

Legal basis

The public contract awarding procedure is conducted pursuant to the Act: Public Procurement Law of September 11 2019 (Journal of Laws of 2019, item 2019 incl. amendments), hereinafter: "the PPL Act".

TERMS OF REFERENCE

Optical spectrum analyzer for quantum cascade lasers emitting in midinfrared band with accessories

CPV Glossary**38433300-2****I. Name and address of the Contracting Authority:**

Sieć Badawcza Łukasiewicz – Instytut Mikroelektroniki i Fotoniki

Al. Lotników 32/46

02-668 Warsaw

Internet website address: <https://imif.lukasiewicz.gov.pl/>

E-mail address:

michal.urbanski@imif.lukasiewicz.gov.pl

Phone number: 22 548 77 43

Address of the website of the ongoing procedure:

<https://platformazakupowa.pl/pn/imif>

Address of the website where changes and explanations to the Terms of Reference will be published as well as other order documents directly related to the contract awarding procedure:

<https://platformazakupowa.pl/pn/imif>

II. Mode of awarding the contract:

1. The public contract awarding procedure is conducted in the basic mode, pursuant to Art. 275 (1) of the PPL Act.
2. The Contracting Authority does not foresee the possibility to choose the best offer with a possibility to conduct negotiations.

3. The value of the contract does not exceed the EU thresholds specified in Art. 3 of the PPL Act.

III. Description of the subject of contract:

1. The subject of Contract is the **delivery a brand new Optical spectrum analyzer for quantum cascade lasers emitting in midinfrared band (4,5 μm – 12 μm) with accessories, guarantee, documentation**, hereinafter referred to as the **“Subject of the Contract”**.
2. The requirements and technical parameters of the Subject of Contract are defined in **Appendix No. 1** hereto.
3. The Contractor shall specify the properties of the offered Subject of Contract to enable its identification, pursuant to the table provided in **Appendix No. 1** hereto.
4. The offered Subject of Contract shall be compliant with the detailed description of the Subject of Contract and meet the provided requirements. Failure to meet at least one of the required parameters shall result in rejecting the bid.

IV. Other information:

1. The Contracting Authority does not require submitting the relevant evidence with the bid.
2. The Contracting Authority shall not accept submitting partial bids.
3. The Contracting Authority shall not accept submitting variant bids.
4. The Contracting Authority neither requires nor accepts submitting bids in form of electronic catalogues.
5. The Contracting Authority does not foresee entering into a framework agreement.
6. The Contracting Authority shall not organise an electronic auction.
7. The Contracting Authority does not foresee the obligation to perform an on-site inspection and to verify the documents necessary to realise the Contract available on the premises of the Contracting Authority by the Contractor.
8. The Contracting Authority does not foresee contracts specified in Art. 214, item 1, items 7 and 8 of the PPL Act).
9. The Contracting Authority shall not reimburse the costs of participating in the procedure.

V. Time of performing the Contract:

The Contract shall be performed at the latest up to **20 weeks** from the date of signing the agreement.

VI. Terms and conditions for participating in the procedure and bases for exclusion

1. Terms and conditions for participating in the procedure:

1) Contractors who may apply for the Contract are those who:

1.1st are not subject to exclusion;

1.2nd comply with the terms and conditions for participating in the procedure, if specified;

2) Pursuant to Art. 112 of the PPL Act, the Contracting Authority specifies the terms and conditions for participating in the procedure, concerning:

2.1st the capacity to participate in business trading

The Contracting Authority has not specified any conditions in this respect.

2.2nd authorisation to conduct a specific type of professional or business activity if it is required by separate legal regulations

The Contracting Authority has not specified any conditions in this respect.

2.3. economic situation or financial standing

The Contracting Authority has not specified any conditions in this respect.

2.4. technical or professional capacity

To confirm the fulfilment of this criterion, the Contracting Authority requires the Contractor to have performed at least 1 delivery of spectrum analyzer for midinfrared range of a minimum net value of PLN 140 000,00 in the 3 years preceding the date of placing bids.

If the delivery value is expressed in a currency other than PLN, the Contracting Authority shall convert it to PLN at the average exchange rate of the NBP as of the date of publication of the announcement of the tender. If the NBP does not publish a foreign currency exchange rate table on the day of announcement of the tender, the Contracting Authority shall use the conversion rate from the last exchange rate table of the NBP published before the announcement of tender.

2. Grounds for exclusion:

1) The Contracting Authority shall exclude from the Procedure those Contractors who are subject to the grounds for exclusion specified in Art. 108, item 1 of the PPL Act, i.e. The Contracting Authority shall exclude from the Procedure Contractors who:

1.1 are natural persons who have been lawfully convicted for an offence consisting in:

- a) being a member of in an organised group or association having for its purpose the commission of offences or tax offences as stipulated in Art. 258 of the Polish Penal Code,
- b) human trafficking, as defined in Art. 189a of the Polish Penal Code,
- c) specified in Art. 228- 230a, Art. 250a of the Polish Penal Code (Journal of Laws of 2021 item 2054) or in Art. 46 or Art. 48 of the Act of 25 June 2010 on Sport (Journal of Laws of 2020 item 1133) or in Art. 54 items 1-4 of the Act of 12 May 2011 on the Reimbursement of Medicines,

Foodstuffs Intended for Particular Nutritional Uses and Medical Devices (Journal of Laws of 2021 items 523, 1292, 1559 and 2054).

- d) financing crimes if a terrorist nature, as specified in Art. 165a of the Polish Penal Code or the offence of preventing, or making it significantly more difficult to determine the criminal origin of profits or concealing their origin, as defined in Art. 299 of the Polish Penal Code,
 - e) offences of a terrorist nature, as specified in Art. 115 § 20 of the Polish Penal Code or aimed at committing such offence,
 - f) entrusting the performance of labour to a minor foreigner as specified in Art. 9, item 2 of the Act of June 15, 2012 on the Effects of Hiring Foreigners Unlawfully Present in Polish Territory (Journal of Laws of 2020, item 2023),
 - g) offences against business trading as defined in Art. 296 – 307 of the Polish Penal Code, the offence of fraud defined in Art. 286 of the Polish Penal Code, offences against the credibility of documents specified in Art. 270 – 277d of the Polish Penal Code, or tax offences
 - h) offences specified in Art. 9, item 1 and 3 and Art. 10 of the Act of June 15, 2012 on the Effects of Hiring Foreigners Unlawfully Present in Polish Territory
 - or for the respective offences specified in the regulations of foreign law;
- 1.2. if an active member of its governing or supervisory body, a partner in a civil partnership or partnership or a general partner in a private partnership or partnership limited by shares, or a proxy has been lawfully convicted for an offence specified in Chapter VI, item 2, point 1 (1.1.) of these Terms of Reference;
- 1.3. against whom a valid legal judgment or a final administrative decision on the arrears in the payment of tax, levies, or social security or health security contributions has been issued, unless the Contractor has paid the due taxes, levies or social or health security premiums with interest or fines or entered into a binding agreement on the payment of the outstanding amounts before the expiry of the period for filing motions to participate in the procedure or of placing bids;
- 1.4. Contractors against whom a valid decision forbidding them to apply for public contracts has been issued;
- 1.5. if the Contracting Authority may determine based on credible grounds that the Contractor entered into an agreement with other Contractors to interfere with the competition, in particular if, belonging to the same capital group as defined in the Act of February 16 2007 on the Protection of Competition and Consumers, they have placed the same bids, partial bids, or motions to participate in the procedure, unless they prove that they prepared these motions independently;

- 1.6. if, in the cases specified in Art. 85, item 1 of the PPL Act, the competition was disturbed as a result of previous involvement of the Contractor or of another Contractor belonging to the same capital group as defined in the Act of 16 February 2007 on the Protection of Competition and Consumers, unless the resulting disturbance of competition may be eliminated in a manner other than excluding the Contractor from the procedure to award a public contract.
- 2) The Contracting Authority shall exclude from the Procedure those Contractors who are subject to the grounds for exclusion specified in Art. 109, item 1 (4) of the PPL Act, i.e. The Contracting Authority shall exclude from the Procedure Contractors who:
 - 2.1. is subject to an initiated liquidation procedure, whose bankruptcy has been declared, whose assets are managed by a receiver or court, who entered into a composition arrangement with creditors, whose business activity has been suspended or who is in another situation of a similar nature as a result of a similar procedure foreseen in the legal regulations of the place where the procedure was initiated..
- 3) The Contracting Authority may exclude the Contractor from the procedure on any stage of the public tender procedure.

