

**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 pointe shoes for the needs of artists of the Polish National
Ballet at Teatr Wielki - The National Opera in Warsaw**

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

Case ref. **ZP.260.7.2020**

Approved:

Warsaw, July 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 as amended*), 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 open on working days, from 8:00 a.m. - 3:00 p.m.

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 pointe ballet shoes for the needs of professional female dancers of the Polish National Ballet at Teatr Wielki - The National Opera in Warsaw, total quantity: **895** pairs.
2. The delivery set comprises:
 - 1) Freed pointe shoes or equivalent – **574** pairs.
 - 2) Bloch pointe shoes or equivalent – **98** pairs.
 - 3) Sansha pointe shoes or equivalent – **60** pairs.
 - 4) Gaynor Minden pointe shoes or equivalent – **163** pairs.
3. 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.
4. 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 complied with if the Contractor can prove that during the last 3 years preceding the lapse of the time limit for submission of tenders (and if the overall duration of the Contractor's business activities is shorter, then during such shorter period), the Contractor completed at least one supply of pointe shoes for each of the following *four brands*:

- a) **Freed** or equivalent at a minimum quantity of **280** pairs, supply value not less than PLN **67.127,00** (before tax);
- b) **Bloch** or equivalent at a minimum quantity of **49** pairs, supply value not less than PLN **10.196,00** (before tax);
- c) **Sansha** or equivalent at a minimum quantity of **30** pairs, supply value not less than PLN **5.157,00** (before tax);
- d) **Gaynor Minden** or equivalent at a minimum quantity of **81** pairs, supply value not less than PLN **35.540,00** (before tax).

The Contracting Entity shall allow a single supply comprising a total of two, three, or all the types of pointe shoes provided that the respective requirement concerning the quantity and value of supply is duly fulfilled for each type of pointe shoes.

In case of Contractors tendering jointly for the award of contract, this requirement can be fulfilled by all the Contractors jointly, or by at least one of the Contractors.

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, sections 3-8 – *Description of the Object of Procurement*.
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 201220, item 1041*), 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, 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 pointe shoes for the artists
of the Polish National Ballet at Teatr Wielki - The National Opera",
case ref. ZP.260.7.2020
Do not open before 2020-07-22, 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 **2020-07-22, 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 **2020-07-22 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. Moliere 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 2020, item 1076*), 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:

1. **Price (C)** **60%**
2. **Time limit for execution of single orders under the contract (T)** **40%**

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 single orders under the contract (T)

In the assessment of tenders for this criterion, the delivery times following the placement of orders will be considered for each of the four brands of pointe shoes specified by the Contractor in section 2(1)-(4) of the Form of Tender (Attachment 2 to the SIWZ),

In this criterion, a maximum of 100 points can be scored, 25 points for each of the four sub-criteria concerning delivery times of the specific brands of pointe shoes as presented in the table below, which also presents a description of scoring for each of the sub-criteria:

Item	Description of sub-criterion	Maximum number of points available	Scoring method
1	Freed pointe shoes T₁ Delivery time, after the purchase order date	25	For delivery times of 120 days or less (as of the individual purchase order date for the specified model): 100 points, for longer times (not exceeding 280 days) proportionally less, according to the following formula: Score (T1) = $\frac{\text{shortest delivery time (days, up to 120 days)}}{\text{delivery time of the examined tender (days)}} \times 25$
2	Bloch pointe shoes T₂ Delivery time, after the purchase order date	25	For delivery times of 30 days or less (as of the individual purchase order date for the specified model): 100 points, for longer times (not exceeding 60 days) proportionally less, according to the following formula: Score (T2) = $\frac{\text{shortest delivery time (days, up to 30 days)}}{\text{delivery time of the examined tender (days)}} \times 25$
3	Sansha pointe shoes T₃ Delivery time, after the purchase order date	25	For delivery times of 30 days or less (as of the individual purchase order date for the specified model): 100 points, for longer times (not exceeding 60 days) proportionally less, according to the following formula: Score (T3) = $\frac{\text{shortest delivery time (days, up to 30 days)}}{\text{delivery time of the examined tender (days)}} \times 25$
4	Gaynor Minden pointe shoes. T₄ Delivery time, after the purchase order date	25	For delivery times of 30 days or less (as of the individual purchase order date for the specified model): 100 points, for longer times (not exceeding 60 days) proportionally less, according to the following formula: Score (T4) = $\frac{\text{shortest delivery time (days, up to 30 days)}}{\text{delivery time of the examined tender (days)}} \times 25$

