

**SPECIFICATION OF TERMS OF REFERENCE**

for

**The Design, Manufacture and Delivery including installation of a helium cooling system  
for the Polish Free Electron Laser - PoIFEL  
at the premises of the National Centre for Nuclear Research in Otwock**

*carried out as part of the project "PoIFEL - Polish Free Electron Laser" co-financed by the European Regional Development Fund*

*as part of the Intelligent Development Operational Programme 2014-2020, Priority IV: Enhancement of the Research Potential, Measure 4.2: Development of Modern Research Infrastructure of the Science Sector*

*and*

*as part of the Regional Operational Programme of the Mazovian Voivodeship for 2014-2020, Priority Axis I: Utilisation of Research and Development Activities in the Economy, Measure 1.1: Research and Development Activities of Research Units*

**Procedure number EZP.270.72.2022**

**after the amendment of 09.11.2022**

Approved by:

Otwock, 02.11.2022

The **Specification of Terms of Reference** are hereinafter referred to as the "Terms of Reference" or "Specification" and include:

**Volume I: INSTRUCTIONS FOR ECONOMIC OPERATORS INCLUDING FORMS**

**Chapter 1 Instruction for Economic Operators (Polish - IDW):**

**Chapter 2 Forms relating to the Tender:**

Form 2.1. Tender

Form 2.2. "Non-price criteria"

**Chapter 3 Forms relating to the Economic Operator's fulfilment of the conditions for participation in the procedure/demonstration of lack of grounds for exclusion of the Economic Operator from the procedure:**

3.1. Single European Procurement Document (JEDZ/ESPD) (A document pre-prepared by the Awarding Entity available on the website of the conducted procedure both in xml format - to be imported in the eESPD service, and in pdf format - for reference);

3.2. Proposal of the content of the obligation of the entity providing the resources to make available to the Economic Operator the necessary resources for the performance of the tender contract;

3.3. Proposed content of the declaration of Economic Operators jointly applying for the award of the tender contract within the scope referred to in Article 117(4) of the PPL Act;

Form 3.4. Declaration concerning the validity of the information in the ESPD

Form 3.5. Declaration concerning the capital group

Form 3.6. Economic Operator's declaration of income

Form 3.7. List of supplies

Form 3.8. List of persons

Form 3.9. List of tools/equipment

Form 3.10. Declaration on sanctioning provisions related to the war in Ukraine

**Volume II Proposed provisions of the Agreement**

**Volume III: DESCRIPTION OF THE SUBJECT OF THE TENDER CONTRACT (Process Design of the PolFEL Accelerator Helium Cooling System with elements of technical design)**

**Volume IV: PRICE FORM**

## Volume I INSTRUCTIONS FOR ECONOMIC OPERATORS

### Chapter 1

#### Instructions for Economic Operators (Polish -IDW)

#### 1. AWARDING ENTITY

National Centre for Nuclear Research

Ul. Andrzeja Sołtana 7,

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tel. + 48 22 273 16 30;

e-mail: [zp@ncbj.gov.pl](mailto:zp@ncbj.gov.pl)

NIP: 532-010-01-25, REGON 001024043

#### 2. THE WEBSITE OF THE TENDER PROCEDURE

- 2.1 The tender procedure shall be carried out using the Procurement Platform: [platformazakupowa.pl](https://platformazakupowa.pl) at the following address <https://platformazakupowa.pl/pn/ncbj> (hereinafter: Platform). Whenever the Terms of Reference or the regulations on public procurement refer to the website of the conducted procedure, this shall also be understood to mean the Platform.
- 2.2 Amendments and clarifications to the content of the ToR and other procurement documents directly related to the contract award procedure will be available at: <https://platformazakupowa.pl/pn/ncbj>.

#### 3 REFERENCE NUMBER OF THE PROCEDURE

The procedure to which this document relates are marked with a (reference number):

**EZP.270.72.2022.**

Economic Operators shall in all their contacts with the Awarding Entity refer to the reference number given above.

#### 4 MODE OF AWARDING THE CONTRACT

- 4.1 The procurement procedure is conducted by means of an open tender pursuant to Article 132 of the Public Procurement Law<sup>1</sup> hereinafter referred to as the "PPL Act".
- 4.2 The Awarding Entity **will apply** the procedure referred to in Article 139(1) of the PPL Act (i.e. the so-called reverse procedure).
- 4.2.1 First of all, the Awarding Entity will examine and evaluate the tenders and then perform the subject qualification of the Economic Operator whose tender was awarded the highest mark in terms of lack of grounds for exclusion and fulfilment of the conditions for participation in the procedure.
- 4.2.2 In connection with application of the procedure referred to in Article 139 (1) of the PPL Act, the Awarding Entity does not require submission with the Tender of the declaration referred to in point. 10.2. OF IDW. The Awarding Entity shall require submission of this declaration only from the Economic Operator whose tender was awarded the highest mark.
- 4.2.3 If the Economic Operator whose tender was awarded the highest mark has grounds for exclusion, does not meet the conditions for participation in the procedure, does not submit subjective evidence or the declaration referred to in point 10.2. of IDW confirming the absence of grounds for exclusion or meeting the conditions for participation in the procedure, The Awarding Entity shall re-examine and evaluate the tenders of the other Economic Operators, and then qualify the Economic Operator whose tender was awarded the highest mark with respect to the absence of grounds for exclusion and compliance with the conditions for participation in the procedure.

<sup>1</sup> Act of 11 September 2019. - Public Procurement Law (Journal of Laws of 2021, point 1129, as amended).

4.2.4 The Awarding Entity shall continue the procedure referred to in point. 4.2.3. of IDW until the selection of the most advantageous tender or cancellation of the contract award procedure.

## 5 SOURCES OF FUNDING

5.1 The tender contract is part of the implementation of the PolFEL - Polish Free Electron Laser project co-financed by the European Regional Development Fund:

5.1.1 **In the scope of Task 1**, defined in point 6.1 – as part of the Operational Programme Intelligent Development 2014-2020, Priority IV: Enhancement of Scientific and Research Potential, Measure 4.2: Development of Modern Research Infrastructure of the Science Sector, on the basis of Grant Agreement POIR.04.02.00-00-B002/18-00;

5.1.2 **In the scope of Task 2**, defined in point 6.1 – as part of the Regional Operational Programme of the Mazowieckie Voivodeship for 2014-2020, Priority Axis I: Utilisation of Research and Development Activities in the Economy, Measure 1.1: Research and Development Activities of Scientific Units, on the basis of Subsidy Agreement RPMA.01.01.00-14-e217/20-00, in the scope of Task 2.

## 6 DESCRIPTION OF THE SUBJECT OF THE TENDER CONTRACT

6.1 The subject of the tender contract is the :

Design, manufacture and delivery including installation of a helium cooling system for the Polish Free Electron Laser - PolFEL to the premises of the National Centre for Nuclear Research in Otwock - Świerk.

The subject of the Tender Contract comprises two Tasks:

- 1) **Task 1:** delivery, installation and commissioning of a helium cooling system based on the TCF50 helium refrigerator (manufactured by Linde Kryotechnik AG) owned by the Awarding Entity and made available to the Economic Operator for this purpose, including:
  - a) the development of conceptual technical design describing how the TCF50 helium refrigerator will be used and operated in the helium cooling system in the mode necessary for supplying helium to the PolFEL helium distribution system and demonstrating how the refrigerator for that purpose will be supplemented with necessary components;
  - b) development of detailed technical design and production documentation;
  - c) performing a refresh of the TCF50 refrigerator and its adaptation to the operation of the PolFEL helium cooling system by inspecting it, cleaning it, adjusting the connectors, updating the control system and supplementing the refrigerator with the necessary associated components;
  - d) delivery and installation of the refreshed TCF50 refrigerator and all associated components at the Awarding Entity's premises;
  - e) commissioning and testing of the helium cooling system based on the TCF50 refrigerator.
- 2) **Task 2:** extending the functionality of the helium cooling system implemented under Task 1 by delivering, installing and commissioning a complete PolFEL helium cooling system based on a new high-efficiency helium refrigerator and its integration with the helium cooling system based on the TCF50 refrigerator, including:



- a) development of technical conceptual design describing: mode of operation, components, basic mechanical, electrical and cryogenic parameters, control system and the principles of cooperation with the TCF50 refrigerator;
- b) development of detailed technical design and production documentation;
- c) manufacture, commissioning and testing at the manufacturer's site of a new helium refrigerator and associated components, in particular including cold and hot compressors, oil removal system and gas management system, control system, vacuum pump system, cryogenic process lines (within the helium cooling system) and connection lines and helium recovery system, as well as low and high pressure helium tanks;
- d) delivery of a new helium refrigerator and associated components to the Awarding Entity's premises.
- e) Installation and commissioning of the helium cooling system as a system consisting of two refrigerators operating in the following modes:
  - independent, combined operation mode: both refrigerators operate by supplying cooled helium to the test objects connected to each refrigerator separately.
  - independent, decoupled operation mode: the two refrigerators work alternately to supply cooled helium to the test objects connected to each refrigerator separately.
  - dependent, combined operation mode: both refrigerators work by supplying cooled helium to the same test object.
- f) testing the correct operation of the complete PolFEL helium cooling system.

Elements of the delivery, including technical and detailed design documentation, manufacture, installation, commissioning and testing must be carried out in accordance **with VOLUME III of the Terms of Reference.**

The tender contract was not divided into parts due to the following:

Although there are well-defined tasks within the helium cooling system, such as the refurbishment of the helium refrigerator in possession of the Awarding Entity's and the design, manufacture and delivery, including commissioning, of a second refrigerator with a significantly higher capacity, functionally and physically (the entire system must be welded together during installation to ensure the vacuum-tightness of the weld), the system is a single entity for which the Economic Operator must take responsibility. Due to this fact, the procedure should select one supplier for both helium cooling systems. It is therefore not possible to divide the contract into parts.

#### **CPV (Common Procurement Vocabulary):**

**Main subject of the tender contract:** 42530000-0 - parts of refrigerating and freezing equipment and heat pumps

The performance of the tender contract is subject to Polish law, including in particular the Construction Law<sup>2</sup>, the Civil Code<sup>3</sup> and the Public Procurement Law<sup>4</sup>.

6.2 The subject of the tender contract is described in detail in **Volume III of the ToR.**

6.3 The minimum required warranty period for the subject of the tender contract is **24 months** from the date of final acceptance.

6.4 The Awarding Entity does not specify employment requirements for persons referred to in Article 95 and in Article 96(2)(2) of the PPL Act.

6.5 The contracting body does not anticipate:

- 1) an on-site visit by the economic operator,
- 2) on-the-spot inspection of the documents necessary for the performance of the contract.

<sup>2</sup> Act of 7 July 1994. - Construction Law (Journal of Laws of 2020, point 1333, as amended).

<sup>3</sup> Act of 23 April 1964. - Civil Code (Journal of Laws of 2020, point 1740)

<sup>4</sup> Act of 11 September 2019. - Public Procurement Law (Journal of Laws of 2021, point 1129, as amended).



6.6 The Awarding Entity **reserves the** obligation for the Economic Operator to personally perform the key tasks

**for Task 1:** technical condition analysis of the TCF50, repair and commissioning of the TCF50 at the Economic Operator's premises, commissioning at the Awarding Entity's premises and final testing of the TCF50;

**for Task 2:** design and construction of the high-power helium refrigerator, design and construction of the connection system for the high-power helium refrigerator, commissioning and testing at the manufacturer's premises, installation and commissioning at the Awarding Entity's premises, testing at the Awarding Entity's premises,

6.7 The Awarding Entity does not envisage the possibility of awarding to the existing supplier - a contract for additional supplies as referred to in Article 214(1)(8) of the PPL Act.