3. Self-clearing

- 1) In the circumstances specified in Art. 108, item 1, points 1), 2), and 5) of the PPL Act, the Contractor shall not be excluded if it proves to the Contracting Authority that it has met all of the following conditions:
 - 1.1. repaired or committed itself to repair the damage caused by the offence, crime, or improper conduct, including by means of financial compensation;
 - 1.2. provided an exhaustive clarification of the facts and circumstances connected to the offence, crime, or improper conduct and the resulting damages, actively cooperating with the competent authorities, including law enforcement authorities or the Contracting Authority;
 - 1.3. took specific technical, organisational, and personnel-related measures that are suitable for preventing further crimes, offences or improper conduct, including, but not limited to:
 - a) broke all the relations with people or entities responsible for the improper conduct of the Contractor,
 - b) reorganised its personnel,
 - c) implemented a reporting and control system,
 - d) created internal audit structures to monitor compliance with the law, internal regulations or standards,
 - e) introduced internal regulations concerning the responsibility and compensations for non-compliance with the law, internal regulations or standards.
- 2) The Contracting Authority shall evaluate whether the actions taken by the Contractor are sufficient to demonstrate its reliability, considering the significance and specific circumstances of the act of the Contractor. If they are deemed insufficient, the Contractor shall be excluded.

VII. SUBJECTIVE AND OBJECTIVE EVIDENCE, OTHER STATEMENTS AND DOCUMENTATION

1. STATEMENTS AND DOCUMENTATION SUBMITTED WITH THE BID.

1.1. The bid shall be placed in electronic form or in electronic form with trusted signature or personal signature, otherwise it shall be considered invalid. The bid shall be prepared on the template constituting Appendix No. 4 to these Terms of Reference.

1.2. The Contractor shall attach to the bid:

- 1) Statement of the Contractor on the conditions for exclusion from the procedure [Appendix No. 2 to the ToR];
- 2) Statement of the Contractor on the fulfilment of the conditions for participating in the procedure [Appendix No. 2 to the ToR];

to the extent specified in Chapter VI item 1 ToR. The statements constitute the evidence confirming the lack of grounds for exclusion and the fulfilment of the conditions for participation in the procedure as at the date of submitting the offers.

1.3. The statement specified in Chapter VII item 1 point 1.2 of these Terms of Reference shall be placed separately by:

- 1) the Contractor/each of the Contractors who jointly apply for the contract. In such case, the statement confirms the absence of grounds for the exclusion of the Contractor and the fulfilment of the conditions for the participation in the procedure to the extent, to which each of the Contractors demonstrates that it fulfils these conditions;
- 2) the entity that makes available the resources, whose potential is referenced by the Contractor in order to confirm the fulfilment of the conditions for the participation in the procedure. In such case, the statement confirms the absence of grounds for the exclusion of such entity and the fulfilment of the conditions for the participation in the procedure to the extent, to which the entity makes its resources available to the Contractor.

2. STATEMENTS AND DOCUMENTS SUBMITTED ON DEMAND.

1) Pursuant to Art. 274, item 1 of the PPL Act, before selecting the best bid, the Contracting Authority shall demand the Contractor whose offer received the highest score to submit within a specific period, not shorter than 5 days, the following evidence that are valid on the day of submission:

2.1. statement of the Contractor referred to in Art. 125 item 1 of the PPL Act confirming the validity of information provided in the statement regarding the grounds for exclusion specified in Art. 108 item 1 point 1-6 of the PPL Act.

2.2. **an excerpt or information from the National Court Register, the Central Registration and Information on Business** in terms of art. 109 paragraph. 1 point 4 of the PPL, prepared not earlier than 3 months before its submission, if separate provisions require registration.

2.3. **List of deliveries performed** – confirming that the Contractor has performed at least 1 spectrum analyzer for midinfrared range of the minimum net value of PLN 140 000,00 within the 3 years preceding the date of placing bids, and if the period of business activity is shorter – during that period. The statement should specify the value, subject, date of realisation and the entity to which the delivery was made, as well as evidence to prove that the said delivery was duly performed. Such evidence may be references or other documents made by the entity to whom the delivery was made. If the Contractor is unable to obtain such evidence due to reasons beyond its control – the statement of the Contractor.

- 2) The Contractor shall not be obliged to submit the documents specified in Chapter VII, item 2, point 1 (2.2.) of these Terms of Reference if the Contracting Authority may obtain them from generally available databases free of charge, provided that the Contractor has specified the data that enable access to these documents.
- 3) If the registered seat or place of residence of the Contractor is located outside the territory of the Republic of Poland, then, instead of the document specified in item 2 point 1 (2.2.) of these Terms of Reference, it shall submit the document(s) issued in the country where its registered seat or place of residence is located, confirming, respectively, that it is not the subject to an open liquidation procedure, its bankruptcy has not been declared, its assets are not managed by a receiver or court, it has not entered into a composition arrangement with creditors, its business activity has not been suspended or that it is not in another situation of a similar nature as a result of a similar procedure foreseen in the legal regulations of the place where the procedure was initiated. The document described hereinabove should be issued not earlier than 3 months before submission.
- 4) If the country where the registered seat or place of residence of the Contractor are located does not issue the documents specified in item 2 point 3, then these documents shall be replaced, in whole or in part, by a document containing an affidavit of the Contractor, specifying the person(s) authorised to represent it or an affidavit of the person whom the document should concern, or, if the country where the registered seat or place of residence of the Contractor are located does not issue affidavits – a statement made before a judicial or administrative authority, a notary public, a professional or business self-government organ that is competent for the registered seat or place of residence of the Contractor.

3. COMPANY SECRET

- 1) In the event if the bid or other documents submitted for the purposes of the procedure contain company secrets, the Contractor shall make a reservation that such information must not be disclosed and **demonstrate** that the reserved information constitutes company secret as defined in the provisions of the Act of April 16 1993 on combating unfair competition (consolidated text: Journal of Laws of 2020, item 1913).
- 2) In the electronic documents that are sent through means of electronic communication for the purposes of the procedure contain information that constitutes company secret as defined in the cited Act on combating unfair competition, the Contractor shall submit such information in a separate, appropriately marked file in order to maintain the confidentiality.

4. THE CONTRACTOR

- 1) The Contractor shall be defined as a natural person, legal entity, or an organisational unit without legal personality that offers on the market the performance of construction works or

building structures, delivery of goods or provision of services, or applies for a contract, has placed a bid, or entered into an agreement concerning a public procurement contract.

- 2) The Contracting Authority does not reserve the possibility to apply for the contract only to Contractors specified in Art. 94 of the PPL Ac, i.e. those that have the status of a supported employment enterprise, social cooperative, or other Contractors whose main aim or the main aim of their separate organisational units that will perform the Contract is to ensure social and professional integration of socially marginalised groups.

5. CONTRACTORS WHO JOINTLY APPLY FOR A PUBLIC CONTRACT

- 1) Contractors may jointly apply for awarding a public contract. In such event, the Contractor who applies jointly shall appoint an authorised representative to represent them in the procedure or to represent them in the procedure and to enter into the agreement on the public procurement contract in question.
- 2) The condition concerning the authorisation to conduct a specific type of business or professional activity (if it has been formulated), specified in Art. 112, item 2 (2) of the PPL Act shall be fulfilled if at least one of the Contractors who are jointly applying for the contract is authorised to conduct a specific business or professional activity and will perform the construction works whose realisation requires such authorisation.
- 3) As for the conditions concerning education, professional qualifications or experience (if they have been formulated), the Contractors who are applying jointly for a contract may rely on the capacity of those Contractors.
- 4) In the case referred to in point 2) and 3), the Contractors who are applying jointly for a contract shall attach to the offer a statement indicating which construction works, supplies or services will be performed by individual Contractors.