$$T = T1 + T2 + T3 + T4$$

Method of calculating the final score for a tender:

$$Ko = C \times 60\% + T \times 40\%$$

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. Tendents 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@teatrwielski.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
- No. 1A 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

DESCRIPTION OF THE OBJECT OF CONTRACT

“Supply of pointe shoes for the artists of the Polish National Ballet at Teatr Wielki The National Opera”

Case ref. **ZP.260.3.2020**

1. The object of the contract consists of supply of pointe shoes for professional ballet dancers of the Polish National Ballet. Because pointe shoes constitute a personal and unique 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 ballet shoes would most closely correspond to the artists' expectations. The ballet dancers' team decided to choose pointe shoes of the following four brands: **Freed, Bloch, Sansha, Gaynor Minden**.

In accordance with Article 29 (3), the Contracting Entity shall allow equivalent tenders.

The choice of the above mentioned brands of pointe shoes is due to the assumption that every ballet artist should be given the opportunity to choose such pointe 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. Pointe 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, with enormous effort and fatigue requires 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 pointe shoes that will offer them the desired level of comfort in their work.

2. The total quantity of pointe shoes covered by the contract is **895 pairs**. The Contracting Entity may reduce the total order quantity by not more than 10% of the specified quantity.
3. Pointe shoe sizes should include:
 - 1) foot sizes from 33 to 41 European, in intervals of 0.5 size for Freed, Bloch, Gaynor Minden models, or in intervals of 1 size for Sansha models,
 - 2) metatarsal width: at least 3 available width options,
 - 3) heel height: at least 3 available height options,
4. Regarding the pointe shoe fabrication method, the following options should be available:
 - 1) pointe shoe depth (at least 2 different depth values available in every vamp size),
 - 2) option to choose the vamp shape - U-shaped and V-shaped vamps available in every size,
 - 3) option to choose vamp box hardness - 3 different hardness values available for each size,
 - 4) option to choose platform shape (flat or rounded) in every size,
 - 5) option to choose the sole bending point under the heel or arch, according to individual anatomical build of the foot,
 - 6) option to chose insole hardness.
5. Every pair should have:
 - 1) a leather sole available in every size, with the exception of Recital by Sansha with leather-like sole,,
 - 2) binding (elastic or lace) for adjustment of the upper circumference of pointe shoe,

- 3) inside antiperspirant and antifungal pads.
6. Accessories for pointe shoes: drawstrings and additional stabilization - elastic or lace should be provided within the scope of the contract.
7. External pointe shoe surface finish fabric - glossy cotton available in each size.
8. Colour of pointe shoe finishing fabric: pink.
9. Supplies shall be shipped in consecutive batches during a 13-month period following the effective date of signing the contract, with lead time, after the purchase order date, according to the time offered by the Contractor in the tender (section 2) and on such terms as specified in detail in the form of contract enclosed to the Specification of the Essential Terms of Reference as Attachment 7.
10. If necessary, before commencement of execution of the first delivery, on the date agreed by the Parties, the Contractor's representative shall deliver all but Custom Made models of pointe shoes to the Contracting Entity's place of business, at the Contractor's expense (for Freed brand: 6 models, 0.5 size intervals; Bloch brand: 15 models, 0.5 size intervals; Sansha brand: 6 models, 1 size intervals; Gaynoir Minden brand: 1 models, 0.5 size intervals; sizes from 33 to 41 - EU), for trying on by dancers, and shall take measure of the dancer's feet for Custom Made pointes, brand: Freed, Bloch, Gaynor Minden.
11. After supplying the first lot of pointe shoes to the Contracting Entity, the Contractor shall be able to make adjustments to pointe shoe sizes, within 30 days of written notice of the need of such adjustments.
12. If any defects or nonconformities are found in the supplied pointe shoes which are not due to misuse by the dancer, or mechanical damage caused without the dancer's default, the Contractor shall deliver new fault-free shoes within the specified time, at the Contractor's expense.

