

**Specification of the Essential Terms of Reference (SIWZ; Specification)  
(SPECIFICATION)**

**The value of contract is lower than the amounts stated in regulations issued on the basis of  
Article 11(8) of the Act - Public Procurement Law**

Procedure: **Open tender**

Object of contract: **Supply**

**Supply of soft flexible ballet shoes  
for the needs of artists of the Polish National Ballet at  
Teatr Wielki The National Opera**

Contracting Entity: **Teatr Wielki The National Opera  
Pl. Teatralny 1, 00-950 Warszawa**

Case ref. **ZP.260.4.2020**

Approved:

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**Warsaw, March 2020**

## **Introduction**

1. This procedure is organized on the basis of the Act of 29 January 2004 - Public Procurement Law (*Journal of Laws of 2019, item 1843*), hereafter the “Act”, and secondary legislation to the Act, particularly Regulation of the Minister of Development of 26 July 2016 concerning the types of documents that a contracting entity may require from a contractor in a contract procedure (*Journal of Laws, item 1126, as amended*), hereinafter referred to as the “Documents Regulation”.
2. A Contractor should submit a tender corresponding to the Specification of the Essential Terms of Reference for the Contract (SIWZ; the Specification).
3. Contractors should refer to the specified case reference in all communications with the Contracting Entity.

## **I. Name and address of Contracting Entity**

Teatr Wielki — Opera Narodowa  
[Teatr Wielki - The National Opera]  
Pl. Teatralny 1, 00-950 Warszawa  
Statistical number Regon: 013055028; tax ID: 525-20-59-432  
URL: <http://www.teatr Wielki.pl>, e-mail: office@teatr Wielki.pl; zamowienia@teatr Wielki.pl  
Telephone no.: +48 (22) 69 20 200; fax: +48 (22) 826 04 23  
Main Office opening hours as per the schedule published on the Contracting Entity’s website.

## **II. Contract award method**

1. This procedure is based on Article 10(1) and Article 39 of the Act, organized as an open tender procedure, with the option of applying the procedure defined in Article 24aa of the Act.
2. The procedure is concerned with a part of the overall contract with a total value lower than the amounts prescribed in the regulations issued on the basis of Article 11(8) of the Act, awarded in parts that are subject to separate procedures. The value of contract and the tender procedure was determined in accordance with Article 32(4) of the Act.

## **III. Description of the object of procurement**

1. The object of contract is the regular supply of Sansha brand, model PRO 1C, or equivalent soft flexible ballet shoes for the needs of artists of the Polish National Ballet at Teatr Wielki - The National Opera in Warsaw, total quantity: **1050** pairs.
2. A detailed description of the object of contract (OPZ) is presented in Attachment 1 to the Specification of the Essential Terms of Reference (SIWZ): “Description of the object of procurement/Pricing form”. The contract performance methodology shall be as defined in the form of Contract in Attachment 7 to the SIWZ.
3. CPV: 18.81.00.00-0 – footwear other than sports and protective footwear.

## **IV. Description of parts of contract if the Contracting Entity accepts submission of partial tenders**

The Contracting Entity does not accept submission of partial tenders.

## **V. Information concerning anticipated contracts referred to in Article 67(1)(7) of the Act**

The Contracting Entity does not envisage awarding any contracts referred to in Article 67(1)(7) of the Act.

## **VI. Description of the method of presenting variants and minimum requirements to be fulfilled by variant tenders, specifying the selected assessment criteria, if the Contracting Entity requires or allows for submission of variants**

The Contracting Entity shall not require or accept variants.

## VII. Time limit for contract completion

13 months of the contract effective date - consecutive supplies based on individual orders placed with the Contractor.

## VIII. Conditions of participation in the contract procedure

Contractors shall be admitted to participate in the procedure if they meet the procedure participation criteria defined by the Contracting Entity below, pursuant to Article 22(1b) with reference to Article 22(1) of the Act:

1. Competence or permission to engage in specific professional activities as prescribed by individual regulations.

The Contracting Entity does not specify this as mandatory procedure participation criteria.

2. Economic or financial standing.

The Contracting Entity does not specify this as mandatory procedure participation criteria.

3. Technical or professional capacity.

1) Knowledge and experience

The Contracting Entity shall consider this requirement duly fulfilled if the Contractor can demonstrate that, during the last 3 years preceding the tenders submission deadline (and if the overall duration of business activity is shorter, then during such shorter period), the Contractor completed at least 1 contract consisting of supply of soft ballet shoes, at least 400 pairs, with the supply value of at least PLN 22.000,00.

In case of a foreign Contractor, where the value of supply is given in any other currency than PLN, in order to verify whether the supply meets the above specified requirement, the value will be translated into PLN at the average rate of exchange of the National Bank of Poland as at the date of publication of the relevant contract notice.

2) Having the requisite technical potential.

The Contracting Entity does not specify this as mandatory procedure participation criteria.

3) Having the personnel resources capable of executing the contract

The Contracting Entity does not specify this as mandatory procedure participation criteria.

## VIIIA Grounds for exclusion referred to in Article 24(5) of the Act

The Contracting Entity shall exclude a Contractor from the procedure if such Contractor has been wound up or pronounced bankrupt, within the meaning of Article 24(5)(1) of the Act, on such terms and according to such legislation as stipulated therein.

## IX. List of statements and documents to verify compliance with the participation criteria and non-existence of grounds for exclusion

1. For the purpose of preliminary verification that the Contractor is not subject to exclusion pursuant to Article 24(1) or Article 24(5)(1) of the Act, the Contractor hereby **submits the following documents together with their tender:**

1) Statement **concerning grounds for exclusion from the procedure**, as per the form specified in Attachment 3 to the SIWZ.

2) Statement **on compliance with the criteria for participation in the procedure**, as per the form specified in Attachment 4 to the SIWZ.

1A For Contractors tendering jointly for the award of contract (hereafter also a Consortium), Contractors shall, as per Article 23(2) of the Act, **nominate a proxy** to represent them in the procedure or to represent them in the procedure and to execute a public contract. The Contracting Entity requires that the original power of attorney or a copy certified for authenticity by a notary public be attached to the tender. Each of the Contractors tendering jointly for the award of contract shall submit the Statements mentioned under (1) above, together with the main tender.

1B. If the Contractor, in order to demonstrate compliance with the participation criteria specified in section VIII(3) of the SIWZ, relies on the technical or professional capacity of third parties, in accordance with Article 22a of the Act, such Contractor must submit the data of these third parties in such statements as

mentioned in (1) above, and attach an undertaking by these parties to offer the necessary resources to the Contractor's disposal for the purpose of fulfilling the order.

2. List of statements and documents to be submitted by the Contractor in the procedure upon the Contracting Entity's demand, to verify compliance with the participation criteria, as specified in section VIII.

Re: clause 3 - Technical and professional capability

Re: sub-clause 1 - Knowledge and experience

List of supplies completed not earlier than during the last 3 years preceding the deadline for submission of tenders or, if the overall duration of the contractor's business activity is shorter, then during such shorter period, specifying the values, objects, completion dates and clients, with attached documents to demonstrate that these supplies have been completed or are being carried out properly, and with such documents enclosed as mentioned in §2(4)(2) of the Documents Regulation, stating whether such supplies were completed properly (according to the form given in Attachment 6 to the SIWZ).

3. List of statements and documents to be submitted by the Contractor in the procedure upon the Contracting Entity's demand, to verify non-existence of grounds for exclusion:

excerpt from the appropriate registry or the central register and information about economic activities if registration is required under separate legislation, as specified in Section IX of the Specification of the Essential Terms of Reference (SIWZ), item 1(4), to demonstrate non-existence of reasons substantiating exclusion on the basis of Article 24 (5)(1) of the Act.

- 3A In this procedure, Contractors shall be required to file a statement on membership or non-membership of the same group of companies; a Contractor being a member of the same group can file documents or information together with the statement to demonstrate that their relations with another contractor do not cause disruption of fair competition in the procedure. For details see section XV(3) of the SIWZ.

