Supply of biophysical equipment:
sale, delivery, installation, and commissioning of a brand new mass photometer KPO9
Postępowanie ADZ.261.32.2024
Strona 1 z 6

Warszawa, 10th of October 2024 r.

ADZ.261.32.2024

**Economic Operators –
Participants in the Procedure**

This concerns the procedure for the award of a public contract, with a value exceeding the EU thresholds, conducted in the open procedure. The subject of the contract is: Supply of biophysical equipment: sale, delivery, installation, and commissioning of a brand new mass photometer KPO9, Case Reference Number: ADZ.261.32.2024

NOTICE OF CANCELLATION OF THE PROCEDURE

The International Institute of Molecular and Cell Biology in Warsaw, as the Contracting Authority, acting pursuant to Article 253 of the Act of September 11, 2019 – Public Procurement Law (Journal of Laws of 2024, item 1320), hereinafter referred to as the "Act", hereby notifies of the results of the procedure.

The tenders submitted by the Economic Operators and their evaluation

In the public procurement procedure conducted under the open tendering procedure, one tender was submitted, which was assessed by the Contracting Authority in terms of grounds for rejection, in accordance with the requirements set out in the Terms of Reference ("ToR"). Details regarding the submitted tender and the result of its evaluation are provided below:

Tender Number	Name and Address of the Economic Operator	Net Price (EURO)	Number of licenses for data analysis and result presentation software related to the device (UNITS)	Delivery Time (WEEKS)
1.	Refeyn GmbH 10117, Berlin, Pariser Platz 4A, c/o BRL Boege Rohde Leubbehuesen Brandenburg, Germany NIP: DE343188453	249 745,00	11	8

Rejection of the Tender

In accordance with the provisions of the ToR, the Contracting Authority, following the evaluation of the tenders submitted in the present procedure, rejected the tender submitted by the Economic Operator: Refeyn GmbH 10117, Berlin, Pariser Platz 4A, c/o BRL Boege Rohde Leubbehuesen Brandenburg, Germany. Factual and Legal Justification for the Rejection of the Tender:

FACTUAL JUSTIFICATION FOR THE REJECTION OF THE TENDER:
The tender submitted by the Economic Operator, which consists of a completed Annex No. 3 to the ToR, was not signed with a qualified electronic signature. The Economic Operator submitted a

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document signed with an "Adobe Acrobat Sign" electronic signature, **which is not a qualified electronic signature within the meaning of Article** 78(1) § 1 **of the Civil Code:** "In order to comply with the electronic form of a legal act, it is sufficient to make a declaration of intent in electronic form and affix it with a qualified electronic signature." Based on the verification conducted by the Contracting Authority using a dedicated signature verification tool, the following information was obtained:

Tool No. 1 – Sigillum Sign 1.10.861 – provided by the Polish Security Printing Works (Polska Wytwórnia Papierów Wartościowych).

Informacje o dokumencie

Nazwa dokumentu:	Załączniki 3.pdf
Skrót z dokumentu:	SHA256: fd429428f1cf5ff93f44d6f74f67ede565802a0f19e71984c53441f59e8fb0c5
Status dokumentu:	POPRAWNIE ZWERYFIKOWANY
	Poprawne podpisy: 1 z 1
Czas walidacji (UTC):	2024-09-20 10:07:58
Podsumowanie walidacji:	
⊘ DocuSign, Inc.	

Podpis: S-6CACEA076491F627862486B931AA733BB1C19E823AA49E01962404D168D9BDA3

Kwalifikacja podpisu:	Brak kwalifikacji
Status:	POPRAWNIE ZWERYFIKOWANY
	Ostrzeżenia:
	Żaden z certyfikatów w ścieżce nie znajduje się na zaufanej liście TSL!
Format podpisu:	PKCS7-B
Typ:	Otoczony
Powód:	Digitally verifiable PDF exported from www.docusign.com
Funkcja skrótu:	SHA256
Osadzone w podpisie dane o statusie certyfikatu:	
Status:	POPRAWNY
Typ:	CRL
Data utworzenia:	2024-09-06T20:44:38
Data kolejnej aktualizacji:	2024-09-13T20:44:37
Certyfikat podpisujący:	Entrust Class 3 Client CA - SHA256
Zweryfikowane certyfikaty:	DocuSign, Inc.
Status:	POPRAWNY
Typ:	CRL
Data utworzenia:	2024-04-05T15:55:58
Data kolejnej aktualizacji:	2025-04-05T15:55:57
Certyfikat podpisujący:	Entrust.net Certification Authority (2048)
Zweryfikowane certyfikaty:	Entrust Class 3 Client CA - SHA256
Certyfikat podpisujący:	
Rodzaj certyfikatu:	Certyfikat niekwalifikowany
Właściciel:	Nazwa powszechna: DocuSign, Inc.
	Kraj: US
	Firma: DocuSign, Inc.
	Jednostka organizacyjna: Technical Operations
Algorytm klucza:	RSA
Ważny od (UTC):	2023-10-26 17:16:36
Ważny do (UTC):	2025-10-26 17:16:34
Numer seryjny:	2686dc3f46f471fa83ad6649605fcb6d
Łańcuch certyfikatów:	DocuSign, Inc.
	Entrust Class 3 Client CA - SHA256
	Entrust.net Certification Authority (2048)
Czas podpisu (UTC):	2024-09-11 14:48:16
Wyznaczony, najlepszy czas podpisu w oparciu o dostępne dane (UTC):	2024-09-20 10:07:58
Kolejność podpisu:	1 z 1
Zakres podpisu:	Zakres danych w bajtach [0, 474211, 539747, 18391]