6. ACCESSIBILITY OF RESOURCES

- 1) In order to confirm the fulfilment of the conditions for participating in the procedure on terms provided in Art. 118 – 123 of the PPL Act, the Contractor may rely on the technical or professional abilities or the economic or financial standing of entities that provide access to its resources, regardless of the legal nature of the relationship between them and the Contractor. The entity, whose resources the Contractor references in order to demonstrate the fulfilment of the conditions for participating in the procedure cannot be subject to exclusion based on Art. 108, item 1 of the PPL Act.
- 2) As for the conditions concerning the education, professional qualifications or experience, the Contractors may rely on the capacity of the entities that provide access to resources, if these entities will perform the construction works that require such capacity.
- 3) The Contractor who relies on the capacity or financial standing of the entities that provide access to resources shall place, together with the bid, a statement of such entity that confirms that it is obliged to provide it with access to the necessary resources for the purposes of realisation of the given contract, or another motion of evidence confirming that the Contractor may use the resources of these entities for the realisation of the contract.
- 4) The statement of the entity providing access to resources specified in Chapter VII, item 6 (3) of these Terms of Reference, shall confirm that the relationship between the Contractor and the entity providing access to resources guarantees actual access to these resources and define, in particular:

- 4.1. the scope of resources of the entity that are available for the Contractor;
 - 4.2. the manner and duration of making the resources accessible to the Contractor and the use of these resources by the Contractor during the realisation of the contract;
 - 4.3. whether and to what extent the entity that provides access to resources, on whose capacity the Contractor will rely with respect to the condition for participating in the procedure that refer to education, professional skills or experience will realise the construction works to which the specific capacity applies.
- 5) The Contracting Authority shall evaluate whether the technical or professional skills or the economic or financial standing of the entities providing resources to the Contractor enable the Contractor to prove that it fulfils the conditions for participation in the procedure specified in Chapter III of these Terms of Reference, and whether the entity is not subject to the grounds for exclusion that are foreseen for the Contractor.
 - 6) The entity that is obliged to provide access to resources shall bear joint and several liability with the Contractor for any damages suffered by the Contracting Authority as a result of failure to provide access to these resources, unless the fault for such failure does not lie on part of the entity.

VIII. Information about means of electronic communication used by the Contracting Authority to communicate with Contractors and information about the technical and organisational requirements for preparing, delivery and receipt of electronic communication:

1. General information:

- 1) The procedure shall be conducted in Polish and English languages. All statements and notifications shall be prepared in Polish or English language versions. The Agreement shall be drawn up in Polish and English language versions. The Contracting Authority shall conduct the procedure in two languages pursuant to Art. 20, item of the PPL Act due to the possibility to expand the group of contractors and the specialist nature of the Contract.
- 2) The communication between the Contracting Authority and the Contractors, in particular placing bids and submitting statements, shall take place through means of electronic communication as defined in the Act of July 18 2002 on the Provision of Electronic Services (Journal of Laws of 2017, item 1219, and of 2018, item 650, incl. amendments).
- 3) In order to shorten the time to provide answers to all inquiries, the communication between the Contracting Authority and the Contractors, including all statements, motions, notifications and information, should be sent through platformazakupowa.pl and the form "Send message to the Contracting Authority".
- 4) The date of delivery of statements, motions, notifications, and information shall be deemed as the date of sending them through the website platformazakupowa.pl by clicking on the button "Send message to the Contracting Authority", after which the message will be displayed to confirm that the message has been sent to the Contracting Authority. In emergency situations, the Contracting Authority accepts communication by e-mail. E-mail address of the person authorised to contact the Contractors: michal.urbanski@imif.lukasiewicz.gov.pl.

- 5) The Contracting Authority shall send information to Contractors through the website platformazakupowa.pl. Information concerning responses to inquiries, changes to specifications, changes of the date of placing and opening the bids shall be published on the platform in the “Announcements” section. Correspondence that is addressed to a specific Contractor pursuant to binding regulations shall be sent electronically through the website platformazakupowa.pl to the given Contractor.
- 6) The Contractor as a professional entity is obliged to check the messages and announcements sent by the Contracting Authority directly on platformazakupowa.pl as the notification system may be down or the notification may be directed to the SPAM folder.
- 7) Pursuant to §11 item 2 of the Ordinance of the Prime Minister of December 30 2020 on the manner of preparing and transmitting information and the technical requirements for electronic documents in procedures to award a public contract or competitions, the Contracting Authority hereby defines the hardware and software requirements that enable the use of the platformazakupowa.pl platform as follows:
 - a) continuous access to the Internet of a guaranteed bandwidth of 512 kb/s,
 - b) PC or MAC computer in the following configuration: minimum memory 2 GB RAM, Intel IV 2 GHz processor or newer version, one of the operating systems: MS Windows 7, Mac OS X 10.4, Linux, or newer versions,
 - c) any Internet browser installed, for Internet Explorer version 10.0 at the minimum,
 - d) JavaScript enabled,
 - e) Adobe Acrobat Reader or another application that supports the .pdf format,
 - f) platformazakupowa.pl operates according to the standard adopted for network communication – UTF8 coding,
 - g) The time of data reception by platformazakupowa.pl is designated as the date and exact time (hh:mm:ss) generated according to local server time synchronised with the clock of the Central Office of Measures.
- 8) By participating in the procedure to award a public contract, the Contractor:
 - a) accepts the terms and conditions of using the website platformazakupowa.pl specified in the Terms and Conditions published at: <https://platformazakupowa.pl/strona/1-regulamin> in the “Terms and Conditions” tab and accepts them as binding,
 - b) has read and undertakes to comply with the instructions on placing bids and submitting documents available at: <https://drive.google.com/file/d/1Kd1DttbBeiNWt4q4sIS4t76lZVKPbkyD/view>.
- 9) **The Contracting Authority shall not be responsible for bids placed in a manner not compliant with the instructions of use of platformazakupowa.pl,** in particular for situations when the Contracting Authority will become familiar with the content of the bid before the expiry of the period for placing bids (e.g. bids placed through the “Send message to the Contracting Authority” function).
- 10) The Contracting Authority hereby informs that the instructions for using platformazakupowa.pl in particular logging in, submitting motions for explanations of the Terms of Reference, placing bids and other actions taken in this procedure with use of

platformazakupowa.pl are available in the tab "Instructions for Contractors" on the website, at: <https://platformazakupowa.pl/strona/45-instrukcje>.

2. Recommendations of the Contracting Authority:

- 1) **The extensions of files used by Contractors should be compliant with** Appendix No. 2 to the "Ordinance of the Council of Ministers on the National Framework of Interoperability, minimum requirements for public registers and sharing information in electronic form and the minimum requirements for ICT systems", hereinafter: the KRI Ordinance.
- 2) The Contracting Authority recommends using the following formats: .pdf .doc .docx .xls .xlsx .jpg (.jpeg) **in particular .pdf**
- 3) For optional data compression, the Contracting Authority recommends using one of the following extensions:
 1. .zip
 2. .7z
- 4) Common extensions **not listed in the KRI Ordinance** include: .rar .gif .bmp .numbers .pages. **Documents submitted in form of such files shall not be deemed as delivered effectively.**
- 5) The Contracting Authority would like to remind the Contractors about the size limit of files signed with a trusted profile, which is **10 MB**, and about the maximum size of files signed in the eDoApp application for affixing personal signature, which is **5 MB**.
- 6) For Contractors who use a qualified electronic signature:
 - a) Due to low risk of damaging the integrity of the file and easier verification of the signature, the Contracting Authority recommends, if possible, **converting the files constituting the bid into the .pdf format and affixing a qualified signature in the PAdES format.**
 - b) Files in formats other than PDF **should be signed in the XAdES format, external type.** The Contractor should remember to submit the file with the signature together with the signed document.
 - c) The Contracting Authority recommends using a signature with a qualified time stamp.
- 7) For **files signed by several persons**, the Contracting Authority recommends **using the same type of signatures.** Using different types of signatures, e.g. personal and qualified, may lead to problems with file verification.

IX. FORM OF THE SUBMITTED STATEMENTS AND DOCUMENTS

1. Bids and statements specified in Art. 125, item shall be placed in electronic form or in electronic form with trusted signature or personal signature, otherwise it shall be considered invalid.
2. Bids and statements specified in Art. Art. 125, item 1 of the PPL Act, subjective evidence, including the statement specified in Art. 117, item 4 of the PPL Act and the statement of the entity providing access to resources specified in Art. 118, item 3 of the PPL Act, in this Chapter further referred to as

“the obligation of the entity providing access to resources”, objective evidence, power of attorney, and the documents specified in Art. 94, item 2 of the PPL Act, shall be prepared in electronic form, in the data formats specified in the regulations issued pursuant to Art. 18 of the Act of February 17 2005 on computerisation of activity of entities implementing public tasks (Journal of Laws of 2020, item 346, incl. amendments).