Attachment 1A to SIWZ *This Attachment shall be submitted together with the tender*

PRICING FORM

<i>Item</i>	Product name	Unit price Gross (VAT included) x PLN*/EUR*/CHF* GBP*/USD* ____**	No. of pairs of given type	Maximum unit price Gross (VAT included)^x PLN*/EUR*/CHF* GBP*/USD* ____**	Total amount Gross (VAT included)^x PLN*/EUR*/CHF* GBP*/USD* ____**																																
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PRICING FORM

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3	<p>Type of shoes: Pointe shoes, brand: Sansha or equivalent, <i>according to the description presented in Attachment 1a to the SIWZ, sections 3 through 8</i></p> <table border="1"> <tr> <td>Required model:</td> <td>Offered model:</td> </tr> <tr> <td>1. Debutante</td> <td>1.</td> </tr> <tr> <td>2. Recital - wide platform</td> <td>2.</td> </tr> <tr> <td>3. Lyrice - V vamp</td> <td>3.</td> </tr> <tr> <td>4. Etudes - square box, medium shank</td> <td>4.</td> </tr> <tr> <td>5. Ovation 3/4 - Professional 3/4 insole</td> <td>5.</td> </tr> <tr> <td>6. Legende - Professional 3/4 insole</td> <td>6.</td> </tr> </table> <p>..... <i>name / type / manufacturer</i></p>	Required model:	Offered model:	1. Debutante	1.	2. Recital - wide platform	2.	3. Lyrice - V vamp	3.	4. Etudes - square box, medium shank	4.	5. Ovation 3/4 - Professional 3/4 insole	5.	6. Legende - Professional 3/4 insole	6.	60		
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Required model:	Offered model:																	
1. Standard - with leather tips	1.																	
2. Custom made	2.																	
TOTAL																		

^x 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 prices will equal the net prices.

*check or specify the applicable currency

- 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 pointe shoes, i.e. shoes of at least equivalent technical performance to those specified by the Contracting Entity (detailed information: see sections 3 - 8 of the Description of the Object of Contract).
- II. In column 2 "Name", fill the blanks with the brand/ type/ manufacturer, model of pointe shoes offered by the Contractor.

- III. The pointe shoes offered by the Contractor should have parameters corresponding to the technical parameters specified by the Contracting Entity (sections 3 - 8 of the Description of the Object of Contract).
- IV. Unless the Contractor enters a specific name, they shall be deemed to offer the exact product specified by the Contracting Entity (sections 3 - 8 of the Description above).
- V. In column 5 "Maximum unit price for given model", specify the maximum unit price of that model of the prices of all models of the given type from column 3.
- VI. The total gross value (with tax) stated by the Contractor in the Pricing Form should be calculated as follows: quantity of the given type (pair) - (column 4) should be multiplied by the maximum gross unit price for the respective model (column 5). The gross total value with tax, together with the unit price with tax, shall be the Contractor's fee referred to in § 4(1) of the Contract (Attachment 7 to the SIWZ).
- VII. If the tender price is given in a different currency than PLN, e.g. EUR or GBP, specify the currency in the blank in column 3, 5, 6. 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.
- VIII. In determining payments for the Contractor for the subsequent supplies, the Contracting Entity shall consider the unit price of the ordered model (column 3).

