Tenderers that comply therewith shall be invited.
- 6) If the number of the Tenderers meeting the conditions for participation in the procedure exceeds the number specified in the Contract Notice, the Contracting Entity shall request tenders from the Tenderers with the highest compliance rating.
- 7) Together with the request for tenders the Contracting Entity shall provide the Tenderers with the TOR.
- 8) Tenders may be submitted only by the Tenderers requested to do so by the Contracting Entity.

#### **Article 4.3. Negotiations**

- 1) Negotiations are a Contract Award procedure where, following a public Contract Notice, the Contracting Entity negotiates the conditions for Contract execution with the Tenderers qualified for the negotiations and, subsequently, invites them to submit tenders based on which the final Tenderer shall be selected.
- 2) The Contracting Entity shall launch the negotiation Contract Award procedure by publishing a Contract Notice on the Company's website, in the Polish nationwide press and in the international press. The notice shall be published in Polish and English language versions. The Contracting Entity may additionally publish information about the launch of the procedure in another manner. Article 4.2 items 3-6 shall apply accordingly, in particular with regard to the content of the notice, the manner of issuing invitations to negotiations and the number of Tenderers invited to negotiations by the Contracting Entity.
- 3) Negotiations shall be confidential.
- 4) Together with the invitation to negotiations, the Contracting Entity shall provide the TOR or a description of the main requirements regarding the object of the Contract, the conditions for its execution or the provisions of the agreement.
- 5) The Contracting Entity shall request tenders from all Tenderers with whom it conducted negotiations.
- 6) In the request for tenders the Contracting Entity shall inform the Tenderers of:
  - a) any modifications to the TOR, providing them with the current version of the TOR;
  - b) the venue and date for submitting and opening tenders;
  - c) the obligation to provide a security deposit, if required.

**ARTICLE 5: PROCEDURE PREPARATION****Article 5.1. Content of the Terms of Reference**

- 1) The Terms of Reference shall specify, at least:
  - a) the name and address of the Contracting Entity;
  - b) the type of the Contract Award procedure;
  - c) the object of the Contract;
  - d) the description of the parts of the Contract, if the Contracting Entity allows for the submission of partial tenders;
  - e) the manner in which variant tenders should be presented and the minimum requirements such variant tenders should meet, if the Contracting Entity allows for the submission of variant tenders;
  - f) the time limit for Contract execution (if required);
  - g) the conditions for participation in the procedure and the manner of assessing compliance with the said conditions;
  - h) information about the declarations and documents to be submitted by the Tenderers as proof of compliance with the conditions for participation in the procedure;
  - i) the requirements to be met by Subcontractors and the request for the Tenderer to indicate in their tender those parts of the Contract that are intended to be executed by subcontractors;
  - j) information regarding the rules of communication between the Contracting Entity and the Tenderers and the manner in which declarations and documents shall be presented;
  - k) the persons authorised to communicate with the Tenderers;
  - l) the requirements regarding the security deposit, if required;
  - m) the tender validity period;
  - n) the manner in which tenders shall be prepared;
  - o) information about the possibility to secure the confidentiality of documents constituting the Tenderer's business secrets;
  - p) the venue and date for submitting and opening tenders;
  - q) the manner of price calculation;
  - r) the award criteria used by the Contracting Entity when selecting the winning tender, including the significance (weight) of those criteria and the manner in which tenders shall be assessed;
  - s) the requirements concerning performance guarantees, if required;



- t) draft provisions significant for the parties to be introduced into the agreement on the Contract, the general terms of the agreement or a draft agreement, if the Contracting Entity requires the Tenderer to conclude the agreement on the Contract in accordance with such terms;
  - u) the instruction concerning the appeal measures available to the Tenderer in the course of the Contract Award procedure;
  - v) the reservation of the right to modify the TOR in the course of the procedure,
  - w) the reservation of the right to invalidate the procedure without stating any reasons,
  - x) the reservation that to the extent not regulated by the TOR the provisions of these Rules and the Civil Code shall apply.
- 2) When the restricted tender or negotiation procedure is used, the TOR shall not include the information specified in item 1 (g) and (h).
- 3) In the Terms of Reference the Contracting Entity shall inform the Tenderer of the option to secure the confidentiality of information constituting the Tenderer's business secrets. Such information shall be provided in the form enabling the protection of its confidentiality, together with a written statement that such information constitute business secrets and may not be disclosed to the general public.