4. If the Contractor's registered office or place of residence is located outside the territory of the Republic of Poland, then instead of document referred to in sub-clause 3 above, the Contractor shall submit upon the Contracting Entity's demand a document or documents issued in the Contractor's country of registration or residence, certifying that they have not been wound up or pronounced bankrupt. These documents should be issued not earlier than 6 months before the lapse of the time limit for submission of tenders.
5. If such documents as mentioned in sub-clause 4 above are not customarily issued in the contractor's country of incorporation or domicile, these shall be substituted by a document containing the contractor's statement, in which the authorized representatives of the contractor shall be identified accordingly, or a statement of the person concerned by such missing document, given before a competent court, administrative authority or professional or economic self-government body of the person's registered address or residence. Such documents should be issued at such time as specified in the second sentence of sub-clause 4.
6. In case of a Consortium, a document certifying non-existence of grounds for exclusion, which is mentioned in sub-clause 3 or 4-5 above, respectively, and in sub-clause 3A, shall be submitted by each Contractor, and the documents to verify compliance with the participation criteria as defined in section VIII(3) shall be submitted by each Contractor to the extent to which such Contractor demonstrates compliance with these requirements.
7. If the Contractor, in order to demonstrate compliance with the participation criteria specified in section VIII(3) of the SIWZ, relies on the technical or professional capacity of third parties, in accordance with Article 22a of the Act, such Contractor shall produce, upon the Contracting Entity's demand and with reference to such parties, a document referred to in sub-clause 3 or 4-5 above, respectively, certifying that these parties are not subject to exclusion and proving that in the performance of the contract, the Contractor shall have the requisite resources of these parties at hand.
8. In order to verify whether a Contractor relying on third party capacities or status in this procedure will have the requisite resources available to the extent enabling such Contractor to complete the public procurement properly, and in order to determine whether the Contractor's relationships with such third parties warrant actual availability of the latter's resources, the Contracting Entity will demand that the

Contractor produce the following documents, unless this is already determined in the obligation in (1B) above:

- 1) the scope of third party resources available to the Contractor,
  - 2) the method of usage of third party resources by the contractor in performing the public contract;
  - 3) the extent and duration of third party participation in contract execution,
9. The statements referred to in sub-clause (1) above shall be submitted as originals. The documents or statements referred to in sub-clauses (2) - (8) above shall be submitted as originals or copies certified for authenticity. A copy of a document or statement, executed in writing, is certified for authenticity with an authentic signature. A copy can be certified for authenticity by the Contractor, by the third party whose capacity or status the Contractor relies on, contractors tendering jointly for the award of the public contract, or the respective subcontractor, with regard to the documents or statements concerning each of them respectively.
10. The Contractor shall not be required to file any statements or documents to verify compliance with the procedure participation criteria or non-existence of grounds for exclusion specified in the SIWZ if the Contracting Entity already has such statements or documents, or if the Contracting Entity is capable of obtaining such statements or documents with regard to the specific Contractor using free public databases, particularly public records within the meaning of the Act of 17 February 2005 on Computerization of the Proceedings of Organizations Pursuing Public Tasks (*Journal of Laws of 2020, item 346*).

#### **IX A List of documents to verify that the offered supplies comply with the requirements defined by the Contracting Entity**

1. Upon the Contracting Entity's demand, the Contractor shall be required to submit a technical description of the offered ballet shoes, with photos, certifying that the supplied shoes conform to the requirements specified by the Contracting Entity in Attachment 1 to the SIWZ, section 3, sub-sections 1 – 7 – *Description of the Object of Procurement - Pricing form*.
2. The documents referred to in sub-clause (1) above shall be submitted as originals or copies certified for authenticity.
3. The Contracting Entity shall accept submission of the documents referred to above in the English language version, without mandatory translation into Polish. Documents in any languages other than Polish or English should be submitted together with their translation into Polish. In case of any uncertainty, the Polish language version shall prevail.

#### **X. Method of Contracting Entity's communication with Contractor and submission of statements or documents**

1. Communication between the Contracting Entity and Contractors in this procedure (filing of tenders, documents to verify compliance with the criteria of participation in the procedure and not being subject to exclusion) shall be via the postal service operator within the meaning of the Act of 23 November 2012 - Postal Law (*Journal of Laws of 2018, item 2188, as amended*), in person or by courier. All documentation in the procedure shall be submitted in writing, notwithstanding sub-section 2 below.
2. The Contracting Entity accepts transmission of statements, requests, notices or information by fax or by means of electronic communication within the meaning of the Electronically Supplied Services Act of 18 July 2002 (*Journal of Laws of 2020, item 344*), provided that they reach the intended recipient before the lapse of the defined time limit and the document is promptly transmitted thereafter by the sender (Contractor or Contracting Entity) upon demand of the recipient (Contracting Entity or Contractor) as specified in the first sentence of section 1.

Contracting Entity's fax number: 22 826 04 23,

E-mail: [office@teatr Wielki.pl](mailto:office@teatr Wielki.pl), [zamowienia@teatr Wielki.pl](mailto:zamowienia@teatr Wielki.pl).

3. Should the Contracting Entity or the Contractor send their statements, notices and communications by fax or means of electronic communication, each party shall promptly confirm their receipt upon the other party's demand.

4. Description of the method of giving clarifications concerning the contents of the SIWZ:

- 1) Each Contractor may request the Contracting Authority to clarify the contents of the Specification of the Essential Terms of Reference. The Contracting Entity shall respond not later than 2 days before the deadline for submission of tenders, provided that the respective request for clarification reaches the Contracting Entity before the end of the last day of the first half of the period set out for submission of tenders. Requests should be sent to the Contracting Entity according to the principle specified in Section X(1) of the SIWZ.
- 2) The Contracting Entity shall send the explanations to all Contractors that have received the SIWZ, without indicating the source of inquiry. The inquiries with respective clarifications of the Contracting Entity shall be published on the Contracting Entity's website.
- 3) In certain justified cases, the Contracting Entity may modify the contents of the SIWZ before the tenders submission deadline. Such modification shall be published on the Contracting Entity's website.

#### **XI. Indication of the persons authorized to communicate with Contractors**

1. The following contact persons are authorized to communicate with the Contractor via e-mail: zamowienia@teatr Wielki.pl, on matters relating to the procedure:
  - 1) regarding professional matters:  
Teresa Lewcio, Anna Rosłonec, Daniel Kowalczyk
  - 2) regarding public procurement procedure issues:  
Urszula Solecka, Piotr Szczerba
2. The persons named above will not be providing any clarifications of the contents of the SIWZ to Contractors. All questions and inquiries regarding these matters shall be raised with the Contracting Entity as written requests, according to the procedure stipulated in section X(1) and (2).

#### **XII. Tender security requirements**

The Contracting Entity does not require a security deposit.

#### **XIII. Tender validity period**

30 days.

Tender validity period shall commence as of the tenders submission deadline.

#### **XIV. Description of tender preparation**

1. Tenders should be prepared in accordance with the requirements stipulated in the SIWZ. Each tender shall comprise:
  - 1) **A form of tender**, prepared in accordance with Attachment 2 to the SIWZ.
  - 2) **Attachments 1A to the SIWZ** with the Pricing Form table duly filled in.The following shall be attached to the tender:
  - 3) **Statements** referred to in section IX(1) of the SIWZ, as initial confirmation that the Contractor is not subject to exclusion and meets the procedure participation criteria, taking into account the circumstances referred to in section IX(1A) and (1B) of the SIWZ.
  - 4) **Powers of attorney** - if the Contractor appoints any proxies to proceed on its behalf in the procedure.
2. A tender should be submitted in the Polish language, in a legible manner (written on a computer or using another permanent and legible technique). In accordance with Article 9 (3) of the Act, the Contracting Entity shall allow submission of English language tenders.
3. Should the Contractors submit documents containing data in other currencies than PLN, the Contracting Entity shall use the average rate of exchange of the National Bank of Poland (NBP) as of the contract notice publishing date as the applicable rate for translating the foreign currency amount into PLN.
4. Each Contractor can only submit one tender.