Tool No. 2 – dedicated to verification by the European Commission, available at:
https://ec.europa.eu/digital-building-blocks/DSS/webapp-demo/validation

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Validation Policy: QES AdESQC TL based

Validate electronic signatures and indicates whether they are Advanced electronic Signatures (AdES), AdES supported by a Qualified Certificate (AdES/QC) or a Qualified electronic Signature (QES). All certificates and their related chains supporting the signatures are validated against the EU Member State Trusted Lists and third country Trusted Lists with voluntary-based AdES recognition (this includes signer's certificate and certificates used to validate certificate validity status services - CRLs, OCSP, and time-stamps).

Signature: SIGNATURE_DocuSign-Inc_20240911-1448

Qualification level:	N/A
Qualification Details:	Unable to build a certificate chain up to a trusted list!
	The signature/seal is an INDETERMINATE AdES digital signature!
Indication:	INDETERMINATE - NO_CERTIFICATE_CHAIN_FOUND
AdES Validation Details:	The certificate chain for signature is not trusted, it does not contain a trust anchor.
	Document contains changes restricted by /SigFieldLock dictionary!
	The document contains undefined object modifications after the signature revision!
Signature Format:	PKCS7-B
Certificate chain:	DocuSign, Inc.
	Entrust Class 3 Client CA - SHA256
	Entrust.net Certification Authority (2048)
On claimed time:	2024-09-11 14:48:16 (UTC)
Best signature time:	2024-09-20 11:10:23 (UTC)
Signature position:	1 out of 1
Signature scope:	Partial PDF (PARTIAL)
	The document ByteRange : [0, 474211, 539747, 18391]

Document Information

Signatures status:	0 valid signatures, out of 1
Document name:	Załączniki 3.pdf

In view of the above, it cannot be concluded that the tender was signed with a qualified electronic signature, which is required under penalty of nullity in accordance with Article 63(1) of the Public Procurement Law. According to the Public Procurement Law, in procedures with values equal to or exceeding EU thresholds, the submission of a tender without a qualified electronic signature results in the rejection of such a tender.

The Docusign software, through which the offer and some of the other documents were signed, enables the signing of documents using an electronic signature.

On the website: https://www.docusign.com/products/electronic-signature/legality/polandthere is information that does not constitute legal advice and may be misleading. One of the points reads:

Use Cases for Standard Electronic Signature (SES)

Use cases where an SES is typically appropriate include:

- commercial agreements between corporate entities, including non-disclosure agreements, purchase orders, order acknowledgements, invoices, other procurement documents, sales agreements, distribution agreements, and service agreements

This is not accurate information addressing issues related to the awarding of public contracts. In accordance with the regulations mentioned above, in the case of bids submitted in tender procedures, it is required to use a qualified electronic signature, as indicated in this section:

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Use Cases for Other Types of Electronic Signature (e.g. Digital Signature, AES

Use cases where an electronic signature other than SES may be required include:

- QES – declaration of will that requires written form (Art. 78 of the Civil Code)

- QES - certain HR documents subject to civil law (other than Labour Code), such as non-disclosure agreements, employee invention agreements or privacy notices.

- QES – license to industrial property rights (art. 76.1, art. 100.1, art. 118.1 and art. 163.1 of the Industrial Property Law) or exclusive license to copyrights (art. 67.5 of the Copyright Act)

- QES - transfer of industrial property rights (art. 12.2 of the Industrial Property Law) or transfer of copyrights (art. 53 of the Copyright Act).