**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.260.7.2020**, for the task entitled:

**“Supply of pointe shoes for the 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** to deliver the pointe shoes, upon receiving a purchase order, within*:
- 1) Freed pointe shoes or equivalent _____ days (maximum 280 days)
 - 2) Bloch pointe shoes or equivalent _____ days (maximum 60 days)
 - 3) Sansha pointe shoes or equivalent _____ days (maximum 60 days)
 - 4) Gaynor Minder pointe shoes or equivalent _____ days (maximum 60 days)
- * For each brand of pointe shoes, the Contractor should specify a single time for delivery, accounting for the respective time limit given in brackets
If the time given by the Contractor exceeds the limit given in bracket, the Contractor's tender shall be rejected.*
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 as amended*), hereafter the “Act”

For the purposes of the procedure for a contract entitled:

**“Supply of pointe shoes for the 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.260.7.2020**
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 as amended*), hereafter the “Act”

For the purposes of the procedure for a contract entitled:

**“Supply of pointe shoes for the 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.260.7.2020**,
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 pointe shoes for the artists of the Polish National Ballet at
Teatr Wielki The National Opera”**

as an open tender, case ref. **ZP.260.7.2020**, 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 2020, item 1076*) 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 2020, item 1076*), 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 pointe shoes for the 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.260.7.2020** 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:

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

The list presented above should include at least one supply for each of the four brands specified by the Contracting Entity in Section VIII(3)(1)(a)-(d) of the Specification of the Essential Terms of Reference for the Contract (SIWZ).

The Contracting Entity shall allow a single supply comprising a total of two, three, or all the types of pointe shoes provided that the respective requirement concerning the quantity and value of supply is duly fulfilled for each type of pointe shoes, as specified in Section VIII(3)(1)(a) - (d) of the SIWZ, respectively.

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 as amended*), hereafter the "Act".

§ 1

1. The object of contract is the supply of **895 pairs** of pointe shoes designed for professional classical ballet dancers of the Polish National Ballet at Teatr Wielki - The National Opera, as per the description presented in Attachment 1 to the Specification of the Essential Terms of Reference (SIWZ; the Specification).
2. The Contracting Entity may reduce the total order quantity by not more than 10% of the specified quantity.
3. The Contractor hereby agrees and undertakes without objections to execute the object of contract to the extent conforming to the Attachment referred to in sub-clause 1 above and with the Contractor's tender, which shall be incorporated in this Contract as integral parts thereof.
4. The scope of supply, technical requirements, requirements for materials, quality and quantity are detailed

in the documents referred to in sub-clauses 1 and 3 above.

5. 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

1. The Contractor shall execute the Contract within the time limits stipulated in sub-clauses 4 and 5 below.
2. If necessary, before commencement of execution of the first delivery, on the date agreed by the Parties, the Contractor's representative shall deliver all but Custom Made models of pointe shoes to the Contracting Entity's place of business, at the Contractor's expense (for Freed brand: 6 models, 0.5 size intervals; Bloch brand: 15 models, 0.5 size intervals; Sansha brand: 6 models, 1 size intervals; Gaynor Minden brand: 1 models, 0.5 size intervals; sizes from 33 to 41 - EU), for trying on by dancers, and shall take measure of the dancer's feet for Custom Made pointes, brand: Freed, Bloch, Gaynor Minden.
3. The Parties shall e-mail the date of Contractor's representative arrival for pointe shoes being tried on by dancers, to the Contracting Entity's e-mail at and to the Contractor's e-mail.
4. Supplies of the object of contract referred to in § 1 shall be delivered consecutively, using the Contractor's own transport, on the Contractor's expense, 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: _____, specifying the details of band, model, size and quantity of pointe shoes.
5. The Contractor shall deliver the pointe shoes within the following time limits, expressed as days after the date of placing the purchase order:
 - I. **Freed pointe shoes** (or equivalent) _____ days
 - II. **Bloch pointe shoes** (or equivalent) _____ days
 - III. **Sansha pointe shoes** (or equivalent) _____ days
 - IV. **Gaynor Minden pointe shoes** (or equivalent) _____ days
6. The Contractor shall notify the Contracting Entity of the delivery date via e-mail 3 days in advance.
7. Qualitative and quantitative acceptance of each consecutive stage of supply shall take place on the Contracting Entity's premises on the date of delivery.
8. 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, on the Contractor's expense.