### **Article 5.2 Object of the Contract**

- 1) The object of the Contract shall be specified in a clear and exhaustive manner, using objective technical, qualitative and functional properties, and, if necessary, also by means of plans, drawings or designs, including the listing of all additional services to be performed as part of the Contract.
- 2) The object of the Contract may not be specified in a manner which is likely to impede fair competition. Specifying the object of the Contract by indicating trademarks, patents or sources of origin shall not be deemed an impediment to fair competition if the submission of equivalent tenders is allowed.

### **Article 5.3 Conditions for participation in the procedure**

- 1) The Contract Award procedure is open to Tenderers who meet the following conditions:
- a) they hold all the authorisations to perform certain activities or acts, if statutorily required;
  - b) they have the necessary knowledge and experience and have at their disposal the technical capacity and personnel capable of executing the Contract;
  - c) their business and financial standing guarantees the execution of the

Contract;

- d) they accept these Rules and agree that any disputes arising in connection with the Contract Award procedure be submitted to an arbitration court, in accordance with the provisions of Article 9 of the Rules.
- 2) The Tenderers shall be obliged to submit a declaration of compliance with the conditions specified in item 1.
- 3) The Tenderers may act jointly in the Contract Award procedure (the Consortium). In reference to the Consortium, the provisions of the Rules regarding the Tenderer apply accordingly. The Contract Notice or the TOR may include detailed provisions regarding the documents to be submitted by the Tenderers jointly competing for the Contract Award.
- 4) The Tenderers acting jointly shall be obliged to submit the power of attorney to represent them in the procedure or to represent them in the procedure and conclude the agreement on the Contract. The Contracting Entity may request the presentation of an agreement governing the co-operation between the entities jointly competing for the Contract Award within the Consortium (the Consortium agreement).

#### **Article 5.4. Declarations and documents submitted to confirm compliance with the conditions for participation in the procedure**

- 1) In order to confirm that the Tenderer holds due authorisation to perform certain activities or acts, the Contracting Entity may request declarations or documents specified in the Contract Notice, including, in particular:
  - a) an up-to-date excerpt from a relevant register or an up-to-date certificate of entry in the register of business activity, if such registration is required under separate regulations, to be issued not earlier than six months before the lapse of the time limit for the submission of tenders/applications;
  - b) concessions, permits or licenses, if such concessions, permits or licenses are legally required for the commencement of activities covered by the Contract;
  - c) declarations or documents stating that the persons in charge of executing the Contract hold the legally required authorisations;
- 2) In order to confirm that the Tenderer has the necessary knowledge and experience and has at its disposal the technical capacity and personnel capable of executing the Contract, the Contracting Entity may, in accordance with the object of the Contract, request declarations or documents specified in the Contract Notice, including, in particular:
  - a) information about the average number of personnel and the number of managerial staff employed over the past three years or, in case the period of business operation is shorter – within such period, if the object of the Contract concerns Construction Works or Services;

- b) a list of tools and equipment at the Tenderer's disposal necessary for the execution of the Contract;
  - c) a declaration stating that the Tenderer has the appropriate materials or specialist equipment to execute the Contract in the case of Construction Works;
  - d) a list of persons and entities executing the Contract or involved in Contract execution, including information on their qualifications necessary to execute the Contract and the scope of activities performed by them;
  - e) a list of Construction Works executed over the past ten years, corresponding, in terms of their type and value, to the Construction Works forming the object of the Contract, providing their value, date of completion and place of execution, as well as indicating the entities ordering such works;
  - f) a list of Supplies or Services executed over the past five years, corresponding, in terms of their type and value, to the Supplies or Services forming the object of the Contract, providing their value, date of completion and place of execution, as well as indicating the entities ordering such supplies or services;
  - g) documents confirming due execution of Supplies, Services or Construction Works;
  - h) relevant certificates or statements confirming the quality or parameters of the executed object of the Contract.
- 3) In order to confirm that the Tenderer's business and financial standing are sufficient to ensure the execution of the Contract, the Contracting Entity may, in accordance with the object of the Contract, request declarations or documents specified in the Contract Notice, including, in particular:
- a) documents specifying the turnover, profit, liabilities and receivables – for the period not longer than the past three financial years or, if the period of operation is shorter – for that period;
  - b) a bank information from the bank keeping the Tenderer's account, confirming the amount of financial assets held or the Tenderer's creditworthiness, such information issued not earlier than six months before the lapse of the time limit for submitting tenders/applications;
  - c) information about the receipt by the Tenderer of a rating issued by Moody's, Fitch or S&P rating agencies.
- 4) The documents shall be submitted in their original copies or photocopies certified to be true copies of the original by the Tenderer. The Contracting Entity reserves the right to request, at any time, the presentation of the original document.
- 5) If the Tenderer has its registered office or place of residence outside the territory

of the Republic of Poland, instead of the document referred to in item 1 (a) it shall submit a relevant document issued by a competent administrative or judicial authority or a declaration made before (or certified by) a notary or a competent judicial or administrative authority in the country where the Tenderer has its registered office or place of residence, confirming that no winding-up procedure has been started nor bankruptcy has been declared with respect to it;

- 6) Documents or declarations made in a foreign language shall be accompanied by a translation into Polish, unless the Contracting Entity allows for the submission of applications or tenders in another language used in international trade.