6.8 Pursuant to Article 5k of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's destabilising actions in Ukraine<sup>5</sup>, it is prohibited to execute a public tender contract with the participation of subcontractors, suppliers or entities whose capacity is relied upon within the meaning of Directive 2014/24/EU if they account for more than 10% of the contract value.

## 7 DEADLINE FOR EXECUTION OF THE SUBJECT OF THE TENDER CONTRACT

7.1 The Awarding Entity requires that the subject of the tender contract (Tasks 1 and 2) be completed within the following deadlines:

**Task 1:** up to 80 weeks from the date of conclusion of the tender contract,

**Task 2:** up to 120 weeks, from the date of conclusion of the tender contract,

taking into account the schedule specified in **Volume III of the OPD** - Chapter 19, in particular Tables 19.1 and 19.2.

## 8. CONDITIONS FOR PARTICIPATION IN THE PROCEDURE

**8.1 Economic Operators who are not subject to exclusion and who meet the conditions for participation specified by the Awarding Entity may apply for the award of the tender contract.**

**8.2 Economic Operators who meet the conditions concerning:**

8.2.1 capacity to act as an economic Operator: not applicable;

8.2.2 authorisation to conduct a specific economic or professional activity, if this results from separate regulations: not applicable;

**8.2.3 economic or financial standing:**

1. The condition will be deemed fulfilled if the Economic Operator proves annual revenue or annual revenue in the area covered by the subject of the tender contract at a level of not less than PLN 9,000,000.00 (in words - nine million zlotys) - for a period not longer than the last three financial years, and if the period of operation is shorter, for this period.

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<sup>5</sup> Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's destabilising actions in Ukraine (OJ EU L 229, 31.7.2014, p.1 as amended).



**NOTE:** When submitting the documents referred to in point 10.8.a, where the Economic Operator conducts the settlements in a currency other than that indicated by the Awarding Entity, he is obliged to convert it (or the conversion will be made by the Awarding Entity) according to the average EURO exchange rate according to the National Bank of Poland in force on the 10th (tenth) day prior to the day of tender submission.

#### 8.2.4 technical or professional capacity:

##### 1. concerning the Economic Operator:

The condition will be fulfilled if the Economic Operator proves making or performing in the last three years before the date of submitting the tenders, and if the period of conducting business activity is shorter - in this period, at least: three supplies of helium cryogenics systems, of the value of min. PLN 2,000,000 gross each. The helium cryogenics area should be considered to be the temperature range below 10 K.

##### 2. concerning persons:

The condition will be fulfilled if the Economic Operator has at his disposal during the execution stage of the tender contract persons capable of performing the contract who meet the following requirements:

- a) a minimum of 2 engineers with a specialisation in cryogenics and refrigeration (or related, i.e.: a completed technical degree related to the construction and operation of machinery and equipment producing or using refrigerants with a temperature range of 2 to 50K. ) who have a minimum of 3 years of documented work experience and who have participated in a minimum of 2 projects related to the design, delivery and installation of helium cryogenic systems in the last 3 years before the date of submitting the tenders
- b) minimum of 7 production staff.

##### 3. concerning the equipment:

1) The condition will be considered fulfilled if the Economic Operator demonstrates that he has the tools to perform calculations and simulations:

- a) thermophysical properties of pure fluids and mixtures over a wide range of fluid conditions, including liquid, gas and supercritical phases,
- b) calculations of the thermophysical properties of helium-4 (4He), including calculations of the liquid helium state for helium I (below the boiling point and above the lambda temperature) and the superliquid helium state for helium II (below the lambda point).

2) The condition will be considered fulfilled if the Economic Operator demonstrates that he has at his disposal a minimum of one test station for the production of liquefied helium, a minimum of one test station for inspection and testing of turbines installed in helium refrigerators, a minimum of one pump station with a turbomolecular pump installed, a minimum of one helium leak detector with a leak detection range of at least  $1 \cdot 10^{-9}$  mbar<sup>3</sup>/s.

8.3 With regard to the conditions relating to professional qualifications or experience, Economic Operators competing jointly for the award of the tender contract may rely on the abilities of those Economic Operators who will perform the services for the performance of which those abilities are required.

8.4 When assessing technical or professional capacity, the Awarding Entity may, at any stage of the procedure, consider that the Economic Operator does not have the required capacity if the Economic Operator has conflicting interests, in particular the involvement of the Economic Operator's technical or professional resources in other economic undertakings of the Economic Operator may have a negative impact on the performance of the contract.

## 9. GROUNDS FOR EXCLUSION OF ECONOMIC OPERATORS

9.1 An Economic Operator in respect of whom any of the circumstances referred to above apply shall be excluded from the procurement procedure:

- a) in Article 108(1) of the PPL Act;

b) in Article 7(1) of the Act on special arrangements for counteracting the promotion of aggression on the Ukraine and to protect national security<sup>6</sup>

c) referred to in Article 5k of Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's destabilising actions in Ukraine (OJ EU No L 229, 31.7.2014, p. 1 as amended) as amended by Regulation 2022/576 (OJ EU No L 111, 8.4.2022, p. 1).

The Awarding Entity indicates that, with regard to the exclusion ground referred to in point b) above, the Economic Operator shall submit a declaration in Part III Section D of the Single Document "Grounds for exclusion of a purely domestic nature".

In addition, the Awarding Entity, in the course of verifying the grounds for exclusion referred to above, reserves the possibility of calling on the Economic Operator to provide explanations.

9.2 The Awarding Entity does not provide for exclusion of the Economic Operator on any of the grounds indicated in Article 109(1) of the PPL Act.

9.3 Depending on the occurrence of the grounds for exclusion specified in point. 9.1. letter a of IDW (obligatory grounds), the Economic Operator shall be excluded for the relevant period indicated in Article 111 of the PPL Act.

9.4 An Economic Operator may be excluded by the Awarding Entity at any stage of the procurement procedure.

9.5 An Economic Operator shall not be subject to exclusion under the circumstances specified in Article 108(1)(1), (2) and (5) of the PPL Act if he proves to the Awarding Entity that he fulfils all of the following conditions:

- 1) he has made good or has undertaken to make good the damage caused by the offence, misdemeanour or his or her wrongful conduct, including through monetary compensation;
- 2) he has fully explained the facts and circumstances surrounding the offence, the misconduct or his wrongful conduct and the damage caused thereby, cooperating actively with the competent authorities, including the law enforcement authorities or the Awarding Entity, as appropriate;
- 3) he has taken specific technical, organisational and personnel measures that are appropriate to prevent further offences, misconduct or improper conduct, in particular:
  - a) he has severed all links with persons or entities responsible for the wrongful conduct of the Economic Operator,
  - b) he reorganised the staff,
  - c) he implemented a reporting and control system,
  - d) he set up internal audit structures to monitor compliance with legislation, internal regulations or standards,
  - e) has introduced internal regulations on liability and compensation for non-compliance with laws, internal regulations or standards.

9.6 The Awarding Entity shall assess whether the actions taken by the Economic Operator as specified in point 9.5. of the IDW are sufficient to demonstrate his reliability, taking into account the importance and special circumstances of the Economic Operator's act. The Awarding Entity shall exclude the Economic Operator if the actions taken by the Economic Operator as specified in point 9.5. of the IDW are not sufficient to demonstrate his reliability.

## 10. THE EVIDENCE IN QUESTION

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<sup>6</sup> Act of 13 April 2022. - On special solutions to prevent support for aggression against Ukraine and to protect national security (Journal of Laws of 2022, point 835)



10.1 The Awarding Entity requires evidence in question to prove:

- 1) no grounds for exclusion
- 2) fulfilment of the conditions for participation in the procedure.

10.2 The declaration referred to in Article 125(1) of the PPL Act is not the evidence in question and constitutes provisional evidence of the absence of grounds for exclusion and of the fulfilment of the conditions for participation in the procedure as at the date of submission of tenders.

10.3 The declaration referred to in point. 10.2. of the IDW (in the form of a Single European Procurement Document drawn up in accordance with the model of the standard form set out in the Implementing Regulation of the European Commission issued pursuant to Article 59(2) of Directive 2014/24/EU, hereinafter referred to as the "Single Document" or "SEPD"), shall be sent by the Economic Operator to the Awarding Entity in electronic form (i.e. bearing a qualified electronic signature), in accordance with the rules specified in point. 14 OF THE IDW.

The Economic Operator shall complete the SEPD by creating an electronic document. He may use the ESPD tool or other available tools or software to complete the SEPD and create the electronic document.

The single document pre-prepared by the Awarding Entity for the procedure in question (in xml format - to be imported into ESPD) is available on the Platform in the place where this ToR is posted.

With regard to "Part IV Eligibility Criteria" of the SEPD, **the Economic Operator may limit himself to completing the section 4**, in which case the Economic Operator shall not complete any of the other sections (A-D) in Part IV of the SEPD.

The Awarding Entity stipulates that in Part III Section C of the single document "Grounds relating to insolvency, conflict of interest or professional misconduct" in subsection "Has the Economic Operator, to the Economic Operator's own knowledge, breached its obligations in the field of environmental, social and labour law" The Economic Operator shall make a declaration regarding:

- the offence referred to in Article 9 or Article 10 of the Act of 15 June 2012 on the effects of delegating work to foreigners unlawfully residing on the territory of the Republic of Poland (Journal of Laws, point 769, as amended).

Due to the fact that the Awarding Entity does not apply the optional grounds referred to in Article 109(1)(2)(b) and (c) and (3) in respect of point. 2) letter b) of the PPL Act in Part III Section C of the uniform document "Grounds for insolvency, conflict of interest or professional misconduct", the Economic Operator shall submit a declaration with regard to the above-mentioned offences, which constitute an obligatory ground for exclusion referred to in Article 108(1)(1)(f) and (h) and (2) of the PPL Act.

The Awarding Entity indicates that with regard to the exclusion premise referred to in point 9.1(b) of the IDW, the Economic Operator shall submit a declaration in Part III Section D of the single document "Grounds for exclusion of a purely domestic nature".

10.4 Before selecting the most advantageous tender, the Awarding Entity shall call upon the Economic Operator whose tender has been awarded the highest mark to submit, within the designated time limit, which shall not be shorter than 10 days, up-to-date evidence and previously the declarations referred to in point 10.2. of the IDW.

10.5 At the request of the Awarding Entity, the Economic Operator referred to in point. 10.4 of IDW shall be obliged to submit:

- the declaration(s) referred to in point 10.2. of the IDW;
- subjective evidence referred to in points. 10.6., 10.7., 10.8. IDW.

10.6 In order to **confirm that there are no grounds for exclusion** from participation in the procurement procedure, the Economic Operator shall submit:

- a) information from the National Criminal Register regarding:
  - Article 108(1)(1) and (2) of the PPL Act,
  - Article 108(1)(4) of the PPL Act, concerning an order prohibiting a person from competing for a public contract as a penal measure,  
prepared not more than **six months** before its submission;
- b) declaration of the Economic Operator, within the scope of provisions of art. 108 point 1 point 5 of the PPL Act, on not being a member of the same capital group, within the meaning of the Act of 16 February 2007 on competition and consumer protection (Journal of Laws of 2020 point. 1076 and 1086), with another Economic Operator who submitted a separate tender, a partial tender or a declaration on affiliation to the same capital group, together with documents or information confirming preparation of a tender, a partial tender independently of another Economic Operator belonging to the same capital group; - a specimen of which constitutes the Form 3.8;
- c) a declaration by the Economic Operator that the information contained in the declaration referred to in Article 125(1) of the PPL Act as regards the grounds for exclusion from the procedure indicated by the Awarding Entity referred to in:
  - Article 108(1)(3) of the PPL Act,
  - Article 108(1)(4) of the PPL Act relating to the imposition of a prohibition to tender for a public contract as a preventive measure,
  - Article 108(1)(5) of the PPL Act regarding entering into an agreement with other Economic Operators to distort competition,
  - Article 108(1)(6) of the PPL Act.