QES stands for Qualified Electronic Signature. The signature used to sign the offer by the Contractor, although electronic, constitutes a non-qualified certificate and cannot be effectively used in tender procedures conducted in Poland. An ADES-type signature is insufficient.

See: ruling of the National Appeals Chamber (KIO) 3521/21 (attached). In accordance with the Public Procurement Law, in procedures with values equal to or exceeding EU thresholds, the submission of a tender without a qualified electronic signature results in the rejection of such a tender.

In accordance with Article 28(1) of the eIDAS Regulation, "Qualified Certificates for Electronic Signatures", qualified electronic signature certificates must meet the requirements set out in Annex I.

Annex I of the Regulation specifies the following requirements for qualified electronic signature certificates:

Qualified certificates for electronic signatures shall contain the following information:

a) an indication – at least in a form suitable for automated processing – that the certificate has been issued as a qualified electronic signature certificate;
b) a set of data uniquely representing the qualified trust service provider issuing the qualified certificates, including at least the Member State in which the provider is established, and:
• for a legal entity: the name and, where applicable, the registration number in accordance with the official register,
• for a natural person: the name of that person;
c) at least the name of the signatory or their pseudonym; if a pseudonym is used, this fact must be clearly indicated;
d) data for the validation of the electronic signature, which corresponds to the data for the creation of the electronic signature;
e) information on the beginning and end of the certificate's validity period;
f) a certificate identification code that must be unique for the qualified trust service provider;

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g) an advanced electronic signature or advanced electronic seal of the qualified trust service provider issuing the certificate;

h) the location where the certificate accompanying the advanced electronic signature or advanced electronic seal referred to in point (g) can be accessed free of charge;

i) the location of services that can be used to request the validation status of the qualified certificate;

j) where the data for the creation of the electronic signature associated with the data for the validation of the electronic signature are in a qualified electronic signature creation device, the appropriate indication of this fact, at least in a form suitable for automated processing.

Whether the submitted signature is qualified can only be determined through the validation process. As indicated in recital 57, first sentence of the preamble to the eIDAS Regulation, in order to ensure legal certainty regarding the validity of the signature, it is necessary to specify the elements of the qualified electronic signature that should be assessed by the relying party during validation.

Article 32(1) of the eIDAS Regulation sets out the requirements for the validation of qualified electronic signatures. Accordingly, the validation process of a qualified electronic signature confirms the validity of the qualified electronic signature, provided that:

a) the certificate accompanying the signature was, at the time the signature was created, a qualified certificate for electronic signatures in accordance with Annex I;

b) the qualified certificate was issued by a qualified trust service provider and was valid at the time the signature was created;

c) the data used to validate the signature corresponds to the data provided to the relying party;

d) the unique set of data representing the signatory, included in the certificate, is correctly provided to the relying party;

e) if a pseudonym was used at the time of signing, this is clearly indicated to the relying party;

f) the electronic signature was created using a qualified electronic signature creation device;

g) the integrity of the signed data has not been compromised;

h) the requirements set out in Article 26 were met at the time the signature was created.

LEGAL JUSTIFICATION FOR THE REJECTION OF THE TENDER:
In accordance with Article 226(1)(5) of the Act: "The Contracting Authority rejects the tender if its content is inconsistent with the terms of the contract."
Pursuant to Article 226(1)(3) and (4) of the Act: "The Contracting Authority rejects the tender if it is non-compliant with the provisions of the Act" and "is invalid under separate regulations."
According to Article 63(1) of the Act: "In procurement procedures (...) with a value equal to or exceeding EU thresholds, the tender must be submitted, under penalty of nullity, in electronic form."
In accordance with Article 78(1) § 1 of the Civil Code: "In order to comply with the electronic form of a legal act, it is sufficient to make a declaration of intent in electronic form and affix it with a qualified electronic signature."."

Cancellation of the Procedure

As a result of the rejection of the sole tender submitted in the procedure, it is necessary to cancel the procedure based on the following factual and legal justification:

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FACTUAL JUSTIFICATION FOR THE CANCELLATION OF THE PROCEDURE

As a result of the rejection of the tender submitted by Refeyn GmbH, 10117, Berlin, Pariser Platz 4A, c/o BRL Boege Rohde Leubbehuesen, Brandenburg, Germany, based on the factual and legal justification provided above, there are no other tenders remaining in the procedure – all tenders are subject to rejection.

LEGAL JUSTIFICATION FOR THE CANCELLATION OF THE PROCEDURE

Pursuant to Article 255(2) of the Public Procurement Law: The Contracting Authority shall cancel the procurement procedure if... all requests to participate in the procedure or all tenders are subject to rejection.