3. Subjective evidence, objective evidence, and other documents or statements prepared in a language other than Polish or English shall be submitted along with their translation into Polish or English language.
4. If the subjective evidence, objective evidence, other documents or documents that confirm the authorisation to represent, respectively, the Contractor, Contractors jointly applying for the public contract, the entity providing access to resources on the conditions specified in Art. 118 of the PPL Act or subcontractors not being entities providing access to resources on these conditions, hereinafter, in this Section, referred to as “documents confirming the powers of representation” were issued by authorised entities other than the Contractor, Contractors jointly applying for the public contract, the entity providing access to resources or subcontractor, hereinafter, in this Section, referred to as “authorised entities” in electronic form, this document shall be submitted.
5. If the subjective evidence, objective evidence, other documents or documents that confirm the authorisation to represent were issued by the authorised entities as a document in hardcopy format, a digital representation of this document shall be submitted, with the affixed qualified electronic signature, trusted signature, or personal signature to certify the compliance of the digital representation with the printed document.
6. The compliance of the digital representation with the hardcopy document shall be made:
 - 1) for subjective evidence and documents confirming the powers of representation – respectively by the Contractor, Contractors jointly applying for the public contract, the entity providing access to resources or the subcontractor, for these subjective evidence or documents confirming the powers of representation that refer to each of them;
 - 2) for objective evidence – respectively, the Contractor or Contractors jointly applying for the public contract;
 - 3) for other documents, respectively, the Contractor, Contractors jointly applying for the public contract, for these documents that refer to each of them.
7. Digital representation is understood as an electronic document that is an electronic copy of the content recorded in hardcopy form, which enables reading and understanding its content without the need to access the original document.
8. Subjective evidence, including the statement specified in Art. 117, item 4 of the PPL Act and the obligation of the entity providing access to resources, objective evidence not issued by authorised entities and the power of attorney shall be submitted in electronic form, with the affixed qualified electronic signature, trusted signature or personal signature.
9. If the objective evidence, including the statement specified in Art. 117, item 4 of the PPL Act and the obligation of the entity providing access to resources, objective evidence not issued by authorised entities and the power of attorney were prepared in hardcopy form, a digital representation of the document shall be submitted, with the affixed qualified electronic signature, trusted signature or personal signature to certify the compliance of the digital representation with the hardcopy document.

10. The compliance of the digital representation with the hardcopy document shall be made:
 - 1) for subjective evidence– respectively by the Contractor, Contractors jointly applying for the public contract, the entity providing access to resources or the subcontractor, for these subjective evidence that refer to each of them;
 - 2) for objective evidence or statement specified in Art. 117, item 4 of the PPL Act or the obligation of the entity providing access to resources – respectively, the Contractor or Contractors jointly applying for the public contract;
 - 3) for the power of attorney – the principal.
11. The compliance of the digital representation with the hardcopy document specified in Chapter IX items 6 and 10 of these Terms of Reference may also be certified by a notary public.
12. In an electronic document is submitted in the procedure in a format that subjects data to compression, affixing qualified electronic signature, trusted signature or personal signature to the file that contains compressed documents shall mean that the qualified electronic signature, trusted signature or personal signature, respectively, are affixed to all documents in this file.
13. Electronic documents in the procedure shall meet all the following requirements:
 - 1) they are recorded in a manner than enables reading, saving and copying them multiple times, and transmitting them through means of electronic communications or on a data carrier;
 - 2) enable the presentation of content in electronic format, in particular by displaying the content on a computer screen;
 - 3) enable the presentation of content in hardcopy form, in particular by printing;
 - 4) contain data that is arranged in a manner that raises no doubts concerning the content and context of the recorded information.

X. Requirements concerning security

Not required.

XI. Bid validity period

1. The Contractor shall be bound by the bid until the 26.02.2022
2. The bid validity period shall commence upon the expiry of the bid placement date.
3. If the best bid has not been selected before the expiry of the bid validity period specified in these Terms of Reference, the Contracting Authority shall ask the Contractors once before the expiry of the bid validity period to agree to prolong the period for the specified time, however not longer than 30 days.
4. The prolongation of the bid validity period specified in item 3 hereinabove requires the written consent of the Contractor to prolong the bid validity period.

XII. Description of the manner of preparing bids:

1. The bid shall be prepared in electronic form, with the affixed qualified electronic signature, trusted signature or personal signature, on the Bid Template constituting **Appendix No. 4 hereto**. The bid shall contain, in particular:
 - 1) the complete name and address of the Contractor,
 - 2) the date of preparing the bid,
 - 3) the price – prices may be quoted in one of the following currencies: PLN, EUR, USD, or GBP. For bids with prices in EUR, USD or GBP, prices will be compared after conversion into Polish zloty – PLN. Prices will be converted at the foreign currency exchange rate of the NBP valid as of the day preceding the day of opening the bids.

2. The following should be attached to the bid:
 - 1) Completed [Appendix No. 1 to these Terms of Reference],
 - 2) Statement [Appendix No. 2 and 3 to these Terms of Reference],
 - 3) power of attorney or another document confirming the authorisation to represent the Contractor if such authorisation of the person placing the bid does not result from the submitted documents,
 - 4) the obligation specified in Chapter VII, item 6 point 3 and 4 of these Terms of Reference if the Contractor relies on the resources of the entity providing access to resources,
 - 5) for Contractor applying jointly for the contract:
 - a) power of attorney for Contractors applying jointly for the contract, which will imply the authorisation to represent them in the procedure for awarding the contract or to represent them in the procedure and to enter into an agreement concerning the public contract. The power of attorney should specify, in particular:
 - the public procurement procedure to which it refers,
 - the names and registered seat addresses of all Contractors who apply jointly for the contract,
 - the appointed authorised representative and the scope of their powers.
 - b) Statement which indicate which construction works, supplies or services are performed by individual contractors, constituting Appendix No. 6 to ToR.
 - 6) Partners of a civil partnership are treated as Contractors jointly applying for the award of a public contract and the provisions specified for Contractors jointly applying for a public contract apply to them

XIII. Manner and date of placing and opening the bids:

1. Bids should be placed at <https://platformazakupowa.pl/pn/imif> until the 28.01.2022 r., 09:00 hours.
2. Bids shall be opened on the 28.01.2022, at 10:00 hours.
3. The Contracting Authority shall publish on the website of the conducted procedure the information about the amount that it intends to spend on financing the contract at the latest before opening the bids.
4. Immediately after opening the bids, the Contracting Authority shall publish the following information on the website of the conducted procedure:
 - a) names or first names and surnames and the registered seats or places of conducting business activity or places of residence of the Contractors whose bids have been opened;
 - b) prices or costs contained in the bids.
5. The Contractor may change or withdraw the bid through platformazakupowa.pl before the end of the period for placing the bids. The manner of withdrawing or changing bids is described in the instructions published online, at: <https://platformazakupowa.pl/strona/45-instrukcje>.
6. Pursuant to the definition of an electronic document provided in Art. 3 item 2 of the Act on computerisation of activity of entities implementing public tasks, affixing a qualified electronic signature to a file that contains compressed data is equivalent to signing the original document, with the exception of copies certified by another contractor who jointly applies for the contract, by the entity on whose capacity or standing the Contractor relies or by a subcontractor.
7. The maximum size of one file sent through the dedicated forms to: place, change, or withdraw a bid is 150 MB, while the maximum size of file for communication purposes is 500 MB.

XIV. Description of the manner of calculating the price:

1. The gross price of the bid provided in PLN/EUR/USD/GBP shall include all costs that the Contractor has to bear in order to lawfully realise the subject of the contract specified in the present Terms of Reference, including:
 - a) the price of the subject of the Contract specified in point III to the Terms of Reference,
 - b) transport, (terms of delivery: organization and costs of loading, transport to the place indicated by the Contracting Authority, delivery insurance is on the side of the Contractor along with the risk of loss or damage to the subject of the contract),
 - c) guarantee period,
 - d) software licenses,
 - e) other services, if they are necessary to realise the subject of the Contract.
2. The price of the bid shall also include all due fees, in particular taxes, and any other potential levies.
3. The Contractor shall specify the price as provided in the bid template, i.e. divided into the net price, VAT tax, and the gross total price of the contract.

4. If a bid is placed which, if selected, would result in a taxation obligation for the Contracting Authority pursuant to the Act on the Goods and Services Tax, the Contracting Authority shall evaluate such bid by adding the tax that it would be obliged to settle pursuant to these provisions to the specified price.
5. When placing the bid, the Contractor shall notify the Contracting Authority whether the selection of the bid will result in the emergence of a taxation obligation for the Contracting Authority, by specifying the name (type) of the goods or services whose delivery or provision will result to such obligation and providing their value without tax.