5. A form with attachments should be signed by duly authorized representative(s) of the Contractor. It is recommended to enclose a document to the tender presenting the rules of the Contractor's representation, or specifying the source for obtaining such information. If the proposal is signed by a proxy, the power of attorney must be attached, as the original or copy certified by a notary public.
6. If the Tenderer states that any confidential information (trade secret) within the meaning defined in laws on suppressing unfair competition cannot be made available or disclosed to the public, such information should be inserted in a separate envelope inside the packaging of preliminary tender, marked as: "Informacje stanowiące tajemnicę przedsiębiorstwa" [*Confidential - Classified company information*]. If information is restricted as confidential, the contractor must demonstrate that the information so restricted is actually a trade secret. The Contracting Entity requires that clarifications be provided in this respect together with the tender.
7. A tender with all attachments (pages should be numbered and a table of contents should be added) should be placed in a sealed envelope. The envelope should bear the exact name and address of the Contracting Entity as well as the following identification:

**"Supply of soft flexible ballet shoes for the needs of artists  
of the Polish National Ballet at Teatr Wielki The National Opera",  
case ref. ZP.260.4.2020  
Do not open before 2020-04-20, 12:15 PM"**

The Contractor's exact name and address should be marked on the envelope as well.

8. Each Contractor may introduce changes, corrections, modifications and amendments to his submitted tender before the tenders submission deadline, provided that he gives a proper written notice to the Contracting Entity to that effect. Such notice should be submitted according to the same requirements as those applicable to the main tender, with a relevant annotation on the package: "MODIFICATION". Envelopes marked as "MODIFICATION" will be opened at the time of opening the tender of the Contractor who made the changes.
9. Each Contractor may withdraw his tender or withdraw from the procedure before the tenders submission deadline through submitting a written notice to that effect according to the same terms as specified above for modifications, in an envelope described as "WITHDRAWAL". Enveloped thus identified will be opened first, after verification of the accuracy of the Contractor's proceeding and consistency with the data placed on the envelope with the tender being withdrawn. Envelopes with withdrawn tenders shall not be opened.

#### **XV. Venue and date of submission and opening of tenders**

1. Submissions shall be made by **2020-04-20, 12:00**, at the main office – room A – 148, floor I of Teatr Wielki – The National Opera, Pl. Teatralny 1, 00-950 Warszawa, entrance from ul. Moliera 5, reception desk IV.
2. Opening of tenders shall be available to the public and shall take place on **2020-04-20 at 12:15 PM p.m.**, room R-153a, floor III of Teatr Wielki - The National Opera, Pl. Teatralny 1, 00-950 Warszawa, entrance from ul. Moliera 5, reception desk IV.
3. According to Article 24(11) of the Act, within 3 days of the date of publication of details of the Contractors tendering in the procedure, the Contractor shall file a statement with the Contracting Entity concerning membership or non-membership of the same group of companies within the meaning of the Competition and Consumer Protection Act of 16 February 2007 (*Journal of Laws of 2019, item 369, as amended*), as referred to in section IX(3A), whereby the form presented in Attachment 5 to SIWZ can be used.

#### **XVI. Price calculation method**

1. The price shall be determined according to the *Pricing form* in Attachment 1A to SIWZ.
2. Price shall mean the price defined by Article 2(1) of the Act.
3. The Contractor shall bear all costs related to the preparation and submission of the bid.

4. The price shall include all costs that may occur during contract execution (including transport costs, other charges, taxes, etc.), as well as any discounts and rebates applied by the Contractor.
5. The Contractor may specify only one price, without the option of suggesting alternatives.
6. Enter the price calculated as per 1 and 2 to the *Form of Tender* (Attachment 2, section 1). Price shall be rounded to two decimal places.
7. If the tender price is given in a different currency than PLN, specify the currency in the Form of Tender and in the respective Pricing forms. For the purpose of comparison of tenders, price given in a foreign currency in the "price" criterion will be translated into PLN at the average rate of exchange of the National Bank of Poland as of the date of publication of the contract notice.
8. If the choice of any tender submitted in the procedure would occasion a tax obligation of the Contracting Entity under the VAT legislation in force, the Contracting Entity shall, in order to evaluate such tender, add VAT to the price presented in the tender in the amount that the Contracting Entity would have to pay under such applicable legislation. **With the submission of his tender, the Contractor shall notify the Contracting Entity whether the choice of his tender will lead to a tax obligation on behalf of the Contracting Entity, specifying the name (type) of goods or services of which the supply will occasion such tax obligation, and stating the value of these goods or services without tax** (a form of such information is presented in item 1a of the Form of Tender - Attachment 2 to the SIWZ).

#### **XVII. Foreign currencies acceptable for payments as between the Contracting Entity and the Contractor**

Payments as between the Contracting Entity and the Contractor can be made in Euro (EUR) or Pound Sterling (GBP).

#### **XVIII. Criteria to be followed by the Contracting Authority in selecting the best tender, specifying the respective weightings of these criteria and method of scoring the tenders**

In the process of tenders evaluation, the Contracting Entity shall consider the following criteria:

- |   |            |
|---|------------|
| <b>1. Price (C)</b>   | <b>60%</b> |
| <b>2. Time limit for execution of single orders under the contract (Tj)</b> | <b>40%</b> |

##### **Re: 1.**

##### **Price (C) - 60%**

The tender with the lowest price will receive 100 points, other tenders will receive proportionally less, according to the following formula:

**lowest gross price with tax**

**Score (C) = ----- x 100 pts.**

**gross price of the examined tender**

##### **Re: 2.**

##### **Time limit for execution of a single order under the contract (Tj)**

For evaluation of tenders under the criteria "Time limit for execution of a single order under the contract", the lead time for a single order will be taken into account as specified by the Contractor under item 2 of the Form of Tender (Attachment 2 to the SIWZ). – each part of the object of contract detailed in section 3 of Attachment 1 to the SIWZ, entitled "*Description of the object of procurement/Pricing form*".

For the lead time of a single order, commencing as at the date of the Contractor's acceptance of such an order, at **30 days** or less, the tender will receive a score of 100; for a longer period, but not exceeding **60 days**, the price will be reduced pro rata, according to the following formula:



**shortest lead time per order** (*days, min. 30 days*)

**Score (Tj) = ----- x 100 pts.**  
**lead time per order for the evaluated tender** (*days, max. 60 days*)

Tenders with lead times per order exceeding 60 days will be rejected.

Method of calculating the final score for a tender:

$$\mathbf{Ko = C \times 60\% + Tj \times 40\%}$$

where Ko stands for the final score of the tender.

The tender with the highest final score (Ko) will be considered the most advantageous tender. Tenders will be evaluated solely on the basis of the tender evaluation criteria presented above.

**XIX. Information on formalities that should be completed after selection of the successful tender for the purpose of concluding the public contract.**

1. According to Article 94(1)(2), notwithstanding Article 94(2)(2)(1)(a) and (3) of the Act, the Contracting Entity shall enter into a public procurement contract with the Contractor who presents the most advantageous bid and produces the statements and documents to verify compliance with the procedure participation criteria and non-existence of grounds for exclusion as specified in section IX, upon the Contracting Entity's demand, within at least 5 days of transmission of the notice of selection of the most advantageous bid by fax or e-mail.
2. The contract shall be signed not earlier than upon the lapse of the time for filing appeals, or announcement of ruling by the National Board of Appeals.
3. If the contract is awarded to contractors tendering jointly, the Contracting Entity may demand submission of an agreement regarding cooperation between these Contractors before signing the public contract.

**XX Performance Bond Requirements**

The Contracting Entity does not require the Contractor to furnish a performance bond.

**XXI. Terms of significance for the parties to be incorporated in the public contract, general terms and conditions of contract, or form of contract if the Contracting Entity requires the Contractor to enter into a contract on such terms.**

1. A form of contract is presented in Attachment 7 to the SIWZ.
2. According to Article 144(1)(1) of the Act, the Contracting Entity shall be entitled to introduce changes to the terms and conditions of the final contract as compared to the contents of tender. The extent, characteristics and terms of implementation of any such variations are presented in the Form of Contract under section 1 above.

**XXII Information about subcontracting**

1. The Contractor may hire subcontractors to execute a part of the object of Contract.
2. The Contracting Entity does not require that the Contractor personally executes the works related to placement and installation.
3. The Contracting Entity requires that the Contractor to specify in their tender the part of contract which they intend to subcontract, and to specify the business names of the subcontractors, together with the statement concerning any such subcontractor which is mentioned in section IX(1)(1), according to the form in Attachment 3 to the SIWZ.
4. If a replacement or withdrawal of a subcontractor is concerned with a party whose resources the Contractor refers to on the terms prescribed in Article 22a(1) of the Act, then the Contractor, in order to demonstrate compliance with the criteria of participation in the procedure as specified in Section VIII of

the SIWZ, shall demonstrate to the Contracting Entity that a proposed another subcontractor or Contractor meets them at least to the degree equivalent to that of the subcontractor whose resources the Contractor was relying on during the contract award procedure.