§ 3

1. The person responsible for Contract execution on behalf of the Contracting Entity is _____ telephone: +48 (22) 69 20 ____ e-mail: _____ and _____ phone no.: _____ e-mail: _____, or a different individual nominated in writing.
2. The person responsible for Contract execution on behalf of the Contractor is _____ telephone: _____ e-mail: _____ fax: _____, or a different individual nominated in writing.

§ 4

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/EURO/GBP (in words: _____).
2. The unit prices with tax for execution of the object of contract in accordance with the SIWZ and the

submitted tender shall be as follows, for each model of the given pointe shoe brand, respectively: (*gross - VAT included/net - VAT not included*)*:

I. Freed pointe shoes (or equivalent) – 574 pairs, model:

- 1) **SBTD** -1.8 mm *Innensohle / insole / semelle* (or equivalent) _____ PLN/EUR/GBP (in words: _____)
- 2) **SBTWB**-2.5 mm *Innensohle / insole / semelle* (or equivalent) _____ PLN/EUR/GBP (in words: _____)
- 3) **SBTCP** Classic Pro (or equivalent) _____ PLN/EUR/GBP (in words: _____)
- 4) **Studio I** - *standard or hard insole* (or equivalent) _____ PLN/EUR/GBP (in words: _____)
- 5) **Studio II** - *standard or hard insole* (or equivalent) _____ PLN/EUR/GBP (in words: _____)
- 6) **Studio Professional** - *V- or round cut vamp* (or equivalent) _____ PLN/EUR/GBP (in words: _____)
- 7) **Custom Made** (or equivalent) _____ PLN/EUR/GBP (in words: _____)

V. Bloch (or equivalent) – 98 pairs, model:

- 1) **Amelie Soft** (or equivalent) _____ PLN/EUR/GBP (in words: _____)
- 2) **Amelie** (or equivalent) _____ PLN/EUR/GBP (in words: _____)
- 3) **Alpha** (or equivalent) _____ PLN/EUR/GBP (in words: _____)
- 4) **Aspiration** (or equivalent) _____ PLN/EUR/GBP (in words: _____)
- 5) **Axiom** (or equivalent) _____ PLN/EUR/GBP (in words: _____)
- 6) **Sonata** (or equivalent) _____ PLN/EUR/GBP (in words: _____)
- 7) **Serenade** - *standard & strong* (or equivalent) _____ PLN/EUR/GBP (in words: _____)
- 8) **Suprima** - *standard & strong* (or equivalent) _____ PLN/EUR/GBP (in words: _____)
- 9) **Demi Pointe** (or equivalent) _____ PLN/EUR/GBP (in words: _____)
- 10) **Triomphe** (or equivalent) _____ PLN/EUR/GBP (in words: _____)
- 11) **Hannah** (or equivalent) _____ PLN/EUR/GBP (in words: _____)
- 12) **Balance European** (or equivalent) _____ PLN/EUR/GBP (in words: _____)
- 13) **B-Morph** (or equivalent) _____ PLN/EUR/GBP (in words: _____)
- 14) **Heritage** (or equivalent) _____ PLN/EUR/GBP (in words: _____)
- 15) **Axis TMT** (*thermoMorphotechnologie*) (or equivalent) _____ PLN/EUR/GBP (in words: _____)
- 16) **Custom made** (or equivalent) _____ PLN/EUR/GBP (in words: _____)

III. Sansha pointe shoes (or equivalent) – 60 pairs, model:

- 1) **Debutante** (or equivalent) _____ PLN/EUR/GBP (in words: _____)
- 2) **Recital** - *wide platform* (or equivalent) _____ PLN/EUR/GBP (in words: _____)
- 3) **Lyrice** - *V vamp* (or equivalent) _____ PLN/EUR/GBP (in words: _____)
- 4) **Etudes** - *square box, medium shank* (or equivalent) _____ PLN/EUR/GBP (in words: _____)
- 5) **Ovation 3/4** - *Professional 3/4 insole* (or equivalent) _____ PLN/EUR/GBP (in words: _____)
- 6) **Legende** - *Professional 3/4 insole* (or equivalent) _____ PLN/EUR/GBP (in words: _____)

IV. Gaynor Minden pointe shoes (or equivalent) – 163 pairs, model:

- 1) **Standard** – *with leather tips* (or equivalent) _____ PLN/EUR/GBP (in words: _____)
- 2) **Custom model** (or equivalent) _____ 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.
4. 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 4 above.