XV. Description of the criteria used by the Contracting Authority to select the best bid, along with the weight of these criteria and the manner of evaluating bids:

1. The best bid will be the bid that receives the best score balance in the following criteria:

- **Price** **Weight: 100 %**

2. This criterion will be evaluated as follows:

The number of points for the Price (C) criterion will be calculated from the following formula:

$$C = C_n / C_b \times 100$$

where:

C – number of points for the price criterion (calculated with the accuracy to two decimal places)

C_n – the lowest price

C_b – price of the analysed bid

The maximum score for the Price criterion is 100 points.

XVI. Information about the formalities to be completed after the selection of the bid in order to enter into an agreement on public contract:

1. Contractors who have placed the bids on the terms and in the scope specified in Art. 253 item 1 of the PPL Act will be notified about the selection of the bid.
2. The Contracting Authority shall inform the Contractor whose bid has been selected about the time and place of signing the agreement.
3. The agreement shall be concluded not earlier than 5 days after sending the notification about the selection of best bid. The Contracting Authority may enter into an agreement on public contract before the expiry of the 5-day period if only one bid was placed in the procedure for awarding a public contract in the basic mode.

4. If the Contractor whose bid has been selected as the best one avoids signing the agreement on the public procurement contract or fails to pay the required performance guarantee (if required), the Contracting Authority may reanalyse and reassess the offers of the remaining Contractors in the procedure and select the best bid or cancel the procedure.
5. The Contractor shall pay the performance guarantee in the amount and form and at the time specified in the notification before signing the agreement.
6. In cases not regulated in the present Terms of reference, the provisions of the Act – Public Procurement Law and of the Polish Civil Code shall apply.
7. Persons authorised to represent the Contractor in signing the agreement should possess the documents that confirm their authorisation to sign the agreement, unless such authorisation results from the documents attached to the submitted bid.

XVII. Draft provisions of the agreement that will be included in the content of the agreement.

1. The draft provisions of the agreement constitute Appendix No. 7 to these Terms of reference.
2. By placing the bid, the Contractor accepts the draft provisions of the agreement.

XVIII. Requirements concerning the due performance of the agreement

The Contracting Authority does not require a performance guarantee.

XIX. Instruction concerning legal remedies:

1. The legal remedies presented in this Section are available to the Contractor, a participant of a contest or another entity that had an interest in obtaining a contract or a prize in the contest and has suffered or may suffer damages as a result of the violation of the provisions of the PPL Act by the Contracting Authority.
2. Organisations entered in the list specified in Art. 469 item 15 of the PPL Act and the Ombudsman for Small and Medium Enterprises are also entitled to use the legal remedies against the party initiating the procedure for awarding a public contract or a call in the contest or the documents of the contract.
3. The aforementioned entities may appeal against:
 - 1) actions of the Contracting Authority taken in the procedure for awarding the contract, including the draft provisions of the agreement that violate the provisions of the Act;
 - 2) failure to perform an action in the procedure for awarding the contract to which the Contracting Authority was obliged under the Act.
4. Appeals shall be filed to the President of the Chamber. The appealing party shall provide the Contracting Authority with a copy of the appeal before the expiry of the period of appeal in a manner that will enable the Contracting Authority to become familiar with the appeal before the end of this period.
5. Appeals against the content of the announcement or the Terms of Reference shall be filed within 5 days from the date of publication in the Public Procurement Bulletin or of the Terms of Reference on the website.
6. Appeals shall be filed within:

- 1) 5 days from the date of notification about the action of the Contracting Authority constituting grounds for the appeal, if the notification was made through means of electronic communication,
 - 2) 10 days from the date of notification about the action of the Contracting Authority constituting grounds for the appeal, if the notification was made in a manner different than that specified in item 1 hereinabove,
7. In cases other than those specified in items 5 and 6 hereinabove shall be filed within 5 days from the date of becoming aware (or the date when one could become aware with all due diligence) of the circumstances constituting grounds for appeal.
 8. The parties and participants of the appeal procedure may file a complaint against the decision of the Chamber or of the President specified in Art. 519 item 1 of the PPL Act.
 9. The proceedings initiated by filing the complaint shall be governed, appropriately, by the provisions of the Act of November 17 1964 – Code of Civil Procedure on appeals, unless the provisions of this Section state otherwise.
 10. Complaints shall be filed to the Regional Court in Warsaw – the Public Procurement Court, hereinafter: “the Public Procurement Court”.
 11. Complaints shall be filed via the President of the Chamber, within 14 days from the date of delivery of the decision of the Chamber or of the President of the Chamber specified in Art. 519, item 1 of the PPL Act. At the same time, a copy of the complaint shall be submitted to the opponent party. Complaints submitted to the post office of the public operator designated pursuant to the Act of November 23 2012 – Postal Law shall be considered as filed.
 12. The President of the Chamber shall transfer the complaint together with the files of the appeal proceedings to the Public Procurement Court within 7 days from the date of receipt.

XX. Other:

1. In cases not regulated in these Terms of Reference, the provisions of the PPL Act shall apply.
2. For natural persons:

Pursuant to Art. 13, item 13 of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 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) (Official Journal of the L 119 of the 04.05.2016, page 1), hereinafter: the “GDPR”, we inform you that:

- a) the data controller is the Contracting Authority (contact data provided hereinabove);
- b) contact to the personal data inspector: iod@imif.lukasiewicz.gov.pl
- c) personal data will be processed pursuant to Art. 6, item 1 (c) of the GDPR for the purposes related to awarding a public Contract;
- d) recipients of personal data will be persons or entities to whom the documentation of the procedure will be disclosed pursuant to Art. 18, 19 and Art. 74-76 of the PPL Act;
- e) Personal data will be stored, pursuant to Art. 71-79 of the PPL Act, for the period of 4 years from the date of closing the procedure for awarding a public Contract, and if the period of the agreement exceeds 4 years, the period of storage shall be the whole duration of the agreement;
- f) the obligation to provide your personal data is a statutory requirement defined in the provisions of the PPL Act, connected with the participation in the procedure for awarding a public contact; the consequences of failure to provide specific data result from the PPL Act;
- g) Scope of data processing: Name and surname;

- h) Your personal data will not be subject to automated decision-making pursuant to Art. 22 of the GDPR;
- i) You have the right:
 - Pursuant to Art. 15 of the GDPR – to access your personal data;
 - Pursuant to Art. 16 of the GDPR – to rectify your personal data*;
 - Pursuant to Art. 18 of the GDPR – to obtain from the controller restriction of processing with the reservation of cases specified in Art. 18, item 2 of the GDPR**;
 - the right to file a complaint to the President of the Personal Data Protection Office if you consider that the processing of your personal data violates the provisions of the GDPR;
- j) You are not entitled to:
 - pursuant to Art. 17, item 3 (b) (d) or (e) of the GDPR – the right to erase your personal data;
 - the right to data portability specified in Art. 20 of the GDPR;
 - Pursuant to Art. 21 of the GDPR – the right to object to the processing of your personal data, as the legal basis for processing is Art. 6, item 1 (c) of the GDPR.

* Exercising the right to rectify personal data cannot lead to the change in the result of the procedure for awarding a public Contract or in a modification of the provisions of the agreement to the extent non-compliant with the PPL Act and cannot violate the integrity of the protocol or the appendices thereto

** *The right to restrict personal data processing shall not apply to data storage in order to ensure the use of legal remedies or to protect the rights of other natural persons or legal entities or due to important public interest of the European Union or its Member State.*

Appendices:

- 1) Appendix No. 1 – Technical requirements and parameters of the Subject of the Contract;
- 2) Appendix No. 2 – Statement of the Contractor – template;
- 3) Appendix No. 3 – Statement of the Contractor – template;
- 4) Appendix No. 4 – Bid form – template
- 5) Appendix No. 5 – List of deliveries performed
- 6) Appendix No. 6 – Statement of the Contractor – template;
- 7) Appendix No. 7 – Draft provisions of the agreement;
- 8) Appendix No. 8 – Obligation – template

Appendix No. 1 to the Terms of Reference

Technical requirements and parameters for the delivery of Optical spectrum analyzer for quantum cascade lasers emitting in midinfrared band with accessories

No.	Parameter	Requirement	To be completed by Bidder*
1	2	3	4
1.	Type of device		specify
2.	Production year	2021 / 2022	confirm
3.	Country of manufacturer		specify
4.	Manufacturer		specify
5.	Device	Brand new	confirm
6.	Basic parameters of device	<ul style="list-style-type: none"> • Spectral wavelength range containing: 2 – 11 μm (or wider) • Spectral measurements in range 2-11 μm possible on one detector without necessity of exchange of detector • Spectral resolution: $\leq 0,5 \text{ cm}^{-1}$ • Wall plug input power: 230V • Automatic control of device possible by USB and/or GPIB (IEE488) interface. Device controlled and equipped with PC computer. • Driver available for LabView 	confirm
7.	Inputs	<ul style="list-style-type: none"> • Fiber input compatible with single mode and multimode fibers with FC/PC connectors • Free-space input equipped with alignment laser 	confirm
8.	Montage	<ul style="list-style-type: none"> • Device equipped with optical table • Honeycomb optical table top with minimal dimensions (Length x Width x Height (with legs)): 2.5 m x 1.5 m x 0.9 m and with M6 mounting holes array • Optical table mounting legs equipped with vibration isolation system 	confirm
9.	User manual, programing manual and technical data sheets in Polish or English	included	confirm

Contractor:

Date:

.....
.....