### **XXIII. Legal measures available to the Contractor in the course of contract award procedure**

1. A Contractor whose legal interest is or can be affected as a result of breach by the Contracting Entity of the provisions set forth in the Act shall be entitled to take such legal measures as stipulated in Section VI of the Act.
2. According to Article 180(1) of the Act, an appeal can be lodged only against any action or omission the Contracting Authority in the course of public contract award procedure, contrary to the obligations of the Contracting Entity under the Act.
3. Each appeal should specify the action or omission of the Contracting Entity which is alleged to breach the provisions of the Act, together with a brief presentation of allegations, specification of the demand, and indication of facts and legal circumstances justifying the appeal.
4. In this procedure, in accordance with Article 180 (2), appeals can only be filed for the following actions:
  - 1) object description,
  - 2) specification of the terms and conditions of participation in the tender procedure,
  - 3) exclusion of the appealing party from the contract procedure;
  - 4) rejection of the appealing party's tender,
  - 5) selection of the most advantageous tender.
5. An appeal shall be filed within 5 days of sending a notice of the Contracting Entity's act constituting the basis for lodging of the given appeal, if sent according to the procedure prescribed in Article 180(5) of the Act, or within 15 days if otherwise, and if the appeal concerns the contents of the contract notice or the terms of the SIWZ - within 5 days of contract notice publication in the Public Procurement Bulletin or publication of the SIWZ on the Contracting Entity's website, respectively.
6. Appeals against any other actions must be lodged within 5 days of the date on which the contractor has or could have obtained knowledge of the circumstances providing grounds for such protest, at the latest.
7. Appeals shall be lodged with the President of the National Board of Appeals, in writing or in electronic format, bearing an authentic signature or a qualified electronic signature.
8. A copy of such appeal was handed over by the Appealing Party to the Contracting Entity before the lapse of the time limit for filing protests and appeals, as specified in Article 180(5) of the Act.

### **XXIV. Other information.**

According to Article 13(1) and (2) of Regulation 2016/679/EU of the European Parliament and of the Council of April 27, 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119 2.7.2009, p. 1, and OJ L 127 of 23.05.2018, p. 2), hereafter GDPR, the Contracting Entity hereby communicates the following:

- 1) The controller of your personal data is Teatr Wielki - The National Opera, Pl. Teatralny, 00-950 Warszawa, Poland; telephone: +48 (22) 69 20 200; fax: +48 (22) 826 04 23
- 2) The data protection officer at Teatr Wielki The National Opera shall be the Data Protection Inspector, contact:
  - a) by post: Inspektor Ochrony Danych / Data Protection Officer, Teatr Wielki-Opera Narodowa, Pl. Teatralny 1, 00- 950 Warszawa,
  - b) e-mail: iod@teatr Wielki.pl;
- 3) Your personal data will be processed pursuant to Article 6(1)(c) of GDPR, with respect to the fulfillment of the legal obligations transpiring from the Act and the Documents Regulation, for the purpose related to the public contract procedure for "Supply of pointe ballet shoes for the needs of artists of the Polish National Ballet at Teatr Wielki - The National Opera in Warsaw", case ref. ZP.260.3.2020, executed as an open tender;
- 4) The recipients of your personal data shall be the persons or entities accessing the procedure records pursuant to Article 8 and Article 96(3) of the Act;

- 5) Your personal data will be retained in accordance with Article 97(1) of the Act for 4 years of closing the contract award procedure or, if the term of contract exceeds 4 years, the retention period shall cover the entire term of contract; upon the lapse of the above specified time limits - for 25 years, in the Contracts Collection, based on Uniform Subject-Matter List of Files in the Office Instructions of Teatr Wielki The National Opera, approved by the State Archive of the Republic of Poland;
- 6) The requirement to provide your personal data is a statutory requirement prescribed in the Act, relating to your participation in the public contract award procedure; the consequences of any failure to provide specific data shall be as prescribed by the Act;
- 7) No automated decisions will be taken with respect to your personal data, as per Article 22 of GDPR;
- 8) You shall have the following rights:
  - a) Pursuant to Article 15 of GDPR - right to access your personal data\*;
  - b) Pursuant to Article 16 of GDPR - right to rectification or supplementation of your personal data\*\*;
  - c) Pursuant to Article 18 of GDPR - right to demand restriction by the controller of processing of your personal data, save for the instances mentioned under Article 18(2) of GDPR\*\*\*;
  - d) Right to file a complaint to the President of the Office for Personal Data Protection (to the address of the Office for Personal Data Protection: Urząd Ochrony Danych Osobowych, ul. Stawki 2, 00-193 Warszawa) if you believe that the manner of processing of your personal data violates the provisions of GDPR;
- 9) You shall not have the following rights:
  - a) With reference to Article 17(3)(b), (d) or (e) of GDPR - right of erasure of personal data;
  - b) Right to portability of personal data as referred to in Article 20 of GDPR;
  - c) **Pursuant to Article 18 of GDPR - right to object to the processing of your personal data because the legal basis for the processing of your personal data is Article 6(1)(c) of GDPR.**

\* **Explanation:** *If the performance of the obligations prescribed by GDPR Article 15(1)-(3) requires disproportionate efforts, the contracting entity may demand the data subject to provide additional information to further clarify the demand, particularly to provide the title or date of the public procurement procedure.*

*With regard to the processing of personal data contained in the report and appendices to the report, if the performance of the obligations prescribed by GDPR Article 15(1)-(3) requires disproportionate efforts, the contracting entity may demand the data subject to provide additional information, specifically to provide the title or date of the public procurement procedure that has been closed.*

\*\* **Explanation:** *Exercising the right to rectification or supplementation of personal data cannot lead to any variation of the outcome of the public contract award procedure, nor any amendment of the contract terms to the extent inconsistent with the Act, nor can it adversely affect the integrity of the report and its appendices.*

\*\*\* **Explanation:** *The right to restriction of processing does not apply to retention for the purpose of ensuring exercise of legal measures or protection of rights of another natural person or legal person, or for reason of important public interest of the European Union or a Member State.*

Details concerning GDPR in public contracts can be found on the website of the Office for Public Procurement at: <https://www.uzp.gov.pl/aktualnosci/rodo-w-zamowieniach-publicznych>

All matters not covered by the present Specification of the Essential Terms of Reference shall be governed by the provisions of the Act, secondary legislation to the Act, and the Polish Civil Code.

#### **List of attachments to the Specification:**

- No. 1. Description of the Object of Contract – Pricing form
- No. 2. Form of Tender
- No. 3. Statement of non-existence of reasons substantiating exclusion from the procedure,
- No. 4. Statement of compliance with the requirements to participate in the procedure
- No. 5. Statement on membership or non-membership of the same group of companies
- No. 6. List of completed supplies
- No. 7. Form of contract

(full name/corporate name of the Contractor, address,  
identification according to the type of organization:  
Tax ID / statistical number PESEL / National Court  
Register KRS / Central Registry of Business Activities  
CEIDG

## Description of the Object of Contract – Pricing form

Case ref. **ZP.260.4.2020**

### Supply of soft flexible ballet shoes for the needs of artists of the Polish National Ballet at Teatr Wielki The National Opera.

1. The object of the contract consists of supply of soft (flexible) ballet shoes for artists of the Polish National Ballet. Because soft (flexible) ballet shoes constitute a personal 'work tool' and an important part of stage costume, the Polish National Ballet was asked to present their preferences in this respect, i.e. to specify which types of shoes would most closely correspond to the artists' expectations. The ballet dancers' team decided to choose **Sansha brand** shoes, model **PRO 1C**. In accordance with Article 29 (3), the Contracting Entity shall allow equivalent tenders.