10.7.1 If the Economic Operator has his registered office or place of residence outside the Republic of Poland, instead of:

- 1) information from the National Criminal Register, referred to in point 10.6. 10.6. letter a) of IDW - shall submit information from a relevant register such as court register or, in case there is no such register, other equivalent document issued by a competent court or administrative authority of the country in which the Economic Operator has his registered seat or place of residence, within the scope of art. 108 point 1 points 1, 2 and 4 of the PPL Act;

10.7.2 The document referred to in point 10.7.1(1), should have been issued no earlier than **6 months** prior to its submission.

10.7.3 If, in the country in which the Economic Operator is established, the documents referred to in point 10.7.1. of IDW, or if such documents do not refer to all cases mentioned in art. 108 point 1, 2 and 4 of the PPL Act, they shall be replaced in whole or in part, respectively, by a document containing a declaration of the Economic Operator, indicating the person or persons authorized to represent him, or a declaration of the person to whom the document refers, made under oath, or, if in the country where the Economic Operator has his seat or place of residence there are no provisions on making such a declaration under oath, made before a court or administrative body, notary public, professional or economic self-government body proper for the seat or place of residence of the Economic Operator. The provision of point. 10.7.2. of IDW shall apply.

10.8 In order to **confirm that the Economic Operator meets the conditions for participation** in the procedure, the Economic Operator shall submit:

- a) **a declaration by the Economic Operator on the annual revenue of the Economic Operator** or on the revenue of the economic Operator in the area covered by the tender contract, for a period not exceeding the last 3 financial years, and if the period of activity is shorter - for this period; - in order to confirm the fulfilment of the condition specified in point 8.2.3(1) - in **accordance with the specimen which constitutes the Form 3.6.**
- b) **a list of supplies** made, and in the case of recurring or continuous services, also performed, in the last 3 years, and if the period of operation is shorter - in this period, together with their value, subject, dates of execution and entities for which the supplies were made or are performed, as well as enclosing evidence stating whether these supplies were made or are performed duly, with the evidence in question being references or other documents drawn up by the entity for the benefit of which the supplies were made or performed

and, in the case of recurring or continuous services, are being performed, and if the Economic Operator, for reasons beyond his control, is not able to obtain these documents - a declaration by the Economic Operator; in the case of recurring or continuous services, references or other documents confirming their proper performance should be issued within the last 3 months in order to confirm the fulfilment of the condition specified in point 8.2.4(1) - in accordance with the **specimen which constitutes the Form 3.7.**

- c) **list of persons employed** by the Economic Operator to perform the public contract, in particular those responsible for providing services, quality control or managing construction works, together with information on their professional qualifications, licenses, experience and education necessary to perform the public contract, as well as the scope of activities performed by them and information on the basis for employing these persons; in order to confirm meeting the condition specified in point 8.2.4, points 2.a and 2.b - **according to the specimen constituting the Form 3.8.**
- d) **list of tools**, plant or technical equipment available to the Economic Operator for the purpose of performing the public contract, together with information on the basis for the use of these resources; in order to confirm compliance with the condition specified in point 8.2.4, points 3.1 and 3.2 - **in accordance with the specimen which constitutes Form 3.9.**

10.9 If for justified reasons the Economic Operator is not able to submit the evidence in question required by the Awarding Entity as referred to in point 10.8. letter a) of the IDW, the Economic Operator shall submit other evidence in question which sufficiently proves compliance with the condition for participation in the procedure described by the Awarding Entity as regards the economic or financial standing.

10.10 If the Economic Operator invokes experience in the execution of supplies performed jointly with other Economic Operators, the list referred to in point. 10.8. letter b) IDW concerns supplies in the performance of which the Economic Operator directly participated, and in the case of recurring or continuous services, in the performance of which he directly participated or participates.

10.11 If the declaration submitted by the Economic Operator, referred to in point. 10.2. IDW or evidence in question gives rise to doubts of the Awarding Entity, it may ask directly to the entity which is in possession of information or documents relevant in this respect for the assessment of compliance of the Economic Operator with the conditions for participation in the procedure or lack of grounds for exclusion, to present such information or documents.

10.12 The Awarding Entity shall not call for evidence in question if:

- 1) he may obtain them using free and generally accessible databases, in particular public registers within the meaning of the Act of 17.02.2005 on the computerisation of entities performing public tasks, provided that the Economic Operator indicated in the single document data enabling access to these means;
- 2) the evidence in question shall be a declaration, the content of which corresponds to the scope of the declaration referred to in point. 10.2 OF THE IDW.

10.13 The Economic Operator is not obliged to submit the evidence in question that the Awarding Entity has in his possession, if the Economic Operator indicates this evidence (by giving the reference number of the procedure or the name of the procedure ) and confirms that it is correct and up-to-date.

10.14 If this is necessary to ensure the proper conduct of the procurement procedure, the Awarding Entity may, at any stage of the procedure, call upon Economic Operators to submit all or some of the evidence in question current as of the date of their submission.

If there are reasonable grounds for believing that previously submitted evidence in question is no longer current, the Awarding Entity may at any time call upon the Economic Operator or Economic Operators to submit all or some of the evidence in question current as at the date of submission.

## 11. PROVISION OF RESOURCES

11.1 An Economic Operator may, in order to confirm that he meets the conditions for participation in the procedure, in the relevant situations, and with reference to a specific tender contract or part thereof, rely on the technical or professional abilities or financial or economic situation of the entities providing the resources, irrespective of the legal nature of the legal relationship between them, subject to the provisions of point. 6.6 OF IDW.

11.2 With regard to the conditions relating to professional qualifications or experience, Economic Operators may rely on the abilities of resource providers if those providers perform the services for which those abilities are required.

11.3 An Economic Operator relying on the capacity or situation of the entities providing resources shall submit, together with the tender, **a obligation of the entity providing the resources to make available to it the necessary resources for the purpose of performing a given contract, or other evidence in question** confirming that while performing the contract the Economic Operator will have at its disposal the necessary resources of those entities.

11.4 The obligation of the entity providing resources, referred to in point. 11.3 IDW, confirms that the relationship between the Economic Operator and the entities making available the resources guarantees actual access to those resources and specifies in particular:

- 1) the extent of the resources of the entity providing the resources available to the Economic Operator;
- 2) the manner and period in which the resources of the entity making the resources available are made available to the Economic Operator and used by him in performing the tender contract;
- 3) whether and to what extent the entity providing the resources, on the capacities of which the Economic Operator relies with regard to the conditions for participation in procedure concerning professional qualifications or experience, will perform the services to which the indicated capacities relate.

11.5 The Awarding Entity shall assess whether the technical or professional capacities or their financial or economic situation made available to the Economic Operator by the entities making the resources available make it possible for the Economic Operator to prove that he fulfils the conditions for participation in the procedure as regards the economic or financial situation and the technical or professional capacity, and it shall examine whether there are any grounds for exclusion provided against that entity in relation to the Economic Operator.

11.6 The entity which undertook to make the resources available shall be jointly and severally liable with the Economic Operator relying on its financial or economic standing for damage sustained by the Awarding Entity as a result of the failure to make the resources available, unless the entity is not at fault for making the resources available.

11.7 If the technical or professional abilities or the economic or financial situation of the entity providing the resources do not confirm that the Economic Operator meets the conditions for participation in the procedure, or there are grounds for exclusion with regard to that entity, the Awarding Entity shall demand that the Economic Operator, within the time limit specified by the Awarding Entity:

- a) replaced that entity with another entity or entities, or
- b) has demonstrated that it independently fulfils the conditions for participation in the procedure.

11.8 The Economic Operator may not, after the deadline for submission of tenders, rely on the capacity or situation of the entities providing the resources if, at the stage of submission of tenders, he has not relied on the capacity or situation of the entities providing the resources.

11.9 If the Economic Operator relies on the abilities or situation of entities making available their resources, the Economic Operator shall present the declaration referred to in point 10.2. of IDW of the entity making available its resources, confirming that there are no grounds for exclusion of that entity and that it fulfils the conditions of participation in the procedure to the extent to which the Economic Operator relies on its resources.

Declarations of the entities providing resources submitted on the ESPD form should be in **an electronic form** (i.e. signed with a qualified electronic signature by each of these entities) to the extent to which they confirm the circumstances referred to in the wording of Article 124(1) of the PPL Act. They should be sent in accordance with the rules set out in point 14 of IDW.

In terms of "Part IV Eligibility Criteria" of the ESPD, the resource provider shall provide the a declaration of the capacity to be made available to the Economic Operator. The resource provider may limit itself to completing the section . In this case, the general declaration of the resource provider will be interpreted only in terms of the capacities made available.

- 11.10 Upon request of the Awarding Entity, the Economic Operator who relies on the abilities or situation of entities making available resources pursuant to the principles specified in art. 118 of the PPL Act, shall be obliged to present, with regard to these entities, the evidence referred to in point. 10.6. letter a) of IDW confirming that there are no grounds for exclusion of these entities from the procedure. The provisions of points 10.7.1. - 10.7.2. of the IDW shall apply accordingly to entities making available resources. 10.7.1. - 10.7.3. IDW.

## 12. SUBCONTRACTING

- 12.1 The Economic Operator may entrust a subcontractor with the performance of a part of the tender contract, except for the key tasks specified in point. 6.6 IDW.

- 12.2 The Awarding Entity **requires that** the Economic Operator indicates the parts of the tender contract which he intends to entrust to subcontractors, as well as the names of any subcontractors , if they are already known. The Economic Operator intending to entrust a part of the contract to subcontractors at the stage of the public procurement procedure:

- a) shall be required to complete Part II, Section D of the single document, including, where known, the names of subcontractors;
- b) shall not be required to provide, for each subcontractor, the information required in Part II Sections A and B and Part III of the single document.
- c) is obliged to indicate in the Tender the parts of the contract which he intends to entrust to subcontractors.

- 12.3 Other subcontracting requirements are set out in *Volume II of the ToR*.

## 13. INFORMATION FOR ECONOMIC OPERATORS COMPETING JOINTLY FOR THE AWARD OF A TENDER CONTRACT

- 13.1 Economic Operators may jointly apply for the award of the tender contract. In such a case, Economic Operators shall appoint a proxy to represent them in the procurement procedure or to represent them in the procedure and conclude the public contract.

- 13.2 In the case of Economic Operators jointly applying for the tender contract, none of them shall be subject to exclusion pursuant to Art. 108 point 1 of the PPL Act, and in the cases referred to in point . 9.1. sub-points b) and c), while the fulfilment of the conditions of participation in the procedure shall be demonstrated by the Economic Operators pursuant to point 8.2. of the IDW.

- 13.3 In the case of Economic Operators jointly applying for the tender contract, the declaration referred to in point 10.2. IDW, shall be submitted by each Economic Operator. Such declarations confirm the absence of grounds for exclusion and the fulfilment of the conditions for participation in the procedure to the extent to which each of the Economic Operators proves the fulfilment of the conditions for participation in the procedure.

- 13.4 In the case of Economic Operators jointly applying for the tender contract, they shall be obliged, upon request of the Awarding Entity, to submit, up-to-date as of the date of submission, the evidence in question referred to in point. 10. whereby:

- 1) The evidence in question referred to in point 10.8. of the IDW shall be submitted, respectively, by the Economic Operator/Economic Operators who demonstrates the fulfilment of the condition, to the extent and in compliance with the rules described in point 8.2. of the IDW.
- 2) The evidence in question referred to in point 10.6 of the IDW shall be submitted by each of them.