Statement of the Contractor

submitted pursuant to Art. 125, item 1 of the Act of September 11 2019

Public Procurement Law (hereinafter: the PPL Act),

ON THE CONDITIONS FOR EXCLUSION FROM THE PROCEDURE

For the purposes of the procedure for award of a public contract, entitled (*name of the procedure*), conducted by Sieć Badawcza Łukasiewicz – Instytut Mikroelektroniki i Fotoniki (*name of the Contracting Authority*), I hereby represent as follows:

STATEMENTS ON THE CONTRACTOR:

- I represent that I am not subject to exclusion from the procedure under Art. 108 item 1 and 109 item 1 (4) of the PPL Act.

or

- that grounds for exclusion from the procedure exist pursuant to Art. of the PPL Act

At the same time, I represent that, in connection with these circumstances, I have taken the following corrective actions pursuant to Art. 110 item 2 of the PPL Act:

.....

STATEMENT CONCERNING THE ENTITY WHOSE RESOURCES WILL BE REFERRED BY THE CONTRACTOR

- I certify that the following entity/s, whose resources I am referring to in these proceedings, i.e. (*full name of the entity, address, and also depending on the entity: Tax ID/Personal ID, National Court Register/Register of Business Activity Number*), is/are not subject of exclusion from the public Contract awarding procedure.

STATEMENT CONCERNING A SUBCONTRACTOR WHICH IS NOT AN ENTITY WHOSE RESOURCES WILL BE REFERRED TO BY THE CONTRACTOR

- I certify that the following entity/s, being the Subcontractor/s: (*full name of the entity, address, and also depending on the entity: Tax ID/Personal ID, National Court Register/Register of Business Activity Number*), is/are not subject of exclusion from the public Contract awarding procedure.

DECLARATION CONCERNING THE INFORMATION PROVIDED:

- I declare that all the information provided in the above statements is up-to-date and truthful and has been presented with full awareness of the consequences of misleading the Contracting Authority when providing the information.

I indicate that the documents confirming these facts, referred to in Chapter VII of the ToR, are available in electronic form at the following internet addresses of public and free (*please select*):

- <https://prod.ceidg.gov.pl>
- <https://ems.ms.gov.pl>
- Other register (please provide internet address):

..... (*place*), date:

.....

(*Signature*)

Contractor:

Date:

.....

.....

Statement of the Contractor

submitted pursuant to Art. 125, item 1 of the Act of September 11 2019

Public Procurement Law (hereinafter: the PPL Act),

ON THE FULFILMENT OF THE CONDITIONS FOR PARTICIPATING IN THE PROCEDURE

For the purposes of the procedure for award of a public contract, entitled (*name of the procedure*), conducted by Sieć Badawcza Łukasiewicz – Instytut Mikroelektroniki i Fotoniki (*name of the Contracting Authority*), I hereby represent as follows:

STATEMENTS ON THE CONTRACTOR:

- I declare that I meet the conditions for participation in the procedure set out by the Contracting Authority in **Chapter VI of the Terms of Reference (ToR)**

INFORMATION RELATING TO RELYING ON RESOURCES OF OTHER ENTITIES:

- I declare that in order to fulfill the conditions for participation in the procedure, specified by the Contracting Authority in the Terms of Reference (ToR), I rely on the resources of the following entity / s:....., to the following extent:
.....
(*please indicate the entity and define the appropriate scope for the indicated entity*).

DECLARATION CONCERNING THE INFORMATION PROVIDED:

- I declare that all the information provided in the above statements is up-to-date and truthful and has been presented with full awareness of the consequences of misleading the Contracting Authority when providing the information.

..... (*place*), date:

(*Signature*)

Appendix No. 4 to the Terms of Reference

BID FORM

for: Łukasiewicz Research Network – Institute of Microelectronics and Photonics

Subject of the Order		Delivery of Optical spectrum analyzer for quantum cascade lasers emitting in midinfrared band with accessories
1.	Name and address of the Contractor
2.	Taxpayer's Identification Number NIP REGON number: or the relevant foreign identification numbers
3.	Telephone: E-mail:
4.	Total net price of the bid VAT rate VAT amount Total gross price of the bid	enter: PLN/EUR/USD/GBP* say:..... enter:% enter: PLN/EUR/USD/GBP* enter: PLN/EUR/USD/GBP* Say:
5.	Time of performing the Contract: Maximum time: up to 20 weeks from the date of signing the agreement	enter: (<i>weeks</i>)
6.	Warranty period: at least 24 months	enter: (<i>months</i>)
7.	Statement	I hereby represent that the selection of our bid will/will not* result in imposing taxation obligation on the Contracting Authority. The following (name or type of the goods or services) will lead to the emergence of a tax obligation Value without tax: Name of goods:

8.	Type of Contractor	<p>I declare that I am:</p> <p><input type="checkbox"/> Microentrepreneur</p> <p><input type="checkbox"/> Small enterprise</p> <p><input type="checkbox"/> Medium enterprise</p> <p><input type="checkbox"/> A sole proprietorship</p> <p><input type="checkbox"/> A natural person who does not conduct business activity</p> <p><input type="checkbox"/> Other types: specify</p> <p>within the meaning of the Act of March 6, 2018 Entrepreneurs Law.</p> <p>(Note! Mark the "X" in the appropriate box)</p>
9.	Statement	<p>I hereby represent that I have read the Terms of Reference (together with the Appendices constituting an integral part thereof) and that I accept its content without reservations.</p>
10.	<p>I hereby represent that I have fulfilled the information obligations foreseen in Art. 13 or Art. 14 of the GDPR towards natural persons whose personal data I obtained directly or indirectly in order to apply for awarding a public contract in the present procedure.</p>	<p>confirm:.....</p> <p><i>In the event if the Contractor does not transfer the personal data other than their own or if the information obligation is excluded pursuant to Art. 13, item 4 or Art. 14, item 5 of the GDPR, the Contractor shall not submit this statement (delete the content of the statement e.g. by crossing out).</i></p>
11.	Persons authorised to represent the Contractor	<p>enter:</p>
12.	Parts of the Contract that will be entrusted to subcontractors	<p>Specify the parts of the Contract:</p> <p>Enter names of companies:</p>
13.	Documents attached to the bid	<p>1.</p> <p>2.</p> <p>3.</p>

* Delete as appropriate

.....

Signature of persons authorised
to represent the Contractor

Contractor

Date:.....

.....

.....

(Full name/Company name, address)

LIST OF DELIVERIES PERFORMED

By placing a bid in the procedure conducted as an open tender procedure, for the **Delivery of Optical spectrum analyzer for quantum cascade lasers emitting in midinfrared band with accessories** we hereby represent that during the period of three years preceding the date of placing bids (for a shorter period of business activity – during this period) we performed the following deliveries:

Item	Subject of delivery	Value of delivery	Date of delivery	Entity for whom the delivery was made <i>(name and address)</i>
1	2	3	4	5
1.				

Note! Please attach the relevant proof confirming that the item was duly delivered for each delivery listed in the table.

.....

Signature of persons authorised
to represent the Contractor

Contractors who jointly apply for a contract:

.....
.....
(Full name/Company name, address)

STATEMENT OF THE CONTRACTOR ABOUT THE SCOPE OF PERFORMANCE OF THE CONTRACT BY THE CONTRACTORS WHO JOINTLY APPLY FOR A CONTRACT

submitted on the basis of art. 117 item 4 of the Act of September 11, 2019 - Public Procurement Law (Official Journal of 2019, item 2019 with later changes)

in the procedure for awarding a public Contract for

.....

we declare that:

- 1. Contractor
(name and address name and address of one of the Contractors who jointly apply for a contract, e.g. a consortium member or partner in a civil partnership)

will perform the following supplies, services or construction works
*:.....

- 2. Contractor
(name and address name and address of one of the Contractors who jointly apply for a contract, e.g. a consortium member or partner in a civil partnership)

will perform the following supplies, services or construction works
*:.....