#### **Article 5.5. Award criteria**

In all contract award procedures the Contracting Entity shall apply the price criterion. The Contracting Entity may also use other award criteria, depending on the specific nature of the object of the Contract. Award criteria may not relate to the qualities and characteristics of the Tenderer, in particular its business, technical or financial credibility.

#### **Article 5.6. Security deposit**

- 1) The Contracting Entity may request the Tenderers to provide a security deposit.
- 2) The security deposit shall equal up to 3% of estimated Contract value.
- 3) The security deposit may be provided in the following forms chosen by the Tenderer:
  - a) cash;
  - b) bank guarantees, unconditional, irrevocable and payable on first demand;
  - c) insurance guarantees, unconditional, irrevocable and payable on first demand.
- 4) Security deposits provided in cash shall be payable by a bank transfer into the Contracting Entity's account.
- 5) Documents confirming the provision of a security deposit must be presented to the Contracting Entity by the tender submission date at the latest.
- 6) The Contracting Entity shall return the security deposit:
  - a) upon the expiry of the tender validity period;
  - b) if the Contracting Entity invalidated the procedure and the time limit for lodging appeals has lapsed;
  - c) to the Tenderer whose tender was deemed to be most advantageous, upon the conclusion of the agreement on the Contract and the provision

- of a performance guarantee;
- d) to the Tenderers whose tenders were not deemed to be most advantageous, within twenty-one days from the date the most advantageous tender has been selected or the procedure invalidated.
- 7) The Contracting Entity shall return the security deposit immediately at the request of the Tenderer:
- a) which has withdrawn its tender before the lapse of the time limit for the submission of tenders;
  - b) which has been excluded from the procedure;
  - c) whose tender has been rejected.
- 8) If the security deposit has been provided in cash, the Contracting Entity shall return it together with accrued interest, calculated in accordance with the bank account agreement for the account where the security deposit has been kept, less the costs of maintaining the account and the bank charges for the transfer to the account specified by the Tenderer.
- 9) The Contracting Entity shall withhold the security deposit together with interest if the Tenderer whose tender has been selected:
- a) has refused to conclude the agreement on the Contract in accordance with the terms and conditions specified in the tender;
  - b) has failed to provide the required performance guarantee;
  - c) the conclusion of the agreement on the Contract has become impossible for reasons attributable to the Tenderer.
- 10) The Tenderer may request for the provided security deposit to be credited towards the performance guarantee.

#### **ARTICLE 6: RULES OF COMMUNICATION**

- 1) The Contract Award procedure shall be conducted in the Polish language, with the reservation that contract notices or information about the launch of the procedure shall also be published in the English language.
- 2) In justified cases the Contracting Entity may consent to the submission of an application for admission to the Contract Award procedure, declarations, tenders and other documents also in another language used in international trade.
- 3) The Contracting Entity and the Tenderers shall present applications, declarations and notifications in a manner chosen by the Contracting Entity in writing, by fax or e-mail. Information regarding the choice of the communication channel shall be specified in the Contract Notice, invitation to negotiations or the TOR.
- 4) If a written form of communication is chosen, it is possible to allow, as auxiliary

means of communication, fax or e-mail. Declarations or notifications transmitted by fax or e-mail shall be deemed timely filed if their content reached the recipient before the lapse of the time limit and has been confirmed immediately in writing by the party transmitting such information.

- 5) In case fax or e-mail communication is used, either party shall, at the request of the other party, immediately acknowledge the receipt of an application, declaration or notification.