- 13.5 The Awarding Entity **has not specified different requirements** related to the performance of the tender contract with respect to Economic Operators applying jointly for the tender contract.



#### 14. METHOD OF COMMUNICATION IN THE PROCEDURE

14.1 The procedure shall be conducted in the Polish language by means of electronic communication via the **Procurement Platform** at: <https://platformazakupowa.pl/pn/ncbj>.

The Awarding Entity has indicated the type of documents that may be submitted in English in paragraphs 16.8.5 and 16.8.6

The Economic Operator intending to participate in a procurement procedure shall have an account on the Procurement Platform. The registration and maintenance of an account on the Procurement Platform and the use of the Platform by the Economic Operator shall be free of charge.

14.2 In the procedure, communication between the Awarding Entity and Economic Operators, including the submission of tenders and the transmission of documents or declarations, shall take place using the Platform. The date of receipt of declarations, requests, notifications and information shall be the date on which they are uploaded to the Platform.

14.3 The Awarding Entity designates Ms Kamila Dżaman to be the contact person for Economic Operators.

14.4 For instructions on how to use the Platform, see <https://platformazakupowa.pl/pn/ncbj> (for the procedure in question).

14.5 The Awarding Entity's recommendations regarding qualified electronic signatures:

- for documents in "pdf" format, a signature in PAdES format is recommended,
- for documents in a format other than 'pdf', an XAdES signature is recommended.

14.6 Necessary hardware and application requirements to work on the Platform:

- permanent access to the Internet with a guaranteed bandwidth of not less than 20/4 Mbps;
- PC or MAC computer with the following configuration: min. 4GB RAM, Intel IV 4GHZ processor, one of the operating systems - MS Windows 7, Mac OS x 10.4, Linux or newer versions;
- any web browser supporting TLS 1.2 installed, in its latest version, in the case of Internet Explorer, at least version 11.0;
- JavaScript enabled;
- Acrobat Reader or other program supporting "pdf" format files installed.

14.7 The Awarding Entity accepts the submission of data in formats permitted by the relevant legislation, i.e. .doc, .docx, .txt, .xls, .xlsx, .ppt, .csv, .pdf, .jpg, .gif, .png, .tif, .dwg, .ath, .kst, .zip, with the Awarding Entity recommending the use of .pdf files.

14.8 Information on coding and data reception time:

- Tender files attached by a Economic Operator on the Platform and saved, are visible on the Platform as encrypted. The possibility to open the file is available only after decryption by the Awarding Entity after the deadline for opening tenders;
- indication of the time of receipt of data by the Platform shall be the date and exact time (hh:mm:ss) pinned to the electronic document,.

14.9 The tender, the ESPD, the obligation referred to in point 11.3. of the IDW, the evidence in question and other documents must be uploaded **as Appendices** on the Platform, according to the Instructions for Use of the Platform.

14.10 Where an electronic document is transmitted in a compressed format in procedure, affixing a qualified electronic signature to the file containing the compressed documents shall be equivalent to affixing a qualified signature to all the documents contained in that file.

#### 15. CLARIFICATION OF THE CONTENTS OF THE TERMS OF REFERENCE

15.1 An Economic Operator may request the Awarding Entity to clarify the content of the ToR. The request should be sent via the Platform and the "Send a message to the Awarding Entity" form.

The Awarding Entity asks that the questions also be submitted in editable form, as this will reduce the time taken to provide clarification.



- 15.2 The Awarding Entity is obliged to provide clarification immediately, but no later than 4 days before the deadline for submission of tenders - provided that the request for clarification of the content of the ToR was received by the Awarding Entity no later than 7 days before the deadline for submission of tenders.
- 15.3 If the Awarding Entity fails to provide clarification within the time limit referred to in point 15.2. he shall extend the deadline for submission of tenders by the time necessary for all interested Economic Operators to familiarise themselves with the clarification necessary for proper preparation and submission of tenders.
- 15.4 The extension of the deadline for the submission of tenders shall not affect the deadline for the submission of a request for clarification of the content of the ToR referred to in point. 15.2.
- 15.5 If a request for clarification of the content of the ToR has not been received by the deadline referred to in point 15.2, the Awarding Entity is not obliged to provide explanations of the ToR and is not obliged to extend the deadline for submission of tenders.
- 15.6 The Awarding Entity will make the contents of the queries, together with the explanations, available to Economic Operators, via the Platform, without disclosing the source of the query.
- 15.7 In justified cases, the Awarding Entity may, before the deadline for submission of tenders, change the content of the ToR. The Awarding Entity will make the amendment to the ToR available on the Platform.
- 15.8 In the event of any discrepancy between the content of this ToR and the content of the clarifications or amendments to the ToR provided, the content of the subsequent statement by the Awarding Entity shall prevail.
- 15.9 In the event that an amendment to the content of the TOR modifies the contract notice, the Awarding Entity shall transmit to the Publications Office of the European Union the notice referred to in Article 90(1) of the PPL Act.
- 15.10 In the case referred to in point 15.9., making the amendment to the content of the ToR available on the Platform cannot take place before the publication of the announcement referred to in Article 90(1) of the PPL Act, except in the case when the Awarding Entity has not been notified of the publication within 48 hours from the confirmation of receipt of that announcement by the Publications Office of the European Union.
- 15.11 If the changes to the content of the ToR are significant for preparing a tender or require additional time from Economic Operators to familiarise themselves with the changes to the ToR and prepare tenders, the Awarding Entity shall extend the deadline for submission of tenders by the time necessary to familiarise themselves with the changes to the ToR and prepare a tender. The provisions of point 15.9. and 15.10. of the IDW shall apply.
- 15.12 If the amendments to the content of the ToR would lead to a significant change in the nature of the contract as compared to the one originally specified, in particular would lead to a significant change in the scope of the tender contract, the Awarding Entity shall invalidate the procedure pursuant to Article 256 of the PPL Act.
- 15.13 The Awarding Entity **does not intend to** convene a meeting of Economic Operators to clarify the content of the Terms of Reference.

## 16. DESCRIPTION OF TENDER PREPARATION

- 16.1 An Economic Operator may submit only one tender.
- 16.2 The Awarding Entity **does not accept** variant tenders.
- 16.3 The Awarding Entity **does not allow** partial tenders.
- 16.4 The tender must be secured by a security deposit.
- 16.5 **The tender consists of** completed "Tender" Form and the following completed documents:
- 1) Price form (Volume IV of the ToR);
  - 2) "Non-price criteria" Form;

*Failure to submit the "Non-price Criteria" Form will not result in rejection of the tender.*

- 16.6 **Together with the Tender**, the Economic Operator shall submit via the Platform:

- 1) an extract or information from the National Court Register, Central Registration and Information

- The Economic Operator shall be obliged to provide information on the Economic Operator's business activity or other relevant register, unless the Awarding Entity is able to obtain such documents using free and publicly available databases, and the Economic Operator indicated in the Tender Form the data allowing access to such documents with **regard to the Economic Operator, the Economic Operator applying jointly for the tender contract, as well as with regard to entities making available the resources;**
- 2) power of attorney or other document confirming the authorization to represent the Economic Operators or entity making available the resources, unless the authorization to represent results from the documents referred to in point 16.6. 16.6. point 1) of the IDW;
  - 3) power of attorney or other document confirming the power to represent all Economic Operators jointly applying for the award (e.g. contract on cooperation). The representative may be appointed to represent Economic Operators in the procedure or to represent them in the procedure and conclude the contract;
  - 4) original guarantee or surety, if the deposit is made in a form other than money, taking into account the provisions of point 18.3 OF IDW;
  - 5) **obligation(s)** required by provisions of point. 11.3. of IDW, if the Economic Operator relies on the abilities of the entities providing resources in order to confirm meeting the conditions of participation in the procedure, **together with powers of attorney, if the right to sign a given undertaking does not result from the documents referred to in point. 16.6. point 1) of the IDW;**
  - 6) Declaration by Economic Operators jointly applying for the tender contract as referred to in Article 117(4) of the PPL Act;
  - 7) Declaration on the sanctioning provisions related to the war in Ukraine on Form 3.4. (to be submitted by: Economic Operator, each of the Economic Operator jointly applying for the tender contract, the entity providing the resources). This declaration shall be submitted in electronic form and accompanied by a qualified electronic signature.

16.7 The Awarding Entity **does not require the submission of** this evidence in question with the Tender.

16.8 **Formal requirements for the following to be** submitted in the procedure: tenders, ESPD declarations, evidence in question and other documents or declarations :

16.8.1 The tender and the Single European Procurement Document shall be submitted, under pain of nullity, in an electronic form (i.e. bearing a qualified electronic signature). These documents shall be signed by a person authorized to represent the Economic Operator in accordance with the form of representation of the Economic Operator as specified in the register or another document appropriate for a given organizational form of the Economic Operator or by an authorized representative of the Economic Operator.

16.8.2 Where evidence in question, other documents or documents evidencing authority to represent, have been issued by authorised parties:

- 1) as an **electronic document** - the Economic Operator shall **transfer that document;**
- 2) as a **paper document** - the Economic Operator shall **provide a digital reproduction of that document bearing a qualified electronic signature** certifying the conformity of the digital reproduction with the paper document;

The certification of the conformity of the digital reproduction with the paper document referred to in (2) above shall be carried out by a notary public or:

- a) in the case of the evidence in question and documents confirming the power of representation - respectively the Economic Operator, the Economic Operator applying jointly for the tender contract, the entity providing the resources, each to the extent of the document which concerns them;
- b) in the case of other documents, respectively the Economic Operator or the Economic Operator jointly applying for the tender contract, each in respect of the document which concerns him;

16.8.3 Evidence in question, including the declaration referred to in point 16.6.(6) of the IDW, obligation(s) of the entity providing the resources, which have not been issued by authorised entities, and the required powers of attorney:

- 1) The Economic Operator shall **transfer in electronic form and bear a qualified electronic signature**;
- 2) if they have been drawn up as a paper document and bear a handwritten signature, the Economic Operator shall **provide a digital reproduction of these documents bearing a qualified electronic signature** certifying the conformity of the digital reproduction with the paper document.

The certification of the conformity of the digital reproduction with the paper document referred to in (2) above shall be performed by a notary public or:

- a) in the case of evidence in question - respectively the Economic Operator, the Economic Operator jointly applying for the award of the tender contract, the entity providing the resources, each to the extent of the document that concerns them;
- b) in the case of the declaration referred to in point 16.6. 16.6. point 6) IDW, obligation of the entity providing resources - the Economic Operator or the Economic Operator jointly applying for the tender contract - respectively;
- c) in the case of a power of attorney, the principal.

16.8.4 The obligation referred to in point. 11.3 of IDW should be signed by a person authorised to represent the entity providing the resources.

16.8.5 The tender should be prepared in Polish. Pursuant to Article 20(3) of the PPL Act, the Awarding Entity allows submitting a tender, declarations or other documents in a language commonly used in international trade - English.

16.8.6 Qualitative means of proof and other documents or statements prepared in a foreign language shall be submitted by the Contractor together with a translation into Polish or English.

16.8.7 The tender and the other declarations and documents for which the Awarding Entity has specified specimens in the form of forms in Chapter 2 and Chapter 3 of Volume I of the ToR should be drawn up in accordance with those specimens as regards content and description of columns and lines.