NOTE!

It should be indicated which supplies/services/construction works * included in scope of the subject of the contract are performed by individual contractors (consortium members or partners of a civil partnership)

STATEMENT REGARDING THE INFORMATION PROVIDED

I/We* hereby represent that any and all information provided in this Statement are up-to-date and accurate and that they I/we are fully aware of the consequences of providing the Contracting Authority with misleading information.

* Delete as appropriate

.....
place, date

.....
signature of the Contractor

Draft provisions of the agreement

This Agreement has been concluded in Warsaw, on the, by and between:

Łukasiewicz Research Network – Institute of Microelectronics and Photonics, 32/46 Lotników Avenue, 02-668 Warsaw, entered into the Registry of Entrepreneurs of the National Court Register, maintained by District Court for the Capital City Warsaw, 13th Business Division of the National Court Register under No. KRS 0000865821, Taxpayer’s Identification Number NIP 5213910680, REGON: 387374918, hereinafter referred to as the “Contracting Authority”, represented by:

- 1. -
- 2. -

hereinafter referred to as the "Contracting Authority".

and

.....

.....

..... _____, _____

represented by:

..... -

hereinafter referred to as the "Contractor".

Łukasiewicz Research Network – Institute of Microelectronics and Photonics hereby represents that it has the status of a large enterprise pursuant to the Act of March 8 2013 on counteracting excessive payment delays in commercial transactions.

§1 Subject of the Contract

- 1. The Subject of the Contract is the **delivery of a brand new Optical spectrum analyzer for quantum cascade lasers emitting in midinfrared band (4,5 μm – 12μm) with accessories, guarantee, documentation, hereinafter referred to as the “Subject of the Contract”**, to Łukasiewicz Research Network – Institute of Microelectronics and Photonics Branch Office, ul. Okulickiego 5E in Piaseczno, pursuant to the Terms of Reference (hereinafter: “**Terms of Reference**”) No. of the” constituting Appendix No. 1 hereto, and the “Bid Form of the constituting Appendix No. 2 hereto (hereinafter jointly referred to as the: “Subject of the Contract”).

§ 2 Value of the Contract

1. The total value of the Subject of the Contract specified in §1 amounts to: PLN/EUR/USD/GBP gross (say:) including VAT tax at the rate of ...%, i.e. PLN/EUR/USD/GBP (say:). The net Value of the Contract amounts to: PLN/EUR/USD/GBP (say:)
2. The value of the Subject of the Contract includes:
 - a) the price of the subject of the Contract specified in appendix no 1 to the Terms of Reference,
 - b) transport, (terms of delivery: organization and costs of loading, transport to the place indicated by the Contracting Authority, delivery insurance is on the side of the Contractor along with the risk of loss or damage to the subject of the contract),
 - c) guarantee period,
 - d) software licenses,
 - e) other services, if they are necessary to realise the subject of the Contract.

§ 3 Terms of payment

1. The payment shall be made to the bank account of the contractor in the following way:

100% of the value of the Agreement (value provided in the bid) – paid by bank transfer either pursuant to the original, correctly issued invoice delivered to the Contracting Authority or based on structured electronic invoices sent to the Contracting Authority through the website pursuant to Art. 4 of the Act of November 9 2018 on electronic invoicing in public procurement, concessions for construction works or services and public-private partnership (Journal of Laws of 2018, item 2191).
2. The Contractor shall deliver the invoice within 5 days from the date of signing the commissioning protocol of the complete Subject of the Agreement by the Contracting Authority without reservations.
3. The Contracting Authority shall pay the price to the Contractor within 30 days from the date of receipt of a correctly issued VAT invoice.
4. The fee specified in the preceding paragraph shall be paid by bank transfer based on a correctly issued invoice submitted to the Contracting Authority within 3 days from the date of issue. The VAT invoices shall be issued based on the commissioning protocol specified in §5 herein.
5. The Contracting Authority shall pay the Contractor the aforementioned fee within 30 days from the date of receipt of the invoice that is correctly issued (i.e. compliant with legal regulations). In the event of delay in payment, the Contracting Authority shall pay the Contractor statutory interest charged on the outstanding amount.
6. The Contracting Authority shall pay the amount by bank transfer to the bank account of the Contractor specified in the VAT invoice.
7. The date of payment shall be deemed as the date of charging the bank account of the Contracting Authority.

8. If the statutory VAT rates change during the period of the Agreement, the value of the Agreement may be adjusted by the difference resulting from the change in VAT amount. Such adjustment requires the approval of a written motion of the Contractor, including factual and legal grounds, by the Contracting Authority.
9. The assignment of receivables under this Agreement to third parties requires the consent of the Contracting Authority.
10. The price specified hereinabove includes the total cost of realisation of the Contract, including all costs related to the realisation, including the complete realisation of the Subject of the Agreement, considering all the conditions of the Description of the Subject of the Contract and the bid, including the costs necessary to perform the contract, including all public levies (fees, customs fees and taxes, including VAT).
11. The bank account of the Contractor is included in the register of information about VAT payers.

§ 4 Terms and conditions of delivery, date of delivery

1. The Subject of the Contract shall be delivered to the address below, and left at the disposal of the Contracting Authority.

Delivery address:

Łukasiewicz Research Network – Institute of Microelectronics and Photonics

Al. Lotników 32/46

02-668 Warsaw, Poland

2. Together with the Subject of the Contract, the Contractor shall deliver a CE certificate of compliance in Polish or English language version.
3. The Subject of the Contract shall be realised within weeks (*date from the bid*) from the date of concluding the Agreement.
4. The Contractor shall provide the Contracting Authority with the technical installation conditions for the equipment.
5. The Contracting Authority is obliged to:
 - a) cooperate with the Contractor in order to ensure smooth and reliable realisation of the Subject of the Contract;
 - b) perform commissioning of the Subject of the Contract that has been realised with all due diligence by the Contractor;
 - c) pay the due amount of fee to the Contractor, at the dates and on the terms and conditions specified herein.
6. The Contractor shall realise the Subject of the Contract with all due diligence and in compliance with the requirements and rules specified herein.
7. The Contractor shall ensure that the persons who participate in the realisation of the Subject of the Contract have the relevant qualifications and that the number of these persons is sufficient to perform the scope of deliveries specified herein.

8. The Contractor shall be responsible for the actions and omissions of subcontractors and other persons who will participate in the realisation of the Subject of the Contract as for its own.
9. In return for the remuneration, the Contractor shall perform all actions necessary to start and launch the Subject of the Contract in compliance with all the terms and conditions provided herein.
10. The Contractor shall provide a guarantee document for all the elements constituting the Subject of the Contract.

§ 5 Commissioning of the Subject of the Contract

Confirmation of the receipt of the subject of the contract will be made by the Contracting Authority signing the acceptance protocol of the complete subject of the contract without reservations.

§ 6 Contractual penalties and the right to withdraw from the Agreement

1. In the event of delay in the realisation of the Subject of the Contract, the Contracting Authority may charge the Contractor with a contractual penalty in the amount of 0.1% of the value of the Subject of the Contract for each business day of delay (the Parties agree that business days are: Monday to Friday), up to 10% of its total value. The contractual penalty shall become payable after the ineffective expiry of the additional period of 14 business days set for the Contractor.
2. In the event of untimely repair or replacement of the equipment, the Contracting Authority may charge a contractual penalty in the amount of 0.1% of the value of the Subject of the Contract for each day of delay, up to 10% of the total value.
3. In the event of termination of the Agreement by the Contractor due to reasons on its part, the Contracting Authority may charge the Contractor with a contractual penalty in the amount of 10% of the value of the Subject of the Contract.
4. In the event of delay in the realisation of the Subject of the Contract exceeding 14 days, the Contracting Authority may terminate the Agreement. The Contracting Authority may exercise the right to terminate the Agreement within 7 days from the date of delay.
5. The Contracting Authority may deduct the amount of the imposed contractual penalty from the fee of the Contractor.
6. The total amount of contractual penalties must not exceed 10% of the gross remuneration amount specified in § 2 item 1.

§ 7 Guarantee and warranty

1. The Contractor shall issue guarantee documents.
2. The Contractor guarantees the proper functioning and technical quality of the delivered Subject of the Contract for a period of: ... (guarantee period from the bid) from the date of signing the acceptance protocol without reservations.