## **ARTICLE 7: PROCEDURAL ACTS**

### **Article 7.1. Clarification and modification of the Terms of Reference (TOR)**

- 1) The Contracting Entity shall immediately respond to any queries concerning the content of the TOR. The Contracting Entity shall not be obliged to respond to queries received by the Contracting Entity later than fourteen days before the lapse of the time limit for submitting tenders.
- 2) The content of the queries together with the answers shall be sent to all Tenderers who received the TOR without revealing the source of the query.
- 3) The Contracting Entity may, at any time before the lapse of the time limit for submitting tenders, modify the TOR in any respect. If, as a result of such modification, additional time is needed to introduce changes in the tenders, the Contracting Entity shall extend the time limit for submitting tenders by a period necessary to introduce such changes.
- 4) The content of modifications shall be sent to all Tenderers who received the TOR, together with a notice about the extension of the time limit for submitting tenders.
- 5) Any material modification of the TOR requires for the Contract Notice to be published again and to enable the submission of tenders or applications for admission to the procedure by the Tenderers who did not participate in the procedure.

### **Article 7.2. Exclusion of a Tenderer**

- 1) A Tenderer may be excluded from the procedure if:
  - a) it has failed to meet the conditions for the participation in the procedure specified by the Contracting Entity or has not submitted the required declarations and documents in order to confirm compliance with the conditions for the participation in the procedure,
  - b) it has been declared bankrupt or liquidated or bankruptcy or liquidation procedure has been started,
  - c) it has been directly involved in the activities related to the preparation of the procedure or used the services of persons who participated in such activities in the preparation of its tender, unless the involvement of such

- a Tenderer does not impede fair competition,
- d) it has submitted false information that affected the result of the procedure,
  - e) it has failed to provide a security deposit or to extend the tender validity period or security deposit validity.
- 2) Should such necessity arise, the Contracting Entity shall call upon a Tenderer to supplement or submit relevant declarations, documents, powers of attorney or to provide clarifications.

### **Article 7.3. Tender review and assessment. Rejection of a tender**

- 1) The Tenderer may submit only one tender in the procedure.
- 2) The Contracting Entity may allow for partial tenders to be submitted and may specify the maximum number of parts that may be covered by a tender submitted by a single Tenderer.
- 3) The Contracting Entity may allow for variant tenders to be submitted, in which case the price may not constitute the sole award criterion.
- 4) The content of the tender shall correspond to the content of the TOR.
- 5) The tender shall be submitted in writing.
- 6) The Tenderer may modify or withdraw its tender before the lapse of the time limit for submitting tenders.
- 7) The tenders submitted after the lapse of the time limit shall be returned upon the expiry of the time limit to file a statement of claim to the Arbitration Court in the manner set forth in Article 9 hereof.
- 8) The opening of the tenders is public and shall occur on the date the time limit for their submission lapses. The Contracting Entity shall disclose the names and addresses of the Tenderers and information concerning the price and other elements of the tenders considered when assessing compliance with the award criteria.
- 9) In the course of the tender review and assessment the Contracting Entity may require the Tenderers to provide clarifications regarding the content of the submitted tender and to supplement the certificates or statements confirming the quality or the parameters of the object of the Contract.
- 10) The Contracting Entity shall correct typographical and arithmetical errors identified in the content of the tender, notifying the Tenderer of such corrections. The correction of errors requires the Tenderer's consent. The Contracting Entity shall specify the time limit for granting consent in the notice concerning the correction of errors.
- 11) Upon the lapse of the time limit for submitting tenders no changes to the content of the tender may be introduced, especially with regard to the price,

subject to the provisions of item 10.

- 12) The Contracting Entity shall reject the tender if:
- a) the content of the tender does not correspond to the content of the TOR, subject to the possibility to correct typographical and arithmetical errors;
  - b) the tender has been submitted by the Tenderer excluded from the procedure or not invited to submit tenders;
  - c) the Tenderer has failed to grant its consent for the correction of a typographical or arithmetical error within the time limit specified in accordance with item 10;
  - d) the tender is invalid.

#### **Article 7.4. Selection of the most advantageous tender**

- 1) From among the tenders not subject to exclusion the Contracting Entity shall select the most advantageous one, in accordance with the award criteria set forth in the TOR.
- 2) If the most advantageous tender cannot be selected due to the existence of two or more tenders with an identical rating, the Contracting Entity shall request the Tenderers who submitted the most advantageous tenders to submit new tenders that may not be less advantageous than the ones submitted originally.
- 3) If the Tenderer whose tender has been selected evades the conclusion of the agreement or fails to provide a performance guarantee despite the obligation to do so, the Contracting Entity may conclude the agreement with another Tenderer whose tender received the second highest rating.