16.9 The Awarding Entity hereby informs that pursuant to provisions of Article 18 point 3 of the PPL Act, information constituting a trade secret as defined by provisions on combating unfair competition shall not be disclosed<sup>7</sup>, if the Economic Operator, together with submitting such information, stipulated that it may not be disclosed **and proved that the information so stipulated constitutes a trade secret**. The Economic Operator may not reserve information referred to in Article 222 (5) of the PPL Act. Any information constituting a business secret within the meaning of the Act on Combating Unfair Competition, which the Economic Operator wishes to reserve as a business secret, shall be attached on the Platform in a separate **file with a simultaneous marking of "Appendix constituting a business secret"**.

16.10 An Economic Operator may not effectively amend or withdraw its tender (appendices) after the deadline for submission of tenders.

## 17. CALCULATION OF THE TENDER PRICE

17.1 The tender price shall be calculated by the Economic Operator on the basis of the Price Form drawn up on the form constituting an integral part of the ToR - Volume IV.

17.2 The price form referred to in point 17.1. shall be completed strictly in the order of the points specified in that form, calculating the individual net unit prices. The Economic Operator indicates

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<sup>7</sup> Act of 16 April 1993. - on combating unfair competition (Dz. U. of 2020, point 1913)

the total value in the form and then indicates the percentage value of the individual works, which are automatically converted into partial amounts.

17.3 When calculating the tender price, the Economic Operator must take into account all points described in the Price Form. The Economic Operator may not introduce any changes to the Price Form by himself.

17.4 All calculated costs shall be added up by the Economic Operator and inserted in the item "Total net price". The "Total net price" calculated in this way shall be increased by VAT. The "Gross Tender Price" calculated in this manner shall then be transferred to the Tender Form provided in Chapter 2 of the IDW.

17.5 The values in particular items of the Price Form and the price of the Tender should be expressed in Polish zloty (PLN) to two decimal places. The Awarding Entity shall accept the submission of a tender (expression of the tender price and prices in the Price Form) in a currency other than PLN.

If the tender is submitted in a currency other than PLN, for the purpose of comparing tenders the Awarding Entity will convert the currency into PLN according to the average exchange rate of the currency according to the National Bank of Poland in force on the 10th (tenth) day prior to the day of submitting the tenders.

17.6 The prices specified by the Economic Operator in the Price Form shall not be changed in the course of the performance of the subject of the tender contract, except as specified in the material provisions of the contract constituting Volume II of the ToR.

17.7 If the tender is submitted, the selection of which will lead to the creation of a tax obligation for the Awarding Entity pursuant to the provisions on value added tax<sup>8</sup>, for the purpose of applying the price criterion, the Awarding Entity will add to the price presented in the Tender the amount of value added tax that it would be obliged to calculate pursuant to these provisions. In the Tender, the Economic Operator is obliged to:

- inform the Awarding Entity that the selection of his tender will lead to a tax liability for the Awarding Entity,
- indicate the name of the (type of) good or service the delivery of which will give rise to liability to tax,
- indicate the value of the goods or services for which the purchaser is liable for tax, exclusive of the amount of tax,
- indicate the rate of value added tax which, to the knowledge of the Economic Operator, shall apply.

## 18. TENDER BOND REQUIREMENTS

18.1 The Economic Operator is obliged to deposit a tender bond of **PLN 890,000.00** (PLN: eight hundred and ninety thousand PLN 00/100). The Awarding Entity does not allow for a bond in a currency other than PLN.

18.2 The tender bond must be deposited before the deadline for submission of tenders in one or more of the following forms listed in Article 97(7) of the PPL Act, depending on the choice of the Economic Operator.

18.3 If the tender bond is deposited in the form of a guarantee or surety, the Economic Operator shall provide the Awarding Entity with the original guarantee or surety in electronic form. Such a tender bond shall cover the entire tender validity period. The wording of the guarantee or surety shall not contain provisions making its continuation subject to the return of the original guarantee document to the guarantor.

**The National Centre for Nuclear Research, ul. Andrzeja Sołtana 7, 05-400 Otwock NIP: 532-010-01-25, REGON 001024043"** should be indicated as the beneficiary of the tender bond deposited in the form of a guarantee or surety.

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<sup>8</sup> Act of 11 March 2004 on tax on goods and services (Journal of Laws of 2020, point 106, as amended).

Where tender bond is deposited in the form of a guarantee or surety, it is necessary that the guarantee or surety shall cover liability for all cases resulting in the forfeiture of the tender bond by the Economic Operator as defined in Article 98(6) of the PPL Act.

The guarantee or surety shall contain in its content an **irrevocable and unconditional** undertaking by the issuer of the document to pay to the Awarding Entity the amount of the tender bond at the Awarding Entity's first written request.

The tender bond deposited in the form of a guarantee (bank or insurance) must have the same liquidity as a bond deposited in cash - claiming a bond deposited in this form must not be difficult. Therefore, the wording of the guarantee should include a clause stating that all disputes regarding the guarantee will be resolved in accordance with Polish law and subject to the jurisdiction of Polish courts, unless it follows from the provisions of the law.

18.4 The tender bond deposited in the form of cash should be paid by bank transfer to the bank account of the Awarding

Entity: **For domestic Economic Operator Account no:** PKO BP XII O/W-wa 58 1020 1127 0000 1902 0007 3015 **For foreign Economic Operator:** Account No. 58 1020 1127 0000 1902 0007 3015, IBAN PL58102011270000190200073015, SWIFT BPKOPLPW, PKO Bank Polski SA, II Regional Corporate Centre in Warsaw, ul. Nowogrodzka 35/41, 00-950 Warszawa;

**with the following information in the title "Tender Bond No. EZP.270.72.2022".**

The tender bond shall be deposited before the deadline for submission of tenders, for the entire period of the tender.

Due to the risks associated with the duration of the interbank settlement period, the Awarding Entity recommends that the transfer be made well in advance.

The tender guarantee submitted in a bank guarantee in the form of a SWIFT message will be considered effectively submitted provided that there is a SWIFT relationship between the banks and that the guarantee complies with all the requirements specified in para. 18.3 of the SWZ and must contain all the grounds for retention of the bid bond listed in Art. 98 para. 6 of the PPL Act. In addition, notice of the guarantee and confirmation of its authenticity by the Ordering Party's bank must reach the Ordering Party before the deadline for submission of bids.

The bank of the Awarding Entity is  
PKO Bank Polski  
SWIFT BPKOPLPW

18.5 The Awarding Entity shall return the tender bond on the principles specified in Article 98 par. 1 and 2 of the PPL Act.

In cases specified in Article 98(2) of the PPL Act, the Economic Operator shall have the right to apply for return of the tender bond, however submitting the application for return of the tender bond shall result in dissolution of the Awarding Entity's legal relationship with the Economic Operator and forfeiture of the Economic Operator's right to seek remedies regulated in Point IX of the PPL Act.

18.6 The Awarding Entity shall return the tender bond deposited in the form of a surety or guarantee by submitting to the guarantor or surety a declaration on release of the tender bond. It is recommended that the surety or guarantee indicate the e-mail address to which the Awarding Entity should send the declaration on release of the tender bond referred to in Article 98 point 5 of the PPL Act.

18.7 The Awarding Entity shall retain the tender bond with interest in the cases specified in Article 98(6) of the PPL Act.

## 19. SUBMISSION AND OPENING OF TENDERS

19.1 Tenders should be submitted via the Platform by **28.11.2022** at 11:00 a.m.

19.2 The Economic Operator shall submit the Tender on the Platform as follows:

- 1) in the Tender Submission Form or the application he adds the appendices specified in points 16.5., 16.6. of the IDW in electronic form (i.e. signed with a qualified electronic signature) and then click on the "Proceed to Summary" button. Then, in the second step of submitting a tender or application, the correctness of the submitted tender, the attached files and their quantity should be checked. To complete the tender submission step, click on the Submit Tender button; in the case of a business secret reservation, the Economic Operator is required to submit the documents in a separate and appropriately marked file;



- 2) The system then encrypts the tender or the Economic Operator's application so that it is inaccessible to the Awarding Entity until the deadline for opening tenders or submitting applications to participate in the procedure in accordance with Article 221 of the Public Procurement Law. As a final step, a message will be displayed and an email will be sent from platformazakupowa.pl with information about the bid or application.

19.3 The deadline for submitting a Tender is determined by the time it takes for the transaction to be fully processed on the Procurement Platform.

19.4 The opening of the Tenders will take place on **28.11.2022 at 12.00 a.m.** via the Platform. In the event of a failure of the Platform, which will result in the inability to open the Tenders on the above date, the opening of the Tenders will take place as soon as the failure is remedied.

19.5 The opening of the Tenders shall be made on the Platform by decrypting and opening the Tenders. The information from the opening of the Tenders shall be published on the Platform under the tab "Appendices" and shall contain the data specified in Article 222(5) of the PPL Act.

## 20. PERIOD OF VALIDITY OF THE TENDER

20.1 The Economic Operator shall be bound by the tender from the deadline for submission of tenders until **25.02.2023**.

20.2 In the event that the selection of the most advantageous tender does not take place before the expiry of the tender validity period referred to in point 20.1., the Awarding Entity shall, prior to the expiry of the tender validity period, request consent from the Economic Operators to extend this period by the indicated period, not exceeding 60 days.

20.3 Extension of the tender period requires a written declaration of consent by the Economic Operator to extend the tender period.

20.4 An extension of the period for which a tender is bound shall be permissible only with a simultaneous extension of the validity period of the tender bond or, if possible, with the deposit of a new tender bond for the extended period.

## 21. TENDER EVALUATION CRITERIA

21.1 In selecting the most advantageous tender, the Awarding Entity will apply the following tender evaluation criteria:

Price "C"	- 90 points
Warranty period "G"	- 10 points

### 21.1.1 The 'Price' criterion:

The "Price" criterion will be considered on the basis of the gross price for the execution of the subject of the tender contract, as stated by the Economic Operator on the Tender Form.

The Awarding Entity will award **90 points to the** tender with the lowest price among the evaluated tenders and each subsequent tender will be assigned a proportionally lower number of points, according to the formula:

$$C = \frac{C_{\min}}{C_o} \times 90$$

Where:

$C_{\min}$	- lowest gross price of the evaluated tenders (PLN)
$C_o$	- gross price of the evaluated tender (PLN)





**NOTE:** If an tender is submitted in a currency other than PLN, the Awarding Entity, for the purpose of comparing tenders, will convert that currency into PLN according to the average exchange rate of that currency according to the National Bank of Poland valid on the 10th (tenth) day prior to the day of submitting the tender.



### 21.1.2 Warranty period" criterion G:

The "Warranty Period" criterion will be considered on the basis of the warranty period for the subject matter of the tender contract, as stated by the Economic Operator on Form 2.2 - Non-price criteria.

The warranty period shall be calculated from the date on which the Final Acceptance Protocol (FAP) is signed without reservations by an authorised representative of the Awarding Entity. The Awarding Entity will award a maximum of **10 points to the** evaluated tender, and the number of points for the evaluated tender will be awarded according to the scores presented in the table below:

No	Tendered warranty period	Number of points
1	24 months unlimited warranty	0
2	24 months unlimited warranty and an additional 6 to 12 months limited warranty	5
3	25 to 35 months unlimited warranty	6
4	24 months unlimited warranty and an additional 18 months or more limited warranty	8
5	36 months or more unlimited warranty	10

**The limited warranty shall** be understood as an obligation to carry out repairs as a result of failures, using the Economic Operator's infrastructure, the Economic Operator's human resources and spare parts owned by the Ordering Party. The limitation of the warranty in this case does not include damage caused by latent defects originating from the production, installation and commissioning stages.

**The unlimited warranty** is understood to mean the obligation to carry out repairs as a result of a breakdown, using the Economic Operator's infrastructure, the Economic Operator's human resources and spare parts owned by the Economic Operator.