The choice of the above mentioned brands of ballet shoes is due to the assumption that every ballet artist should be given the opportunity to choose such shoes as fit them best, particularly in terms of anatomical properties, due to the need to provide the artists with necessary equipment, ensuring achievement of optimized artistic effect and appropriate comfort of work. During an artistic performance of complicated dancing evolutions during ballet shows, such as jumps, leaps, combinations of pirouettes, the artist must feel comfortable enough to disregard their shoes as items of equipment not causing any inconvenience whatsoever. Ballet shoes must fit the dancer's feet and be fully acceptable by the dancer, as non-physiological position of the foot during an approximately 3-hour show, requiring appropriate professional footwear. Otherwise, artists are exposed to serious discomfort, making their work difficult and contributing to frequent injuries, which in extreme cases may involve a risk of becoming unable to practice ballet. Therefore, the Contracting Entity has adopted a rule, which is a common practice in ballet dancers' teams in Europe and worldwide, according to which the dancers themselves should specify the types of shoes that will offer them the desired level of comfort in their work.

2. The total quantity of soft flexible ballet shoes covered by the contract is **1050 pairs**. The Contracting Entity may reduce the total order quantity by not more than 10% of the specified quantity.
3. The ballet shoes should meet the following technical requirements:
  - 1) Flexible ballet shoe sizes should include:
    - a) foot length: availability in sizes from 33 to 45 (EU), in intervals of 1 size,
    - b) metatarsal width: at least 3 available width options,
  - 2) binding (elastic or lace) for adjustment of the upper circumference of flexible ballet shoe,
  - 3) inside antiperspirant and antifungal pads,
  - 4) material covering the external part of flexible ballet shoe - linen,
  - 5) material covering the external part of flexible ballet shoe in all models available in the following colors: white, nude, black, pink,
  - 6) sectional leather sole available in every size,
  - 7) machine (wet) washable.
4. If any defects or nonconformities are found in the supplied ballet shoes which are not due to misuse by the artist, or mechanical damage caused without the artist's default, the Contractor shall deliver new fault-free shoes within the specified time, not exceeding 14 days, at the Contractor's expense.
5. Supplies shall be delivered consecutively during the 13-month period following the date of signing the contract. Each order, or part of contract, will be executed on such terms as specified in detail in the form of contract in Attachment 6 to the SIWZ, within the time period offered by the Contractor, however not exceeding 60 days of acceptance of a specific order by the Contractor.

The details concerning order performance are defined in the form of contract in Attachment 7 to the SIWZ.

6. Tenders of Contractors who indicate a longer lead time per order than 60 days, starting at the date of the Contractor's acceptance of the respective order, shall be rejected.
7. The Contractor shall, upon the Contracting Entity's demand, submit a detailed technical description of the offered object of contract, including photos of ballet shoes, to verify that the ballet shoes to be delivered will meet the requirements defined in section 3 (1)-(7) above.

## 8. PRICING FORM

<i>Item</i>	<i>Product name</i>	<i>No. of pairs</i>	<i>Unit price net<sup>x</sup></i> PLN*/EUR*/GBP*	<i>Unit price gross<sup>x</sup></i> PLN*/EUR*/GBP*	<i>Total amount</i> PLN*/EUR*/GBP*
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>3 x 5 = 6</b>
<b>1</b>	<b>Type of flexible ballet shoes</b> <b>Sansha model PRO 1C</b> or equivalent, as per the description presented under section 3 of the Description, sub-sections 1-7  <hr/> <hr/> <i>(brand and model)</i>	<b>1050</b>	_____	_____	_____
				<b>TOTAL:</b>	

<sup>x</sup> if the Contractor checks option (II) in the Form of Tender, section 1, meaning that the selection of the Contractor's proposal will lead to any tax obligation for the Contracting Entity according to the applicable tax on goods and services (VAT) legislation (reverse VAT mechanism), the gross unit price should equal the net unit price

\*check the applicable currency

The Contracting Entity should hereby emphasize the importance of filling in this form carefully.

- I. Due to the circumstances identified in section 1 of the Description of the Object of Contract (the Description), the table above contains trademarks. The Contracting Entity allows tenders for equivalent flexible ballet shoes, i.e. shoes that would comply with the technical requirements defined by the Contracting Entity in section 3 of the Description of the object of contract (above).
- II. In column 2 "*Product name*", fill the blank with the brand and model of the flexible ballet shoes offered by the Contractor.  
The total value (with tax) stated by the Contractor in the Pricing Form should be calculated as follows: no. of pairs - (column 3) should be multiplied by gross unit price (column 5). The total value shall be the Contractor's fee referred to in § 5(1) of the Contract (Attachment 6 to the SIWZ).
- III. Unless the Contractor enters a specific brand or model, they shall be deemed to offer the exact product specified by the Contracting Entity.
- IV. If a tender price is specified in a foreign currency, then for the purpose of comparison of tenders in the 'price' criterion, such price will be translated into PLN at the average rate of exchange of the National Bank of Poland as of the date of publication of the contract notice.
- V. In determining payments for the Contractor for the subsequent supplies, the Contracting Entity shall consider the unit price of the offered model as given in column 5.

**Carry the 'TOTAL' to item 1 of the Form of Tender as the tender (Attachment 2 to the SIWZ). Please fill in this form carefully and double check your calculations.**

\_\_\_\_\_, date: \_\_\_\_\_

\_\_\_\_\_  
*legible signature of Contractor or Contractor's authorized representative(s)*

*(full name/corporate name of the Contractor, address,  
identification according to the type of organization:  
Tax ID / statistical number PESEL / National Court  
Register KRS / Central Registry of Business Activities  
CEIDG*

## QUOTATION

I (we) the undersigned: \_\_\_\_\_

acting for and on behalf of: \_\_\_\_\_

in response to the notice of open tender procedure, case ref. **ZP.260.4.2020**, for the task entitled:

**“Supply of soft flexible ballet shoes for the needs of artists of the Polish National Ballet at Teatr Wielki  
The National Opera”**

announced by Teatr Wielki The National Opera in Warsaw,

present the following proposal.

1. **We offer** to execute the object of contract in the scope covered by the SIWZ for the price of:  
\_\_\_\_\_ PLN\*/EUR\*/GBP\*

*\* specify the currency*

(in words: \_\_\_\_\_)

We hereby inform that the selection of said tender:

**\*(I)** will not lead to any tax obligation for the Contracting Entity under the applicable tax on goods and services (VAT) legislation

**\*(II)** will lead to a tax obligation for the Contracting Entity with regard to the following goods and services:

\_\_\_\_\_  
*(specify name, type)*

with the value of (specify net value without tax) \_\_\_\_\_ PLN\*, another currency  
\_\_\_\_\_\*

**Note**

*If option (I) is checked, the tender **price** should include VAT.*

*If option (II) is checked, the tender price should not include VAT, which should be paid by the Contracting Entity according to the applicable VAT legislation.*

2. **We hereby agree and undertake that we shall** deliver each part of the object of contract within \_\_\_\_\_ days of the Contractor’s acceptance of the respective single order (*not exceeding 60 days*)
3. **We hereby represent** that we have read and understood the SIWZ and we consider ourselves bound by the provisions and rules of proceeding included therein.
4. **We shall consider ourselves** bound by this Tender for the period set in the SIWZ, namely for 30 days after the tenders submission deadline.
5. **We intend to execute the Contract** independently, without any Subcontractors.\*

**We intend to execute the Contract** with Subcontractors.

The portion of contract which I intend to outsource from Subcontractors shall comprise the following, specifying the respective names (business names) of these subcontractors:

Identification of the contract part	Name (company name) of subcontractor

6. **We hereby represent** that we have read the form of contract in Attachment 7 to the SIWZ and if our tender is selected, we hereby agree and undertake to sign the contract on the terms specified therein, at the place and time prescribed by the Contracting Entity.

7. Classification of the Contractor's undertaking\*\*

**I am** a small or medium-sized entrepreneur\*\*:

YES\* / NO\*:

*\*\* This information is required for statistical purposes only*

*Definitions: (OJ L 124 of 20. 05.2003, p. 36).*

- 1) *Micro enterprise: an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.*
- 2) *Small enterprise: an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.*
- 3) *Medium-sized enterprises, enterprises which are neither micro nor small and which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, or an annual balance sheet total not exceeding EUR 43 million.*

*If the Contractor is a micro entrepreneur, check YES.*

8. All notices concerning the present procedure shall be sent to us at:

\_\_\_\_\_

phone no.: \_\_\_\_\_, fax no.: \_\_\_\_\_, e-mail: \_\_\_\_\_

\_\_\_\_\_

9. **This tender** is submitted on \_\_\_\_\_ consecutively numbered pages.

