

## Contracting Authority's Written Report on Public Tender

regarding over the threshold public tender administered in accordance with Act. No. 137/2006 Sb., on Public Procurement, as amended (hereinafter the „Act“)

**Contracting Authority:** Fyzikální ústav AV ČR, v.v.i.  
**Seat:** Na Slovance 2, 182 21 Praha 8  
**ID No.:** 68378271  
**Represented by:** doc. Jan Řídký, DrSc., Director

(hereinafter the “Contracting Authority”)

**Auhtorized Representative:** HOLEC, ZUSKA & Partneři, with offices at Palác Anděl, Radlická 1c/3185, Praha 5, PSČ 150 00, responsible partner JUDr. Karel Zuska

**Public Tender Name:** “Technology development and delivery of a kilo-joule laser for 10 PW beamline operating at augmented shot rate – Round 2”

**Subject Matter** delivery for the purpose of research and development – development, commissioning and demonstration of the kilo-joule laser for 10 PW beamline operating at augmented shot rate into the L4 beamline of the Extreme Light Infrastructure ELI-Beamlines facility (hereinafter the “Technology”)

**Legal form:** Above-the-threshold public contract for supplies administered in the form of a negotiated procedure without publication pursuant to Sec 23 (5) a) of the Act (hereinafter the “Negotiated Procedure”).

**Classification of the Subject Matter:** CPV - 73000000-2 Research and Development and related services  
CPV - 73100000-3 Research and experimental Bids  
CPV - 73110000-6 Research  
CPV - 73120000-9 Experimental Bids  
CPV - 31712348-1 Laser diodes  
CPV - 38636100-3 Lasers

### 1. Contract Value:

The Negotiated Procedure has been cancelled and no contract was concluded.

### 2. Identification of the Chosen Supplier

No Supplier has been chosen due to cancellation of the procedure.

### 3. Identification of All Bidders, Bid Price

Bid number	Name / Business name	Seat / place of business	Bid Price (including and Options)
1.	National Energetics  Ekspla	2320 Donley Drive, Austin, Texas 78756 USA  Savanoriu Av. 231, LT-02300m Vilnius, Lithuania	44,705,835 USD

### 4. Identification of Participants Removed from the Negotiated Procedure

Item number	Name / Business name	Address according to Sec. 69 par. 5 no. 137/2006 Coll., on Public Contracts	Removal Reasons
1.	Science & Technology facilities Council Rutherford Appleton laboratory	Harwell Oxford, Didcot, Oxfordshire OX11 0QX OXON United Kingdom	<ul style="list-style-type: none"><li>Applicant's withdrawal from the procedure during negotiation phase</li></ul>
2.	LAWRENCE LIVERMORE NATIONAL SECURITY, LLC	7000 East Avenue, L-001, Livermore, CA 94550, USA	<ul style="list-style-type: none"><li>Applicant's withdrawal from the procedure during negotiation phase</li></ul>
3.	CEA - Commissariat à l'énergie atomique et aux énergies alternatives	CAB AG – Batiment 447 Centre de Saclay 91191 Gif-Sur-Yvette CEDEX, FRANCE	<ul style="list-style-type: none"><li>Non-Submission of a bid</li></ul>
4.	Thales Optronique S.A.	2 avenue Gay-Lussac - CS90502 78995 Elancourt Cedex France	<ul style="list-style-type: none"><li>Applicant's withdrawal from the procedure during negotiation phase</li></ul>

5.	National Energetics  Ekspla	2320 Donley Drive, Austin, Texas 78756 USA  Savanoriu Av. 231, LT- 02300m Vilnius, Lithuania	<ul style="list-style-type: none"> <li>• Submission of an incomplete bid non compliant with the Tender Documentation<sup>1</sup></li> </ul>
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## 5. Eventual Extremely Low Bid Price Issues

The Negotiated Procedure has been cancelled, therefore the Extremely Low Bid Price issue is irrelevant

## 6. Grounds for the Use of Negotiated Procedure Without Publication

The Negotiated Procedure has been organised in accordance with Sec 23 (5) a of the ACT.