21.2 The tender which obtains the highest total number of points (P), being the sum of the points awarded under each of the given criteria, calculated according to the following formula, will be considered the most advantageous:

$$P = C + G$$

where: **C** - number of points awarded to the evaluated tender in the criterion "Price",

**G** - number of points awarded to the evaluated tender in the criterion "Warranty period"

21.3 The Awarding Entity **does not provide for an** electronic auction.

21.4 Immediately after the selection of the most advantageous tender, the Awarding Entity shall simultaneously inform all Economic Operators who submitted tenders of:

- 1) the selection of the most advantageous tender, indicating the name or business name, registered office or place of residence, if this is the place of business of the Economic Operator whose tender was selected, and the names or business names, registered offices or places of residence, if these are the places of business of the Economic Operators who submitted tenders, as well as the scores awarded to the tenders for each tender evaluation criterion and the total score

2) unsuccessful Economic Operators,

- giving reasons in fact and in law.

21.5 The Awarding Entity will make the information referred to in point. 21.4. point 1) IDW, on the Platform.

21.6 The Awarding Entity may withhold the information referred to in point 21.4 of the IDW, if their disclosure would be contrary to an important public interest.

## 22. INFORMATION ON FORMALITIES TO BE COMPLETED FOLLOWING TENDER SELECTION WITH A VIEW TO CONCLUDING THE CONTRACT

22.1 The Awarding Entity shall sign the Contract for the performance of the tender contract with the selected Economic Operator, within the time limit specified in Article 264(1), subject to Article 264(2) of the PPL Act.

22.2 If the tender of the Economic Operators applying jointly for the tender contract is selected as the most advantageous one, before the contract is signed the Economic Operator, upon the request of the Awarding Entity, will submit a copy of the agreement regulating the cooperation of the Economic Operators, in which, among others, the representative authorised to contact the Awarding Entity and to issue documents related to payments will be identified.

22.3 Prior to signing the Contract, the selected Economic Operator shall provide the Awarding Entity with the information necessary to be included in the content of the Contract, e.g. names of authorised persons who will represent the Economic Operator at the signing of the contract, coordination, etc.

22.4 The Economic Operator shall provide a performance bond under the terms of point 23.

## 23. PERFORMANCE BOND

23.1 The Economic Operator shall be obliged to lodge a performance bond for an amount representing **2.5 per cent of the gross price quoted in the tender in the** forms specified in Article 450(1) of the PPL Act.

If the performance bond is provided in non-monetary form, the following should be indicated as the beneficiary of the guarantee: **Narodowe Centrum Badań Jądrowych, ul. Andrzeja Sołtana 7, 05-400 Otwock NIP: 532-010-01-25, REGON 001024043.**

23.2 The Awarding Entity does not consent to the provision of performance bond in the forms provided for in Article 450(2) of the PPL Act.

23.3 If the tender bond is deposited in cash, the Economic Operator may agree to credit the amount of the tender bond against the performance bond.

23.4 The performance bond document (bank performance bond or insurance) must contain an irrevocable and unconditional guarantee payable at the first written request of the Awarding Entity.

23.5 Where a performance bond is provided in a form other than money,  
Before signing the contract, the Economic Operator shall be obliged to submit the content of the performance bond document (bank performance bond or insurance) or surety for the approval of the Awarding Entity.

It is recommended that the performance bond contains the following provisions:

- The Guarantor irrevocably and unconditionally undertakes to pay the Beneficiary, within 14 days from the date of delivery to the Guarantor of the first written request for payment referring to the performance bond number, any amount or amounts up to their total maximum amount (Performance Bond Sum);
- The Guarantor may not examine documents relating to the Contract, the factual or legal situation relating to the Contract or concerning an obligation relationship arising from the Contract, including that relating to non-performance or improper performance of the Contract. The foregoing shall not deprive the Guarantor of the power to formally examine the requirements resulting from the Performance Bond

- The Beneficiary has the right to forward the payment request to the Guarantor as follows:  
through the intermediary of the bank holding the Beneficiary's account, at the Guarantor's address indicated in the Guarantee, which bank will confirm that the demand for payment has been signed by persons authorised to make declarations of will on behalf of the Beneficiary or by him. The bank holding the Beneficiary's account within the period of validity of the Guarantee shall transmit to the Guarantor, in the name and on behalf of the Beneficiary, the demand for payment: directly or by registered post or courier service or (*\*in the case of a bank guarantee*) by sending a keyed SWIFT message sent by the Beneficiary's bank to the SWIFT address .....in the case of sending the request in the form of a keyed message transmitted via the SWIFT system, the Beneficiary's bank should additionally confirm in the message that it is in possession of the original of the Beneficiary's payment request and that the message sent accurately reflects the content of the payment request, and the original of the payment request will be promptly delivered to the Guarantor. The original of the payment demand may be delivered to the Guarantor after the expiry date of the Guarantee. Failure to deliver the original of the payment demand to the Guarantor before the expiry of the time limit for payment from the payment demand does not relieve the Guarantor of its payment obligation.

In addition to the request for payment, the Beneficiary's bank will provide the Guarantor with notarised copies of documents confirming the correctness of the representation of the persons authorised or empowered by the Beneficiary to make declarations of intent on its behalf, as well as a printout of the KRS [national court register];

or

directly or by registered post or courier service to the Guarantor's address as indicated in the Guarantee, within the time limit of the Guarantee's validity, whereby the signatures of the persons authorised to make declarations of will on behalf of the Beneficiary or by him/her will be certified by a notary public. The Beneficiary shall attach to the demand for payment made in this form notarial copies of documents confirming the correctness of the representation of the persons authorised or by him to make declarations of will on his behalf, as well as a printout of the National Court Register.

- If the end of the period for making a demand for payment under the Guarantee falls on a Saturday, a public holiday or other day on which the Guarantor is not in operation, the period shall be extended to the nearest day on which the Guarantor is in operation.
- No variation or addition to the terms of the Contract or the scope of services which may be carried out under the Contract or in any contractual documents which may be drawn up between the Beneficiary and the Economic Operator shall relieve the Guarantor of its liability under the Guarantee and the Guarantor waives the need to give notice of any such variation or addition to the
- The claim under the Performance Bond may not be assigned (transferred) to a third party without the Guarantor's prior written consent.
- The Performance Bond is drawn up in accordance with and subject to the laws of Poland.
- Any disputes that may arise in connection with the Performance Bond shall be settled by a common court of law having jurisdiction over the registered office of the Beneficiary - Narodowe Centrum Badań Jądrowych, ul. Andrzeja Sołtana 7, 05-400 Otwock.

23.6 The Awarding Entity shall return the performance bond within the time limit and under the conditions specified in Volume II.

23.7 If the period for which the performance bond is to be provided exceeds 5 years, the performance bond in cash shall be provided for the whole of that period, and the performance bond in another form shall be provided for a period of not less than 5 years, with a simultaneous obligation of the Economic Operator to extend the performance bond or provide new performance bond for subsequent periods.

23.8 In the event of non-renewal or failure to provide new performance bond no later than 30 days prior to the expiry of the existing performance bond provided in a form other than cash, the Awarding Entity changes the form of the bond to cash by depositing the amount from the existing performance bond.

23.9 The payment referred to in point 23.8. of the IDW shall be made no later than on the last day of validity of the existing performance bond.

23.10 Pursuant to Article 452(4) of the PPL Act, subject to the requirements set out in paragraphs 5 to 7, the performance bond may, with the consent of the Awarding Entity, be established by deductions from amounts due for services performed in part.

## 24. INFORMATION ON LEGAL REMEDIES

24.1 The Economic Operator, as well as any other entity which has or had an interest in obtaining the tender contract and has suffered or may suffer damage as a result of an infringement of provisions of the PPL Act by the Awarding Entity, shall be entitled to the remedies specified in Section IX of the PPL Act. Organisations on the list referred to in Article 469 point 15 of the PPL Act and the Ombudsman for Small and Medium-Sized Enterprises shall also be entitled to legal remedies against the procurement notice and the tender contract documents.

24.2 The appeal is against:

- 1) action taken by the Awarding Entity in the procurement procedure which is incompatible with the provisions of the PPL Act, including the draft contractual provisions;
- 2) failure to take any action in the procurement procedure which the Awarding Entity was obliged to take under the PPL Act.

24.3 The appeal includes:

- 1) First name and surname or name, address, telephone number and e-mail address of the Appellant and the name of his representative(s);
- 2) name and registered office of the Awarding Entity, telephone number and e-mail address of the Awarding Entity;
- 3) PESEL [*personal identity number*] or VAT number of the Appellant who is a natural person, if he is obliged to have it or has it without being obliged to have it;
- 4) number in the National Court Register [KRS] or, failing that, the number in any other relevant register or record, or the NIP [VAT] of the Appellant who is not a natural person and who is not required to be entered in a relevant register or record, if he is obliged to have one;
- 5) definition of the subject of the tender contract;
- 6) indication of the publication number in the Official Journal of the European Union;
- 7) indication of the action or omission of the Awarding Entity's action allegedly incompatible with the Act;
- 8) concise summary of the claims;
- 9) demand as to how the appeal should be resolved;
- 10) indication of the facts and legal grounds on which the appeal is based and the evidence in support of those grounds;
- 11) signature of the Appellant or his representative(s);
- 12) list of appendices.

24.4 The Appeal shall be accompanied by:

- 1) proof of payment of the appeal fee in the required amount;
- 2) proof of delivery of the appeal or a copy thereof to the Awarding Entity, as appropriate;
- 3) document confirming the Appellant's power of representation.

24.5 The Appeal shall be lodged with the President of the Chamber either in writing or in electronic form with a trusted signature.

24.6 The Appellant shall submit to the Awarding Entity the appeal filed in electronic form or in electronic form, or a copy thereof if filed in writing, before the deadline for lodging an appeal in such a way that he could have read its contents before that deadline. It shall be presumed that the Awarding Entity could have read the contents of the appeal before the expiry of the time limit for lodging an appeal, if the communication of the appeal or a copy thereof, as the case may be, was effected by means of electronic communication before the expiry of the time limit for lodging an appeal.

24.7 The Appeal shall be lodged within the following time limits:

- 24.7.1 10 days from the date of sending information on the Awarding Entity's actions constituting the basis for lodging the Appeal, if the information was transferred by means of electronic communication, or within 15 days - if the information was transferred in a different manner;
- 24.7.2 10 days from the date of publication of the procurement notice in the Official Journal of the European Union or of the posting of the tender contract documents on the Platform against the content of the procurement notice or against the content of the tender contract documents;
- 24.7.3 The appeal in cases other than those specified in points 24.7.1. and 24.7.2. of the IDW shall be lodged within 10 days of the day when the circumstances constituting grounds for lodging the appeal came to light or could have come to light with due diligence.
- 24.7.4 If the Awarding Entity has not sent the Economic Operator a notice of selection of the most advantageous tender, the Appeal shall be lodged no later than within the time limits:
  - 1) 30 days from the date of publication of the procurement notice in the Official Journal of the European Union;
  - 2) 6 months from the date of conclusion of the contract, if the Awarding Entity has not published a procurement notice in the Official Journal of the European Union.

24.8 Detailed rules for procedure after the Appeal has been lodged are set out in the relevant provisions of Section IX of the PPL Act.

24.9 The judgment of the National Appeal Chamber and the decision of the President of the Chamber referred to in Article 519(1) of the PPL Act may be appealed to the court by the parties and participants in the appeal procedure.