10. **We hereby declare** that we have complied with the reporting obligations prescribed in Article 13 or 14 of GDPR with respect to natural persons whose personal data have been obtained by us directly or indirectly for the purpose of tendering for the award of this public contract\*\*\*.

*\*\*\*If the Contractor does not disclose any personal data other than the data concerning the Contractor directly, or the reporting obligation is not applicable pursuant to Article 13(4) or Article 14(5) of GDPR, the Contractor shall not file the statement (its contents should be deleted/stricken).*

11. **The following Attachments** are enclosed to and incorporated in the present tender:

- 1) \_\_\_\_\_
- 2) \_\_\_\_\_
- 3) \_\_\_\_\_
- 4) \_\_\_\_\_
- 5) \_\_\_\_\_
- 6) \_\_\_\_\_
- 7) \_\_\_\_\_
- 8) \_\_\_\_\_
- 9) \_\_\_\_\_
- 10) \_\_\_\_\_

(\*select if applicable)

\_\_\_\_\_, date: \_\_\_\_\_

\_\_\_\_\_  
*legible signature of Contractor or Contractor's authorized representative(s)*



*(full name/corporate name of the Contractor, address,  
identification according to the type of organization:  
Tax ID / statistical number PESEL / National Court  
Register KRS / Central Registry of Business Activities  
CEIDG*

**STATEMENT  
CONCERNING REASONS SUBSTANTIATING EXCLUSION FROM THE  
PROCEDURE**

**filed pursuant to Article 25a(1) of the Public Procurement Law Act of 29 January 2004 (*Journal of Laws of 2019, item 1843*), hereafter the “Act”**

For the purposes of the procedure for a contract entitled:

**“Supply of soft flexible ballet shoes for the needs of artists of the Polish National Ballet at Teatr Wielki The National Opera”**

organized by Teatr Wielki The National Opera in Warsaw as an open tender, case ref. **ZP.260.4.2020**  
I hereby declare and represent the following:

**I STATEMENTS CONCERNING THE CONTRACTOR**

1. I hereby represent that I am not subject to exclusion from tender proceedings pursuant to Article 24(1)(13)-(22) of the Act.
2. I hereby represent that I am not subject to exclusion from tender proceedings pursuant to Article 24(5) sub-paragraphs (1), (5), (6), (7) of the Act.

\_\_\_\_\_, date: \_\_\_\_\_  
\_\_\_\_\_  
*legible signature of Contractor or Contractor's  
authorized representative(s)*

I hereby represent that certain grounds for exclusion from the procedure exist for me, pursuant to Article \_\_\_\_\_ of the Act  
*(specify the applicable grounds for exclusion among those enumerated in Article 24(1)(13)-(14), (16)-(20), or Article 24(5)(1)-(8) of the Act - Public Procurement Law).*

I further represent that I have undertaken the following remedies with respect to the above specified circumstance, pursuant to Article 24(8) of the Act - Public Procurement Law:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_, date: \_\_\_\_\_  
\_\_\_\_\_  
*legible signature of Contractor or Contractor's  
authorized representative(s)*

## **II STATEMENT OF THE PARTY WHOSE RESOURCES THE CONTRACTOR RELIES ON**

I hereby represent that the following parties whose resources I have relied upon in this procedure:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

*(provide full name/corporate name, address, identification according to the type of organization: Tax ID / statistical number PESEL / National Court Register KRS / Central Registry of Business Activities CEIDG*

they are not subject to exclusion from tender proceedings.

\_\_\_\_\_, date: \_\_\_\_\_

\_\_\_\_\_  
*legible signature of Contractor or Contractor's  
authorized representative(s)*

## **III STATEMENT OF SUBCONTRACTOR OTHER THAN A PARTY WHOSE RESOURCES THE CONTRACTOR RELIES ON**

*NOTE: applicable only when the contracting entity has envisaged the option stipulated in Article 25a(5)(2) of the Act - Public Procurement Law]*

I hereby represent that the following subcontractors:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

*(provide full name/corporate name, address, identification according to the type of organization: Tax ID / statistical number PESEL / National Court Register KRS / Central Registry of Business Activities CEIDG*

they are not subject to exclusion from tender proceedings.

\_\_\_\_\_, date: \_\_\_\_\_

\_\_\_\_\_  
*legible signature of Contractor or Contractor's  
authorized representative(s)*

## **IV STATEMENT CONCERNING THE PROVIDED INFORMATION**

I hereby represent that all the information given in the above statements are valid, updated, true and fair, and that I have presented the information in full awareness of the consequences of misleading the contracting entity in my presentation of such information.

\_\_\_\_\_, date: \_\_\_\_\_

\_\_\_\_\_  
*legible signature of Contractor or Contractor's  
authorized representative(s)*

(full name/corporate name of the Contractor, address,  
identification according to the type of organization:  
Tax ID / statistical number PESEL / National Court  
Register KRS / Central Registry of Business Activities  
CEIDG

**STATEMENT  
OF COMPLIANCE WITH THE REQUIREMENTS TO PARTICIPATE IN THE  
PROCEDURE**

filed pursuant to Article 25a(1) of the Public Procurement Law Act of 29 January 2004 (*Journal of Laws of 2019, item 1843*), hereafter the "Act"

For the purposes of the procedure for a contract entitled:

**"Supply of soft flexible ballet shoes for the needs of artists of the Polish National Ballet at  
Teatr Wielki The National Opera"**

organized by Teatr Wielki The National Opera in Warsaw as an open tender, case ref. **ZP.260.4.2020**,  
I hereby declare and represent the following:

**I STATEMENT CONCERNING THE CONTRACTOR**

I hereby represent that I have complied with the requirements for participation in the procedure as defined by  
the Contracting Entity in:

\_\_\_\_\_ (specify the document and the applicable section of the document setting out the criteria for participation in the procedure).

\_\_\_\_\_, date: \_\_\_\_\_  
\_\_\_\_\_ legible signature of Contractor or Contractor's  
authorized representative(s)

**II INFORMATION ABOUT RELIANCE ON THE CAPACITIES OF OTHER ENTITIES**

I hereby represent that, in order to demonstrate compliance with the criteria of participation in the contract procedure, as specified by the Contracting Entity in \_\_\_\_\_ (specify the document and the applicable section of the document setting out the criteria for participation in the procedure), I am relying on the resources belonging to:

1. \_\_\_\_\_ in the following range: \_\_\_\_\_
2. \_\_\_\_\_ in the following range: \_\_\_\_\_
3. \_\_\_\_\_ in the following range: \_\_\_\_\_

(specify the organization(s) and the relevant scope for each presented organization).

\_\_\_\_\_, date: \_\_\_\_\_

\_\_\_\_\_  
*legible signature of Contractor or Contractor's  
authorized representative(s)*

### **III STATEMENT CONCERNING THE PROVIDED INFORMATION**

I hereby represent that all the information given in the above statements are valid, updated, true and fair, and that I have presented the information in full awareness of the consequences of misleading the contracting entity in my presentation of such information.

\_\_\_\_\_, date: \_\_\_\_\_

\_\_\_\_\_  
*legible signature of Contractor or Contractor's  
authorized representative(s)*

*(full name/corporate name of the Contractor, address,  
identification according to the type of organization:  
Tax ID / statistical number PESEL / National Court  
Register KRS / Central Registry of Business Activities  
CEIDG*

**STATEMENT ON MEMBERSHIP OR NON-  
MEMBERSHIP  
IN THE SAME GROUP OF COMPANIES**

Pursuant to Article 24(11) of the Act, having become aware of the Contractors who have submitted their tenders in the procedure for a contract entitled:

**“Supply of soft flexible ballet shoes for the needs of artists of the Polish National Ballet at  
Teatr Wielki The National Opera”**

as an open tender, case ref. **ZP.260.4.2020**, I hereby represent that:

\*I I am not a member of a group of companies as defined by the Competition and Consumer Protection Act of 16 February 2007 (*Journal of Laws of 2019, item 369, as amended*) together with any other Contractor tendering in the procedure specified above,

\* II I am a member of a group of companies as defined by the Competition and Consumer Protection Act of 16 February 2007 (*Journal of Laws of 2019, item 369, as amended*), together with the Contractor(s) named below who have filed their tenders in the procedure specified above:

- 1) \_\_\_\_\_
- 2) \_\_\_\_\_
- 3) \_\_\_\_\_
- 4) \_\_\_\_\_

Please see below\*/enclosed\* the relevant evidence to support the fact that my relations with other contractors shall not adversely affect fair competition principles in the contract procedure:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Note:**

*For Contractors tendering jointly for the contract, each contractor should present the statement to the extent applicable to them.*

*\* delete or circle as appropriate*

\_\_\_\_\_, date: \_\_\_\_\_

\_\_\_\_\_  
*legible signature of Contractor or Contractor's  
authorized representative(s)*

(full name/corporate name of the Contractor, address, identification according to the type of organization: Tax ID / statistical number PESEL / National Court Register KRS / Central Registry of Business Activities CEIDG)

## LIST OF SUPPLIES

For the purposes of the procedure for a contract entitled:

### “Supply of soft flexible ballet shoes for the needs of artists of the Polish National Ballet at Teatr Wielki The National Opera”

organized by Teatr Wielki The National Opera in Warsaw as an open tender, case ref. **ZP.260.4.2020** we hereby represent that our company has completed the following orders during the period of the last 3 years before the tenders submission date or, if the duration of the company's business is shorter, then during such shorter period:

<b>Object of procurement</b> <i>(please provide information sufficient to determine whether all parts of the criteria specified in Section VIII(3)(1) of the Specification of the Essential Terms of Reference for the Contract (SIWZ) are duly fulfilled)</i>	<b>Contract value - gross</b>	<b>Date completed</b>	<b>Client</b>

The above list should specify at least 1 (one) supply conforming to the description in section VIII(3)(1) of the Specification of the Essential Terms of Reference for the Contract (SIWZ).

Evidence should be enclosed to each completed order presented in the table, demonstrating that the orders were completed as required, specifically letters of reference or other documents issued by the client, and if the Contractor is unable to obtain such documents for a reasonable and objective cause, they shall be replaced by the Contractor's statement to that effect.

\_\_\_\_\_, date: \_\_\_\_\_

\_\_\_\_\_  
*legible signature of Contractor or Contractor's authorized representative(s)*

## Attachment 7 to the Specification of the Essential Terms of Reference – SIWZ

### CONTRACT \_\_\_\_\_/form/

made in Warsaw on this ..... day of....., 2020 by and between:

**Teatr Wielki - The National Opera of Poland**, with its registered seat in Warsaw, Poland, at: 00-950 Warszawa, Plac Teatralny 1, registered in the registry of culture institutions operated by the Minister of Culture and National Heritage with number RIK 47/98, statistical number REGON 013055028, tax ID 525-20-59-432,

hereinafter referred to as the “Contracting Entity”, duly represented herein by:

1. \_\_\_\_\_ – \_\_\_\_\_
2. \_\_\_\_\_ – \_\_\_\_\_

and

\*[Name], a proprietor of a business with the corporate name of \_\_\_\_\_, with its registered seat in \_\_\_\_\_, address: \_\_\_\_\_ (status of entry in the Central Registry and Information of Economic Activities as of the effective date of the Contract: "active")

statistical number REGON \_\_\_\_\_ tax ID \_\_\_\_\_,

hereinafter referred to as the “Contractor”

\*operating jointly as a civil law partnership with a business name \_\_\_\_\_, with its registered seat in \_\_\_\_\_, address: \_\_\_\_\_, statistical number REGON: \_\_\_\_\_, tax ID: \_\_\_\_\_

hereinafter referred to as the “Contractor”

\* [Company name] with its registered seat in \_\_\_\_\_, registration files held by the District Court \_\_\_\_\_, with National Court Register number KRS: \_\_\_\_\_,

statistical number REGON: \_\_\_\_\_, tax ID: \_\_\_\_\_,

share capital in the amount of \_\_\_\_\_, paid up at \_\_\_\_\_\*,

duly represented herein by:

- \_\_\_\_\_ - \_\_\_\_\_  
\_\_\_\_\_ - \_\_\_\_\_,

hereinafter referred to as the “Contractor”

who shall be hereinafter jointly referred to as the Parties and each of them separately as a Party.

*\*choose the right option according to the form of the Contractor's business. If the Contractor is represented by a proxy, refer to a power of attorney document. Contractors operating as a civil law partnership should provide data of all partners and data of the partnership.*

This Contract was signed pursuant to an open public procedure under Article 10(1) of the Act of 29 January 2004 - Public Procurement Law (*consolidated text: Journal of Laws of 2019, item 1843*), hereafter the "Act".

### § 1

1. The object of contract is the subsequent supply of soft (flexible) ballet shoes, brand: \_\_\_\_\_, model: \_\_\_\_\_ hereinafter referred to as the “ballet shoes”, in a total quantity of **1050 pairs**, designed for female and male dancers of the Polish National Ballet of Teatr Wielki The National Opera, as per the description given in Attachment 1 to Specification of the Essential Terms of Reference for the Contract (hereafter the SIWZ) and the pricing form submitted by the Contractor together with the tender.
2. The quantity of ballet shoes as stated in sub-clause 1 above is set as the target limit. The Contracting Entity shall deliver the ballet shoes in consecutive lots, according to the Contracting Entity's current needs, up to the maximum value of the Contractor's fee as set in § 5(1).
3. The Contracting Entity may reduce the total order quantity by not more than 10% of the specified quantity.

### § 2

1. The Contractor shall deliver the object of contract in accordance with the description in the SIWZ and the Contractor's tender, as factory new, high quality items, conforming to health & safety requirements, approved for market trade.
2. Before commencement of execution of the first delivery, on the date agreed by the Parties, the Contractor's representative shall deliver, at the Contractor's expense, the ballet shoes, sizes from 33 to 45 at 1 size intervals (EU), for trying on and selection by dancers to the Contracting Entity's place of business, on the date agreed by the Parties, 5 days before the delivery date.

### § 3

1. Supplies of the object of contract referred to in § 1 shall be delivered consecutively, during the period of 13 months following the effective date of the Contract, i.e. by \_\_\_\_\_, on the basis of the Contracting Entity's purchase orders in writing, which shall be given to the Contractor to fax no. \_\_\_\_\_ or e-mail: \_\_\_\_\_ the details of the quantities and sizes of ballet shoes sized 33 to 45 (EU), in 1 size intervals. The Contractor shall promptly confirm receipt of any such individual order by fax or e-mail. The date of confirmation shall be the date of the Contractor's acceptance of the specific order and the commencement of the delivery lead time specified in the Contractor's tender and indicated under sub-clause 2 below.
2. The Contractor shall deliver the ballet shoes within \_\_\_\_\_ days of acceptance of the specific order by the Contractor.
3. Every order in writing shall comprise the following information concerning the ordered ballet shoes:
  - 1) no. of pairs,
  - 2) sizes;
  - 3) colour,
  - 4) insole width,
  - 5) delivery time, as agreed by phone and confirmed by fax with the Contracting Entity, which shall not exceed the time limit specified in the tender.
4. Lead times for delivery of orders shall be agreed by the Contractor with the Contracting Entity within 3 days of receiving the purchase order by phone and confirmed thereafter by fax or e-mail, however not exceeding the time limit specified in the tender.
5. The Contractor shall deliver the object of contract by the Contractor's transport and at the Contractor's expense, to the Contracting Entity's registered office.
6. Qualitative and quantitative acceptance of each order shall take place on the Contracting Entity's premises. If any nonconformity of the delivered items with the Contracting Entity's requirements or in the purchase order is discovered during acceptance, or if the delivered items are found defective, the Contractor shall replace the nonconforming or defective items with factory new, fault-free items, within the time specified by the Contracting Entity for that purpose, not exceeding 14 days, at the Contractor's expense.

### § 4

1. The person responsible for Contract execution on behalf of the Contracting Entity is \_\_\_\_\_, e-mail: \_\_\_\_\_ and \_\_\_\_\_, or a different individual nominated in writing.
2. The person responsible for Contract execution on behalf of the Contractor is \_\_\_\_\_, fax no.: \_\_\_\_\_, e-mail: \_\_\_\_\_, or a different individual nominated in writing.

### § 5

1. The Contractor's fee for execution of the object of contract specified in § 1 throughout the term of this Contract shall not exceed the amount of (*gross - VAT included / net - VAT not included*) \*: \_\_\_\_\_ PLN/EUR/GBP (in words: \_\_\_\_\_).
2. The unit price for supply of one pair of ballet shoes, colors: white, nude, black, pink, shall be (*gross - VAT included / net - VAT not included*) \*: \_\_\_\_\_ PLN/ EUR/GBP (in words: \_\_\_\_\_).