3. Under the warranty, the Contractor covers the costs of repair or replacement of the defective device, as well as the costs related to the transport of the repaired or replaced device to the Contracting Authority.
4. During the warranty period, the Contractor is obliged to repair or replace the broken or defective device no later than within 6 weeks from the date of its delivery to the Contractor. The cost of delivery is covered by the Contracting Authority.
5. The guarantee shall be prolonged by the duration of repair of the Subject of the Contract.
6. The replaced or repaired elements shall be subject to guarantee by the Contractor or Manufacturer.
7. Service intervention at the tool installation site provided within a maximum of 3 days from reporting the failure. Remote diagnosis of the technical condition of the device and remote application support (via e-mail or phone).
8. After the expiry of the warranty period, the Contractor guarantees technical support response within 14 working days after notification about the defects
9. During the guarantee period, the costs of all repairs and services (including travel costs to the Contracting Authority) shall be borne by the Contractor.

§ 8 Force majeure

1. None of the Parties shall be deemed to be in violation of the Agreement or liable to the other Party in any other way in the event of delayed performance or failure to perform as a result of the circumstances of force majeure.
2. Force majeure shall be understood as extraordinary, external events beyond the control of any of the Parties that could not be prevented by any of the Parties, in particular acts of terror, wars, natural disasters, epidemics, floods, and explosions, provided that they hinder the realisation of the Agreement. The circumstances of force majeure must be documented. The Contractor has concluded this Agreement during the international SARS-Cov-2 pandemic. The Contractor hereby represents that as of the date of conclusion of the Agreement, neither the realisation of its Subject, nor the agreed time of realisation are threatened by circumstances of force majeure.
3. In the event of circumstances of force majeure, the obligations of the Party that are impossible to fulfil shall be suspended for the duration of the circumstances of force majeure and resumed as soon as they may reasonably be fulfilled.
4. Each of the Parties shall notify the other Party about the emergence of force majeure immediately, but not later than within 3 days from the commencement of these circumstances.
5. If the Party fails to notify the other Party about the circumstances of force majeure, about the related suspension of its obligations and the date of their resumption within the period specified in item 4, the Party shall be responsible for any damages suffered by the other Party as a consequence of lack of information.

§ 9 Modifications of the Agreement

1. The Contracting Authority foresees the possibility to introduce changes to the provisions of the concluded Agreement to diverge from the content of the bid that was the basis for selecting the Contractor in cases that result directly from the provisions in public procurement and in the event of circumstances listed below, taking into account the conditions for introducing such changes.
2. Any modifications to this Agreement require written form, otherwise they shall be considered null and void.
3. The provisions of the Agreement may be subject to changes with respect to the content of the Bid of the Contractor in cases foreseen in the PPL Act and in the following situations:
 - a. amendments to legal regulations, published in the Official Journal of the European Union, the Journal of Laws, the Official Gazette of the Republic of Poland or in the Official Journal of the relevant Minister;
 - b. changes to the time of realisation of the Contract in cases of force majeure;
 - c. changes to the binding VAT rate; if the changed VAT rate will lead to increasing costs of the realisation of the Agreement on part of the Contractor, the Contracting Authority accepts the possibility to increase the fee by the amount equal to the difference in the tax amounts paid by the Contractor.

§ 10 Settlement of disputes

Any disputes that arise from this Agreement and cannot be settled amicably shall be settled by the Common Court of local jurisdiction for the seat of the Contracting Authority. This Agreement shall be governed by Polish law. This Agreement is subject to the jurisdiction of Polish courts.

§ 11 Licence

1. The Contractor grants the Contracting Authority in return for the fee a non-exclusive licence, unlimited in terms of time and territory, subject to all provisions of the Bid Form, to use all elements of the documentation and software constituting works as defined in the Act on Copyright and Related Rights, delivered as part of the Contract, with the right to grant sub-licences within the scope of activities of the Contracting Authority and in the following fields of exploitation:
 - 1) using the provided documentation to operate the equipment;
 - 2) entering and recording the documentation in computer memory or on other electronic carriers, both stationary and mobile;
 - 3) reproducing the documentation on any carriers for the purposes of operating the equipment;
 - 4) replacing the carriers on which the documentation is recorded and transferring the documentation to the memory of computers and computer network servers.
2. The above licence shall also apply to any changes and updates introduced to the documentation by the Contractor during the period of guarantee.

3. Whenever software is referred to in the Agreement, it is deemed that the Contractor grants a non-exclusive licence, unlimited in terms of time and territory, for this software or application in return for the remuneration, in all fields of exploitation specified in Art. 74, item 4 of the Act on Copyright and Related Rights.
4. Together with the intellectual property rights, the Contracting Authority shall be granted a permission to exercise the dependent rights to the software in question together with the right to permit the exercise of dependent rights by third parties.

The Contractor transfers the ownership title to the carriers on which the documentation and software have been recorded to the Contracting Authority.

§ 12. Personal data

1. The Contracting Authority shall fulfil, on behalf of the Contractor, the information obligation concerning personal data processing towards its designated contact persons for the realisation of the Agreement, within 14 days from the conclusion hereof.
2. The Contractor shall fulfil, on behalf of the Contracting Authority, the information obligation concerning personal data processing towards its designated contact persons for the realisation of the Agreement, within 14 days from the conclusion hereof.
3. The information obligation results from the provisions of Art. 14 of the Regulation of the European Parliament and the Council (EU) 2016/679 of the 27.04.2016 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).
4. **The Contractor shall fulfil the information obligation concerning the Information Clause specified below towards the persons designated by third parties for the purposes of contact or the realisation of the Agreement concluded with Łukasiewicz Research Network – Institute of Microelectronics and Photonics.**

Pursuant to art. 14 of the General Data Processing Regulation of April 27, 2016 (Official Journal of the EU L 119 of the 04.05.2016), I hereby inform you that:

- 1) the controller of your personal data is Łukasiewicz Research Network – Institute of Microelectronics and Photonics in Warsaw, 32/46 Lotników, Avenue 02-668 Warsaw;
- 2) in cases related to your personal data, please contact the Data Protection Inspector, e-mail address: iod@imif.lukasiewicz.gov.pl
- 3) Your personal data will be processed only for the purposes of the realisation of this Agreement, pursuant to Art. 6, item 1 (f) of the General Data Processing Regulation of April 27, 2016;
- 4) the data controller shall process the following personal data: first name and surname, e-mail, telephone number;
- 5) Your personal data will be stored until the expiry of the mutual claims between the parties to the Agreement;
- 6) Your personal data will not be transferred to third-party recipients;

- 7) you have the right to demand the data controller to enable you to access your personal data, the right to rectify, erase or limit processing, and the right to raise objections against the processing of your data;
- 8) you have the right to file a complaint to the supervisory authority, i.e. the President of the Personal Data Protection Office, if you consider that your data are processed in violation of the personal data protection regulations.

§ 13 Final provisions

1. Appendix No. 1 – “Terms of Reference for Contract No. ... of the ...” constitutes an integral part of this Agreement.
2. Appendix No. 2 – “Bid of the ...” constitutes an integral part of this Agreement.
3. In cases not regulated in this Agreement, the relevant provisions of the Polish Civil Code shall apply.
4. Any modifications to this Agreement require written form, otherwise they shall be considered null and void.
5. The present Agreement has been made up in two identical copies, one for the Contractor and one for the Contracting Authority.
6. This Agreement shall enter into force after signing by both Parties.

The Contractor

The Contracting Authority

Appendix No. 8 to the Terms of Reference

OBLIGATION OF AN ENTITY TO PROVIDE THE CONTRACTOR WITH THE RESOURCES NECESSARY FOR PERFORMING THE CONTRACT

Having read the content of the announcement of the Contract and the Terms of Reference for the procedure for awarding a public Contract conducted in form of an open tender by for:, we:..... (*first name and surname of the person signing the statement*) hereby represent that we are duly authorised to perform this action, acting on behalf of:..... (*enter the name of the entity providing resources*) with its seat in: (*enter the address of the entity providing resources*) we hereby commit ourselves to provide access to the resources in our possession necessary to realise the Contract, to: (*enter the name*) with its seat in:, hereinafter referred to as the Contractor.

1) The scope of the resources available to the Contractor:

a)
(*please specify the provided resources*)

b)
(*please specify the provided resources*)

2) Manner of using the resources in the realisation of the Contract:

.....

3) Scope and duration of our participation in performing the Contract:

.....

4) We will provide the following services being parts of the subject of the Contract:

.....

Due to the above, we hereby provide these resources to the disposal of the Contractor who may use them in the realisation of the subject of the Contract (if its bid is selected and the Contract granted in the said procedure).

.....

place, date

.....

*Signature of persons authorised
to represent the Contractor*