The reasons for the use of this provision were that the subject matter of the Negotiated Procedure is delivery of a technology which does not yet exist in the world, represents above the state of the art technology and has yet to be developed by the supplier.

The Technology is a unique system to be delivered according to detailed technical specifications set forth as part of the Tender Documentation and shall by no means be produced in an assembly-line (batch) manner.

On the part of the supplier the Technology is developed and delivered as research and development project for a third party. On the part of the Contracting Authority, the Technology shall be delivered for the purposes of the ELI-Beamlines Project awarded to the Contracting Authority as part of the Research and Development for Innovations Operational Programme 2007-2013. The Technology shall not be developed and delivered with the aim of achieving profit (on either party's side<sup>2</sup>), nor with the aim to cover the costs of the Contracting Authority.

Finally, at the moment of opening of the Negotiated Procedure, the Contracting Authority was not in place to stipulate all legal, economical or technical aspects of the tender. Therefore, it was necessary to negotiate these with potential applicants. The state of the Contracting Authority's knowledge of the technical aspects of the tender in the latest phases of the Negotiated Procedure has led to the necessity to enable variant bids pursuant to Sec 70 of the Act.

The use of the Negotiated Procedure has been validated by the Ministry of Education, Youth and Sports.

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<sup>1</sup> See below under Art 7. Grounds for cancellation of the Negotiated Procedure



## 7. Grounds for cancellation of the Negotiated Procedure

During the Negotiated Procedure only one bid has been submitted within the stipulated deadline (hereinafter the "**Bid**").

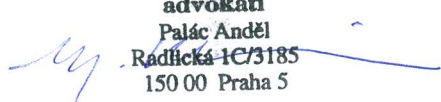
During the Assessment of the Bid, the following discrepancies have been identified by the Bid Assessment and Evaluation Committee (hereinafter the "**Committee**"):

- on page 5 of the Bid the Bidder stated by way of footnote reference that the "*Prices represent best available figures at the time of submission of the contract. Because of future uncertainties Additional Spares are only **estimates**. They are subject to change subsequent to completion of the of the Engineering Design (Milestone D2). Consequently, line items 1 and 6 are subject to change when Option is exercised. The Contractor will supply a binding quote upon request after Milestone D2 which will be valid fo 60 days from the request. (Because of large uncertainty in kJ beam transport mirrors, this price reflects a "no bid" on this at this time.)*"
- on page 6 and 333 of the Bid with respect to the Bid Price for the Spare Parts Call-In Option, at the position 14 – Full set of output kJ beam transport mirrors with 2 OAPs the Bidder (instead of providing a bid unit price) stated "*No bid (to be determined with design)*".

The Committee assessed the above discrepancies as clearly making the Bid incomplete and non-compliant with the Tender Documentation. The nature of these discrepancies (the Bidder clearly stated it's will not to make a bid for the position Nr. 14 and that the Total Bid Price is not a final bid price, but a sole estimate) did not enable the Contracting Authority to resolve these discrepancies by way of Bid Explanation.

Therefore, the Committee recommended the Contracting Authority to exclude the Bid from the Negotiated Procedure and to cancel the Negotiate Procedure pursuant to Sec. 84 (1) b) of the Act.

**Following the Committee's recommendation, the Contracting Authority has removed the the Bid of the bidder consortium of National Energetics, Inc., 2320 Donley Drive, #C, Austin, Texas, 78758 USA and Ekspla, Savanoriu Av. 231, LT-02300m Vilnius from the Negotiated Procedure and has cancelled the Negotiated Procedure.**

Name and Surname of the Person Entitled to Act on Behalf of the Contracting Authority	Matej Kliman, representative of the Authorised Representative <b>HOLEC, ZUSKA &amp; Partneři</b> advokáti
Authorised Representative Signature	 Palác Anděl Radlická 1C/3185 150 00 Praha 5