24.10 The Appeal shall be brought before the Warsaw Regional Court - Public Procurement Court.

24.11 The Appeal shall be brought through the President of the National Appeal Chamber within 14 days of the day of delivery of the decision of the National Appeal Chamber or the decision of the President of the Chamber referred to in Article 519(1) of the PPL Act, at the same time sending a copy of the Appeal to the opponent of the Appeal. Lodging the Appeal with the postal service of the Operator designated within the meaning of the Act of 23 November 2012 Postal Law<sup>9</sup> shall be tantamount to lodging the Appeal.

24.12 The Appeal in cassation to the Supreme Court may be brought against the court's judgment or the decision terminating the case.

## 25. PROTECTION OF PERSONAL DATA

25.1 The Controller of your personal data processed in connection with the conduct of the public procurement procedure is the National Centre for Nuclear Research (hereinafter referred to as the Controller or NCBJ) with its registered office in Otwock, ul. Andrzeja Sołtana, 05-400 Otwock.

25.2 If you have any questions about the manner and scope of the processing of your personal data or your rights, you may contact the Data Protection Officer at NCBJ at the address above or by email at [iod@ncbj.gov.pl](mailto:iod@ncbj.gov.pl) or at tel. 22 273 22 31.

25.3 The Controller processes your personal data on the basis of the applicable legal provisions, i.e. in particular:

- 1) Act of 11 September 2019. Public Procurement Law and its implementing acts, including on the types of documents that the Awarding Entity may require from the Economic Operator
- 2) the Act of 14 July 1983 on National Archive Resources and Archives

25.4 Your personal data is processed for:

<sup>9</sup> Act of 23 November 2012. - Postal law (Journal of Laws of 2020, point 1041)



Purpose of processing	Legal basis for processing
Conduct of public procurement procedure	necessity of the processing for compliance with a legal obligation to which the controller is subject (Article 6(1)(c))
Implementation of contracts concluded with Economic Operators	necessity of the processing for the performance of the contract (Article 6(1)(b) GDPR)
Handling tender contract activities	the necessity of the processing for the performance of the contract (Article 6(1)(b) GDPR) in order to comply with a legal obligation (Article 6(1)(c))
Processing of data on the basis of consent	the legal prerequisite for processing is consent given through the act of participation in a public procurement procedure (Article 6(1)(a) GDPR)

25.5 In relation to the processing of personal data for the purposes referred to in point 4, your personal data shall be disclosed to interested entities and persons, as, in principle, the public procurement procedure is open to the public. Moreover, recipients of personal data may be other entities and persons who, on the basis of relevant agreements signed with NCBJ, process personal data for which NCBJ is the Controller .

25.6 Your personal data will be stored pursuant to Article 78 of the Public Procurement Law, i.e. for a period of 4 years from the date of completion of the procurement procedure, and in the case of the conclusion of a public contract whose duration exceeds 4 years, the duration of storage will be in accordance with the duration of the contract and consistent with the achievement of the purposes set out in point 4 above.

25.7 You have the following rights in relation to the processing of your personal data:

- 1) Article 15 of the GDPR - the right to access and obtain a copy of personal data,
- 2) Article 16 GDPR - the right to request rectification or supplementation of personal data, with the proviso that such a request may not have the effect of altering the outcome of the procurement procedure or changing the provisions of the public procurement contract to an extent contrary to the Act (Article 19(2) PPL).
- 3) Article 17 GDPR - the right to request the erasure of personal data (the so-called right to be forgotten), unless erasure is not possible pursuant to Article 17(3) b), d) or e) GDPR.
- 4) Article 18 GDPR - the right to request the restriction of the processing of personal data, as long as the restriction of processing does not have the effect of limiting the processing of personal data until the end of those procedure (Article 19(3) PPL)

25.8 If you become aware of unlawful processing of your personal data at the NCBJ, you have the right to lodge a complaint with the supervisory authority competent for data protection.

25.9 With regard to your personal data, decisions will not be taken by automated means, pursuant to Article 22 of the GDPR.

25.10 The above rights should be addressed to NCBJ in accordance with the details provided at the outset. If NCBJ is unable to determine the content of the request or to identify the applicant on the basis of the notification made, NCBJ will ask the applicant for additional information. The application will be responded to promptly, no later than one month after its receipt. If it is necessary to extend this deadline, NCBJ will inform the applicant of the reasons for such an extension. The reply will be sent to the e-mail address from which the application was sent or, in the case of applications sent by letter, by registered mail to the address indicated by the applicant, unless it is clear from the content of the letter that the applicant wishes to be contacted by e-mail (in which case the e-mail address must be provided)



## Chapter 2 Forms relating to the Tender





Form 2.1.

TENDER

National Centre for Nuclear Research,  
ul. Andrzeja Sołtana 7, 05-400 Otwock

Referring to the procurement notice in the public procurement procedure conducted as an open tender for:  
**The Design, Manufacture and Delivery including installation of a helium cooling system for the Polish Free Electron Laser - PoIFEL at the premises of the National Centre for Nuclear Research in Otwock**

Reference number: EZP.270.72.2022

**I/WE THE UNDERSIGNED**

name: .....

surname: .....

basis for representation: .....

acting for and on behalf of the ECONOMIC OPERATOR

*NB: if a tender is submitted by joint entities, provide the following details for all the partners in a partnership or consortium*

name (company): .....

registered office address: .....

Province: .....

KRS number: .....

REGON: .....

NIP: .....

being a micro enterprise \* **being a small enterprise** \* **being a medium enterprise** \*.

sole trader \*

being a natural person not exercising an economic activity \*

other type \*

\* please tick/indicate as appropriate

*The definition of micro, small and medium entrepreneur can be found in Article 7(1)(1), (2) and (3) of the Act of 6 March 2018. Entrepreneurs' Law (i.e. Journal of Laws of 2021, point 162).*

**1. WE SUBMIT a TENDER** for the execution of the subject of the tender contract in accordance with the Terms of Reference for this procedure (ToR).



2. **WE DECLARE** that we have familiarised ourselves with the Terms of Reference and the clarifications and amendments to the ToR communicated by the Awarding Entity and we consider ourselves bound by the provisions and rules of procedure set out therein.

3. **WE OFFER** to perform the subject of the tender contract **for the total price of:**

PLN ..... (EUR/USD) (in words).....,

including VAT, in the amount of PLN .....(in words PLN.....) *if applicable*  
- see point 4 below

4. **WE INFORM** that<sup>10</sup> :

1) the selection of the tender **will not\*** lead to any tax liability for the Awarding Entity.

2) the selection of the tender **will\*** lead to tax liability for the Awarding Entity

- for the following goods/services (depending on the subject of the tender contract):.....

- the taxable value of the goods/services (depending on the subject of the tender contract) for the Awarding Entity is PLN (EUR/USD) net

- value added tax rate%, which, to the knowledge of the Economic Operator shall apply.

5. **WE INTEND**<sup>11</sup> to subcontract the following parts of the tender contract:

.....

6. **WE UNDERTAKE** not to perform the tender contract with the participation of subcontractors, suppliers or entities whose capacity is relied upon within the meaning of Directive 2014/24/EU, as referred to in Article 5k of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's destabilising actions in Ukraine, where they account for more than 10% of the contract value.

7. **WE UNDERTAKE** to perform the tender contract within the time limits specified in the Terms of Reference.

8. **WE ACCEPT** the terms of payment specified by the Awarding Entity in the Terms of Reference.

9. **WE ARE** bound by the tender for the period indicated in the ToR.

In confirmation of the above, we have submitted a tender bond in the amount of PLN ..... in the form of .....

The tender bond shall be reimbursed by transfer to account no. .... (to be completed in the case of payment of a tender bond in the form of money)

a declaration on the release of the tender bond referred to in Article 98(5) of the PPL Act should be sent to the issuer of the performance bond or surety by e-mail to .....@.....

(in case of payment of a deposit in a form other than money, the e-mail address of the bank/insurer, etc. must be provided.)

10. **WE DECLARE** that the information and documents contained in a separate appendix, duly marked and named (Insert name of appendix) constitute a business secret within the meaning of the provisions on combating unfair competition, as we have demonstrated in the appendix to the Tender ( indicate the name of the appendix) and stipulate that they may not be disclosed.

<sup>10</sup> applies to Economic Operators whose tenders will generate the liability to add VAT to the net value of the tender, i.e. in the case of:

- intra-Community acquisition of goods,
- the importation of services or the importation of goods, which implies an obligation on the part of the Awarding Entity to add VAT when comparing tender prices.

<sup>11</sup> Note: The declaration should be consistent with the declaration made in the single document Part II Section C and D.

11. **WE DECLARE** that we have familiarised ourselves with the material provisions of the contract, as specified in the Terms of Reference, and We undertake, should our tender be selected, to conclude a contract in accordance with this tender, on the terms and conditions specified in the ToR, at the place and date designated by the Awarding Entity.
12. **WE DECLARE** that we have fulfilled the information obligations provided for in Article 13 or Article 14 of the GDPR<sup>12</sup> towards the natural persons from whom we have directly or indirectly obtained personal data in order to compete for the award of the public contract in this procedure and whose data has been communicated to the Awarding Entity as part of the tender contract<sup>13</sup>.
13. **WE DECLARE** that we are not an entity referred to in Article 5k of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's destabilising actions in Ukraine, i.e.
- a) Russian citizen or a natural or legal person, entity or body based in Russia;
  - b) a legal person, entity or body in which more than 50 % of the ownership rights are directly or indirectly held by an entity referred to in point (a) above; or
  - c) a natural or legal person, entity or body acting on behalf of or at the direction of an entity referred to in points (a) or (b) above.

14. **THE AUTHORISED CONTACT PERSON** for these tender procedure is:

First name & surname .....tel.  
..... e-mail: .....

15. **LIST of enclosed declarations and documents:** *(list all declarations and documents submitted, etc.):*

.....  
.....  
.....  
.....  
.....

..... dated:.....

.....  
*(electronic signature of the person authorised to represent the Economic Operator)*

\* delete as appropriate

<sup>12</sup> 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 EU L 119 of 04.05.2016, p. 1).

<sup>13</sup> Where the Economic Operator does not provide personal data other than that directly concerning him or there is an exclusion of the application of the information obligation, pursuant to Article 13(4) or Article 14(5) GDPR the content of the declaration shall not be submitted by the Economic Operator (removing the content of the declaration, e.g. by deleting it).

(name of Economic Operator(s))	<b>FORM</b> <b>"NON-PRICE CRITERIA"</b>
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Submitting a tender in the public procurement procedure for:

**The Design, Manufacture and Delivery including installation of a helium cooling system for the Polish Free Electron Laser - PoFEL at the premises of the National Centre for Nuclear Research in Otwock**

Reference number: **EZP.270.72.2022**

we declare that

<p><b>Non-price criteria</b> Maximum number of points for the non-price criteria - 10 points</p>	
<p><b>Criterion:</b> <b>Warranty period</b> (maximum number of points - 10)</p>	
<p>Taking into account the description of the criterion in point 21 of the IDW - Volume I of the ToR, I declare:</p> <p>a) .....months limited warranty *</p> <p>b) .....unlimited warranty months *</p>	<p>*Economic Operator's declaration (indicate as appropriate - in accordance with the principles described in point 21 of the IDW)</p> <hr/> <p>If no warranty period is indicated, the Awarding Entity will consider that the Economic Operator has submitted a warranty for the minimum period, i.e. 24 months of unlimited warranty from the date of signing of the Final Acceptance Protocol (FAP) without reservations by an authorised representative of the Awarding Entity, thus awarding 0 points.</p> <p>The number of points for the evaluated tender will be awarded according to the score presented in the table in point 21.1.2 of IDW - Volume I of the ToR.</p>

.....  
(electronic signature person authorised to represent the Economic Operator)





**Forms relating to the Economic Operator's fulfilment of the conditions for participation in the procedure/demonstration of lack of grounds for exclusion of the Economic Operator from the procedure:**

3.1. Single European Procurement Document (ESPD) *(A document pre-prepared by the Awarding Entity available on the website of the conducted procedure both in xml format - to be imported in the eESPD service, and in pdf format - for reference);*

3.2. Proposal of the content of the obligation of the entity providing the resources to make available to the Economic Operator the necessary resources for the performance of the contract;

3.3. Proposed content of the declaration of Economic Operators jointly applying for the award of the contract within the scope referred to in Article 117(4) of the PPL Act;

Form 3.4. Declaration concerning the validity of the information in the ESPD

Form 3.5. Declaration concerning the capital group

Form 3.6. Economic Operator's declaration of income

Form 3.7. List of supplies

Form 3.8. List of persons

Form 3.9. List of tools/equipment

Form 3.10. Declaration on sanctioning provisions related to the war in Ukraine

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Form 3.1.