The 14-day time for payment as referred to in sub-clause 5 of this clause shall then commence as at the date of delivery of the adjusted invoice.

5. 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.
6. VAT invoices shall be issued on the basis of acceptance of each supply within the given purchase order without qualification by the person identified in § 3(1). Acceptance can be confirmed via e-mail within 3 working days of receiving the goods, to the following address:
_____.
7. The Contractor's unit price stated in the bid and in sub-clause 2 above shall remain fixed throughout the term of Contract, notwithstanding § 6(3) of the Contract.
8. Payment for each delivery shall be charged at the unit price of the pointe shoes model of the given type as specified in the Contractor's bid and in sub-clause 2 above.
9. The Contractor shall receive payments only for goods actually delivered and accepted within a given purchase order.

§ 5

1. The Contractor shall pay the following liquidated damages to the Contracting Entity:
 - 1) for late delivery of the object of contract as specified in the purchase order, at 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 12 of Attachment 1 to the Specification - at 5% of the total fee for the 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 or delivery of a new fault-free item,
 - 3) in the event of termination of Contract without notice for reasons attributable to the Contractor - at 25 % of the Contractor's fee referred to in § 4(1) of the Contract.
2. The Contracting Entity hereby declares that in the event of a 14-day delay in the supply of the object of Contract within the agreed time periods, the Contracting Entity shall be entitled to terminate the Contract in respect of that part of procurement. In such case, the Contractor shall not be entitled to any remuneration and the Contracting Entity shall be entitled to charge the Contractor with liquidated damages at 25% of the fee payable for the outstanding part of procurement.
3. The Contractor Entity may pursue indemnity in excess of the liquidated damages prescribed, up to the value of loss actually incurred.
4. The Contracting Entity reserves the right to deduct the liquidated damages receivable by the Contracting Entity from the fee payable to the Contractor.
5. Notwithstanding the provisions of sub-clauses 1 and 2 above, the Contracting Entity shall be entitled to terminate the Contract without notice and without any prior call to remedy a default in the following cases:
 - 1) delay in purchase order delivery in excess of 45 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 11 of Attachment 1 to the Specification, exceeding 30 days,
 - 3) delivery of more than 30% nonconforming items within a single shipment.

§ 6

1. Any variations and amendments to the present Contract may only be effected in writing, notwithstanding 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) in the event of occurrence of any other unforeseeable legal, economic or technical circumstance that could not be foreseen at the time of signing the contract, for which no party shall be responsible, preventing adequate performance of the Contract in accordance with the SIWZ, the final deadline for contract execution may vary,
 - 2) in the event of reasonable necessity to vary the quantities of the specific types of products enumerated in the contract after signing, such modification shall be allowed, provided that:
 - a) the change refers only to the quantities of product ranges enumerated in the contract (less of some for more of other types),
 - b) the change does not vary the Contractor's maximum fee as stated in § 4(1) of the Contract,
 - c) the change does not involve introduction of any product ranges other than those enumerated in the SIWZ and the Contract.
 - 3) 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, where the unit prices set in the relevant Schedule to the Contract shall not vary.
3. If any change occurs during the contract term 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 amounts of payments to employee equity plans referred to in the Employee Equity Plans Act of 4 October 2018 (*Journal of Laws of 2018, item 2215, as amended*), and the changes affect the costs of execution of the contract by the Contractor - the rules of modifying the contractor's fee shall apply as stated in sections 4 through 9 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.

§ 7

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
2. Contractor's Bid

CONTRACTING ENTITY

CONTRACTORS