#### **Article 7.5. Invalidation of the procedure**

- 1) The Contracting Entity shall invalidate the procedure in any of the following circumstances:
  - a) no correct application for admission to the procedure has been filed or no tenders or tenders that are not subject to exclusion have been submitted in the procedure;
  - b) the Contracting Entity has reached the conclusion that awarding the Contract is contrary to the Company's interests, in particular due to a change in the circumstances or failure to meet the Contracting Entity's expectations regarding the course of the procedure, if in the Contract Notice or the TOR the Contracting Entity has reserved the right to invalidate the procedure without stating any reasons.

#### **Article 7.6. Notifying the Tenderers**

- 1) Upon the selection of the most advantageous tender, the Contracting Entity shall notify the Tenderers of the selection of the most advantageous tender and



the rating given to each tender.

- 2) Together with the notification about the selection of the most advantageous tender:
  - a) the Tenderer whose tender has been rejected shall be informed of the grounds for rejection.
  - b) the Tenderer excluded from the procedure shall be informed of the grounds for exclusion, unless the procedure is conducted by way of a restricted tender or negotiations; in which case the Tenderer shall receive such information immediately upon its exclusion.
- 3) The Contracting Entity shall notify all the Tenderers participating in the procedure of its invalidation. Should invalidation occur prior to the lapse of the time limit for submitting applications or tenders, a notice of invalidation shall be published on the Contracting Entity's website.

#### **ARTICLE 8: AGREEMENT ON THE CONTRACT**

- 1) The agreement on the Contract shall be concluded in writing or shall otherwise be null and void. A statement announcing the selection of the tender shall not be sufficient for the agreement to be deemed concluded. The agreement on the Contract may not be concluded earlier than ten days after notifying all the Tenderers who submitted their tenders about the selection of the most advantageous tender, unless only one tender has been submitted.
- 2) The scope of the Tenderer's obligations stipulated in the agreement should be identical to that set forth in the tender.
- 3) The agreement may include a provision obliging the Tenderer to provide a performance guarantee equal to up to 10% of the agreement's gross value. In such a case the agreement is concluded subject to the condition precedent that the performance guarantee shall be provided within a specified time limit.

#### **ARTICLE 9: APPEAL MEASURES**

- 1) Any disputes related to the Contract Award procedure for the execution of the LNG terminal investment specified in these Rules shall be resolved by an arbitration court, pursuant to the principles specified in the Rules of Arbitration in cases concerning the award of contracts with respect to the execution of the investment regarding the Liquefied Natural Gas regasification terminal in Świnoujście (the "Rules of Arbitration"), attached as an Appendix hereto.
- 2) For the purpose of excluding the long-term status of legal uncertainty, the Tenderer and the Contracting Entity are obliged to promptly pursue any claims connected with Contract Award procedure before the arbitration court referred to in item 1. The Tenderer's statement of claim must be filed pursuant to the rules set out in the Rules of Arbitration within ten days from the date when the circumstances constituting the basis for the filing thereof became known or

- could have become known with the application of due care and diligence. The statement of claim filed upon the lapse of this time limit shall be rejected.
- 3) The Contracting Entity shall not conclude the agreement on the Contract before a decision is issued by the arbitration court if, within the time limit specified in item 2 above, a statement of claim has been filed with respect to the following actions of the Contracting Entity:
    - a) the specification of the object of the Contract or the criteria or conditions for participation in the procedure,
    - b) the exclusion of the Tenderer,
    - c) the rejection of the tender,
    - d) the selection of the most advantageous tender.
  - 4) This Article, together with the declaration referred to in Article 5.3 item 2 and the Rules of Arbitration, forms an integral whole and constitutes an agreement between the parties submitting all disputes related to the Contract Award procedure regarding the execution of the LNG terminal investment specified in these Rules to resolution by an arbitration court within the meaning of Article 1161.1 of the Code of Civil Procedure (arbitration clause).
  - 5) Any disputes concerning the concluded agreements shall be settled pursuant to the rules provided therein or in line with general principles.
  - 6) The Tenderer's participation in the Contract Award procedure provided for in these Rules, as well as the Tenderer's acceptance of the content of the Rules, shall mean that the Tenderer agrees that to the extent permitted by the mandatory provisions of law, the Contracting Entity's liability in connection with the Contract Award procedure shall be limited to negative contractual interest of a given Tenderer and shall not exceed the amount of PLN 10,000,000.

#### **ARTICLE 10: FINAL PROVISIONS**

- 1) The legal relationships arising out of the procedures conducted pursuant to these Rules shall be governed by the provisions of Polish law, including, in particular, the provisions of the Civil Code.
- 2) These Rules shall take effect as of July 14, 2009.
- 3) These Rules are published on the Company's website.