### Single European Procurement Document (ESPD)

*(The document pre-prepared by the Awarding Entity is available on the website of the conducted procedure both in .xml format - to be imported in the eESPD service, and in pdf format - for reference).*



**OBLIGATION**

**to put at the Economic Operator's disposal the necessary resources for the performance of the tender contract**

Reference number: **EZP.270.72.2022**

**ME/US:**

.....  
*First name and surname of person(s) authorised to represent the entity, position (owner, chairman of the board, member of the board, proxy, authorised representative, etc. \*)*

**acting for and on behalf of:**

.....  
*(name of the entity providing the resource)*

**I UNDERTAKE to provide the following resources for the performance of the tender contract:**

.....  
*(identification of the resource - experience, persons contracted to carry out the contract, technical capacity, financial or economic capacity)*

**at the Economic Operator's disposal:**

.....  
*(name of the Economic Operator)*

**in the performance of the tender contract entitled:**

**The Design, Manufacture and Delivery including installation of a helium cooling system for the Polish Free Electron Laser - PoIFEL at the premises of the National Centre for Nuclear Research in Otwock**

**WE DECLARE that:**

a) I make the above-mentioned resources available to the Economic Operator, to the following extent:

.....  
.....

b) the manner in which the said resources are to be made available and used will be as follows:

.....  
.....

c) period of access to and use of the resource will be as follows:

.....

By committing to make available the resources, I am jointly and severally liable with the above-mentioned Economic Operator, who relies on my financial or economic situation, for the damage incurred by the Awarding Entity as a result of the non-availability of these resources, unless I am not at fault for the non-availability of the resources.

..... dated:.....

.....  
(electronic signature person authorised to represent the Economic Operator)

**DECLARATION**

of Economic Operators applying jointly for the tender contract within the scope referred to in Article 117(4) of the PPL Act

Reference number: **EZP.270.72.2022**

In connection with the public procurement procedure conducted as an open tender for:

**The Design, Manufacture and Delivery including installation of a helium cooling system for the Polish Free Electron Laser - PoIFEL at the premises of the National Centre for Nuclear Research in Otwock**

**I/WE:**

.....  
(first name and surname of person(s) authorised to represent Economic Operators jointly applying for the tender contract)

**on behalf of the Economic Operator:**

.....  
.....  
(Insert names of Economic Operators jointly applying for the tender contract)

**DECLARE** that the following Economic Operators jointly applying for the tender contract will perform:

Economic Operator (name): ..... will perform.....\*

Economic Operator (name): ..... will perform.....\*

..... dated: .....

.....  
(electronic signature person authorised to represent the Economic Operator)

\* to be adjusted to the number of Economic Operators in the consortium

**DECLARATION**  
concerning the validity of the information in the ESPD

Reference number: **EZP.270.72.2022**

In connection with the public procurement procedure conducted as an open tender for:

**The Design, Manufacture and Delivery including installation of a helium cooling system for the Polish Free Electron Laser - PoIFEL at the premises of the National Centre for Nuclear Research in Otwock**

I declare,

that the information contained in the ESPD regarding the following grounds for exclusion referred to in:

- 1) Article 108(1)(3) and (6) of the PPL,
- 2) Article 108(1)(4) of the PPL, relating to the imposition of a prohibition to tender for a public contract as a preventive measure,
- 3) Article 108(1)(5) of the PPL, concerning the conclusion of an agreement with other economic Operators aimed at distorting competition,

are up to date.

.....  
(electronic signature person authorised to represent the Economic Operator)



**DECLARATION**  
concerning the capital group

Reference number: **EZP.270.72.2022**

In connection with the public procurement procedure conducted as an open tender for:

**The Design, Manufacture and Delivery including installation of a helium cooling system for the Polish Free Electron Laser - PoIFEL at the premises of the National Centre for Nuclear Research in Otwock**

Economic Operator:

Name: .....

Address: .....

NIP: .....

KRS: .....

1. I declare that I do not belong to the same capital group within the meaning of the Act of 16 February 2007 on Competition and Consumer Protection (consolidated text: Journal of Laws of 2021, point 275) with the Economic Operators who submitted tenders in this procedure for the award of a public contract.

2. I declare that I belong to a capital group within the meaning of the Act of 16 February 2007 on Competition and Consumer Protection (consolidated text: Journal of Laws of 2021, point 275) with the following Economic Operators who submitted tenders in this procedure for the award of a public contract:

1) ..... (name/business name and address)

2) .....

I submit the following evidence attached

1) .....,

confirming the preparation of a tender independently of another Economic Operator belonging to the same group.

.....  
(electronic signature person authorised to represent the Economic Operator)



**DECLARATION  
of revenue**

Reference number: EZP.270.72.2022

In connection with the public procurement procedure conducted as an open tender for:

**The Design, Manufacture and Delivery including installation of a helium cooling system for the Polish Free Electron Laser - PoFEL at the premises of the National Centre for Nuclear Research in Otwock**

Economic Operator:

Name: .....

Address: .....

NIP: .....

KRS: .....

I, the undersigned,

.....

*/first name and surname of person(s) authorised to represent the entity/*

declare that the annual revenue of the Economic Operator or the Economic Operator's revenue in the area covered by the tender contract, for a period not longer than the last 3 financial years, and if the period of operation is shorter - for this period is PLN ..... (in words.....).

At the same time, I acknowledge that the Awarding Entity has the right to verify the declaration by sending an appropriate request in writing.

.....  
*(electronic signature person authorised to represent the Economic Operator)*

**Note:** Note: When submitting the documents referred to in point. 10.8.a, if he carries out the settlement in a currency other than that indicated by the Awarding Entity, he is obliged to make the conversion (or the conversion will be made by the Awarding Entity) according to the Euro exchange rate in force in the National Bank of Poland on the 10th (tenth) day prior to the submission of tenders.





## LIST OF SUPPLIES

Reference number: EZP.270.72.2022

In connection with the public procurement procedure conducted as an open tender for:

**The Design, Manufacture and Delivery including installation of a helium cooling system for the Polish Free Electron Laser - PoIFEL at the premises of the National Centre for Nuclear Research in Otwock**

Economic Operator:

Name: .....

Address: .....

NIP: .....

KRS: .....

No	Name of the Awarding Entity to whom the delivery was made	Subject of the tender contract	Gross value in PLN	Date (day, month and year) of delivery (from - to)	Comments

.....  
(electronic signature/person authorised to represent the Economic Operator)





## LIST OF PERSONS

Reference number: **EZP.270.72.2022**

In connection with the public procurement procedure conducted as an open tender for:

**The Design, Manufacture and Delivery including installation of a helium cooling system for the Polish Free Electron Laser - PoIFEL at the premises of the National Centre for Nuclear Research in Otwock**

Economic Operator:

Name: .....

Address: .....

NIP: .....

KRS: .....

No	First name & surname	Scope of the tender contract activities	Qualifications - licenses, experience	Information on the basis for disposal of these persons

..... (place), dated:.....

.....  
(electronic signature of the person authorised to represent the Economic Operator)



## LIST OF EQUIPMENT/TOOLS

Reference number: **EZP.270.72.2022**

In connection with the public procurement procedure conducted as an open tender for:

**The Design, Manufacture and Delivery including installation of a helium cooling system for the Polish Free Electron Laser - PoIFEL at the premises of the National Centre for Nuclear Research in Otwock**

Economic Operator:

Name: .....

Address: .....

NIP: .....

KRS: .....

No	Name	Information on the basis of disposal of the equipment/tools

..... (place), dated:.....

.....  
(electronic signature/person authorised to represent the Economic Operator)

**DECLARATION**

referred to in Article 7(1) of the Act of 13 April 2022,

on special arrangements to counteract the promotion of aggression against Ukraine and to protect national security and

referred to in Article 5k of Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's destabilising actions in Ukraine (OJ EU No L 229, 31.7.2014, p. 1 as amended) as amended by Regulation 2022/576 (OJ EU No L 111, 8.4.2022, p. 1),

Reference number: **EZP.270.72.2022**

In connection with the public procurement procedure conducted as an open tender entitled:

**The Design, Manufacture and Delivery including installation of a helium cooling system for the Polish Free Electron Laser - PoIFEL at the premises of the National Centre for Nuclear Research in Otwock**

I/WE:

..... (first name and surname of person(s) authorised to represent)

acting for and on behalf of:

..... (name of the Economic Operator/Economic Operator/ shareholder) jointly applying for tender contract/Entity making available the resources)

1)

declare that I/we are not subject to exclusion on the basis of Article 7(1)(1)-(3) of the Act of 13 April 2022 on special solutions to prevent support for aggression against Ukraine and to protect national security (Journal of Laws of 2022, point 835, as amended), i.e. I/we are not the Economic Operator:

- a) specified in the lists set out in Regulation 765/2006 and Regulation 269/2014 or included in the list on the basis of a decision on inclusion in the list ruling on the application of the measure referred to in Article 1(3) of that Act;
- b) whose beneficial owner, within the meaning of the Act of 1 March 2018 on the prevention of money laundering and terrorist financing (Journal of Laws of 2022, point 593 and 655), is a person listed in the lists set out in Regulation 765/2006 and Regulation 269/2014 or listed or being such a beneficial owner as from 24 February 2022, provided that he or she has been listed on the basis of a decision on listing conclusive of the measure referred to in Article 1(3) of that Act;
- c) whose parent entity within the meaning of Article 3(1)(37) of the Accounting Act of 29 September 1994 (Journal of Laws of 2021, point 217, 2105 and 2106) is an entity listed in the lists set out in Regulation 765/2006 and Regulation 269/2014 or listed or being such a parent entity as from 24 February 2022, provided that it has been listed on the basis of a listing decision resolving the measure referred to in Article 1(3) of that Act.





2)

declare that I/we are not subject to exclusion pursuant to Article 5k of Regulation (EU) No. 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (Official Journal of the EU No. L 229 of 31.7.2014, p. 1 as amended) as amended by Regulation 2022/576 (Official Journal of the EU No. L 111 of 8.4.2022, p. 1), as I/we are not:

- a) Russian citizen, natural or legal person, entity or body based in Russia;
- b) a legal person, entity or body in which ownership rights directly or indirectly in more than 50 % belong to Russian citizens or natural or legal persons, entities or bodies based in Russia;
- c) natural or legal person, entity or body acting on behalf of or under the direction of: Russian nationals or natural or legal persons, entities or bodies established in Russia or legal persons, entities or bodies, more than 50 per cent of whose ownership rights are directly or indirectly held by Russian nationals or natural or legal persons, entities or bodies established in Russia,

3)

At the same time, I declare that none of my subcontractors, suppliers and entities on whose capacity I rely, where they account for more than 10% of the value of the tender contract, fall into any of the above categories of entities.

.....  
(electronic signature  
person authorised to represent the Economic Operator)