\* according to whether or not the selection of the Contractor's tender leads to any tax obligation for the Contracting Entity under the applicable tax on goods and services (VAT) legislation.

3. Payments shall be effected on the basis of the Contractor's invoice.  
The Parties shall accept payments in EUR or GBP. In such case, the PLN amount shall be translated into EUR or GBP at the average rate published by the National Bank of Poland for EUR or GBP as of the



last working day before the Contractor's invoice date.

Should the Contractor apply a wrong foreign exchange rate, the Contracting Entity shall call the Contractor to adjust the invoice amount accordingly and shall make the payment at the rate referred to in sub-clause 3 above. The 14-day time for payment as referred to in sub-clause 4 of this clause shall then commence as at the date of delivery of the adjusted invoice.

4. Payments for subsequent lots of supplies of the object of contract shall be made by bank transfer for the completed delivery, to the bank account specified by the Contractor, within 14 days after the date of receiving the invoice.
5. VAT invoices shall be issued on the basis of acceptance of each supply without qualification by the person identified in § 4(1). Acceptance can be confirmed via e-mail within 3 working days of receiving the goods, to the following address: \_\_\_\_\_
6. Fees for the consecutive lots of supplies referred to in § 5(4) shall be calculated on the basis of the unit price specified in the Contractor's tender and in sub-clause 2 above.
7. The Contractor shall receive payments only for goods actually delivered and accepted within a given purchase order.

## § 6

1. The Contractor shall pay the following liquidated damages to the Contracting Entity:
  - 1) for late delivery of a single purchase order, at 0.5% of total contract fee for each whole or partial day of delay,
  - 2) for late delivery of an item free of any defects discovered during acceptance, or if the Contracting Entity reports a fault or defect mentioned in section 4 of Attachment 1 to the Specification - at 0.5% of the total fee for the single purchase order comprising the given defective product for each full or partial day of delay, beginning on the first day following the deadline set for remedying the default,
  - 3) in the event of termination of Contract without notice for reasons attributable to the Contractor - at 25 % of the Contractor's fee mentioned in § 5(1).
2. The Contracting Entity may pursue indemnity in excess of the liquidated damages prescribed, up to the value of loss actually incurred.
3. Notwithstanding the provisions of sub-clauses 1 and 2 above, the Contracting Entity shall be entitled to terminate the Contract without notice in the following cases:
  - 1) delay in purchase order delivery in excess of 60 days,
  - 2) late delivery of an item free of any defects discovered during acceptance, or if the Contracting Entity reports a fault or defect mentioned in section 4 of Attachment 1 to the SIWZ, exceeding 14 days,
  - 3) delivery of more than 30 % nonconforming items within a single shipment.

## § 7

1. Any amendment to this Contract shall be executed as an Annex in writing to take effect, without any infringement of Article 144 of the Act.
2. According to Article 144(1)(1) of the Act, the Contracting Entity shall be entitled to introduce significant changes to the terms and conditions of the final contract as compared to the contents of tender, in any of the following circumstances:
  - 1) any change of mandatory legislation to the extent affecting execution of the object of contract or obligations of the parties,
  - 2) if the entire amount of the Contractor's fee is not used during the term of the Contract, the Parties may sign an annex to extend the term of the Contract until the Contract price is exhausted,
  - 3) in the event of a force majeure occurrence, meaning an external occurrence beyond either Party's control, which could not be foreseen, avoided or prevented by the Parties before signing the contract, despite acting with due diligence (such as fire, flooding, other natural disasters, radiation or contamination, civil unrest, strike, terrorist attack, war, sudden weather occurrences, sudden power supply failures), to the extent affecting execution of the object of contract or obligations of the Parties (including the lead time for contract execution),
  - 4) if any inconsistency or ambiguity occurs with regard to the construction of words and expressions used in this Contract which cannot be remedied otherwise, and the change gives the option to remedy the inconsistency and to clarify the Contract so that the terms thereof are construed by the Parties simultaneously.
3. If any change occurs during the contract term beyond 12 months regarding:

- 1) tax on goods and services (VAT) rate,
  - 2) minimum salary or the minimum wage per hour, as determined under the Minimum Salary Act of 10 October 2002 (Journal of Laws of 2018, item 2177, as amended ),
  - 3) rules of applicability of the social security or health insurance system or rate of social security or health insurance payments,
  - 4) rules of collection and rates of payments to employee capital plans referred to in the Employee Capital Plans Act of 4 October 2018 (Journal of Laws of 2018, item 2215, as amended), relevant to the costs of performance of the contract by the Contractor - the rules of modifying the contractor's fee shall apply as stated in sections 4 through 10 below.
4. Not later than 30 days following entry into force of the legislation implementing the changes referred to in section 3 above, the Contractor may request the Contracting Entity in writing for modifying the contract with regard to the amount of the fee, with justification and documents necessary for the Contracting Entity to determine whether the changes affect the costs of the Contractor's performance hereunder and to what extent the variations of such costs justify the change of the Contractor's fee prescribed in the Contract, particularly:
    - 1) a detailed calculation of the proposed amended value of the Contractor's fee, and demonstration of that proposal being adequate to the change of costs of contract performance by the Contractor,
    - 2) the rules of cost calculations adopted by the Contractor to determine the costs of contract performance and assumptions concerning the values of prior and future contract execution costs, with documents to verify the accuracy of such assumptions, such as employment agreements or documents to verify registration of personnel under the social security/insurance system.
  5. Within 30 days of receiving a request such as referred to in section 4, the Contracting Entity shall be entitled to request that the Contractor supplement his request with additional clarifications, information and documents (e.g. demand the original documents for review, or copies certified for authenticity).
  6. Within 30 days of receiving a complete request, the Contracting Entity shall reply in writing. The effective date of issuance of the Contracting Entity's opinion shall be the date of sending the notice to the Contractor's address for service of notices.
  7. Not later than 30 days after the entry into force of the legislation implementing the changes referred to in section 3, the Contracting Entity may give the Contractor a request in writing for amending the Contract. Such a request should at least specify a proposal for amending the contract with regard to the amount of the fee and with reference to the amended legislation.
  8. Before sending the request referred to in section 7 above, the Contracting Entity may ask the Contractor for information, clarification or documents (original documents for review, or copies certified for authenticity) as necessary for the Contracting Entity to verify whether the changes mentioned in section 3 affect the costs of the Contractor's performance and to what extent these changes of costs justify the change of the costs of fee. The types and scope of such information shall be determined by the Contracting Entity. The provisions of sections 5-6 shall apply accordingly, save that the Contractor shall issue an opinion in writing in each specific case, within 30 days of receiving the Contracting Entity's request.
  9. If the changes referred to in section 3 are found to justify the change of the Contractor's fee through the procedure mentioned in sections 4 through 8 above, the Parties shall agree on an annex to the contract and shall execute such annex accordingly, as per the rules of modifying the fee to correspond with the rate of variation of costs of contract execution caused by the reasons specified in section 3.
  10. Changes in the Contract that do not require an annex:
    - 1) change of names, registered addresses of the parties to the Contract, bank account numbers, other identification information;
    - 2) replacement of the responsible contact persons in charge of monitoring the Contract performance.

## § 8

1. With regard to all matters not covered by this Contract, respective Polish laws shall apply, particularly the provisions of the Act and the Polish Civil Code.
2. Contractor shall not be allowed to assign any of their rights and obligations hereunder to a third party.
3. All disputes that may arise in the course of execution of this Contract shall be settled without undue delay through negotiations between the Parties. If the Parties are unable to reach an agreement, such disputes shall be resolved by a court of competent jurisdiction in the territory of the Contracting Entity's registered office.

4. This Contract has been drawn up in the Polish language and in the English language. In the event of any inconsistency between the two language version, the Polish version shall prevail.
5. This Contract has been executed in two identical counterparts, one for the Contracting Entity and one for the Contractor.

The following Schedules are incorporated in this Contract:

1. Attachment 1 to the Specification of the Essential Terms of Reference for the Contract (SIWZ)  
Description of the Object of Contract – Pricing form
2. Contractor's Bid

**CONTRACTING ENTITY**

**CONTRACTORS**