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TERMS OF REFERENCE (ToR)

in a public procurement procedure conducted as an open tendering procedure, with the contract value exceeding the EU thresholds provided for in Article 3 of the Act of 11 September 2019 - Public Procurement Law (consolidated text Journal of Laws of 2022, item 1710 as amended), hereinafter referred to as the 'PPL', the subject of which is:

"Supply of consumables MOCVD divided into 4 lots for the EPI-MAT Research Group"

Case no.: PO.271.66.2023

APPROVED BY:

PREAMBLE

Expenses related to the public procurement procedure shall be incurred inter alia using the project funds of the following funding sources:
Project entitled "High-performance AlGaIn/GaN-HEMT transistors fabricated with hybrid MBE-MOVPE technology" financed from funds of Łukasiewicz Centre under the Contract No 2/Ł-PORT/CŁ/2021.

July 2023



Projekt pn. „Wysokowydajne tranzystory AlGaIn/GaN-HEMT wykonywane hybrydową technologią MBE-MOVPE” dofinansowano ze środków budżetu państwa, dotacja celowa przyznawana instytutom działającym w ramach Sieci Badawczej Łukasiewicz na podstawie umowy nr 2/Ł-PORT/CŁ/2021

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1. Name and address of the Contracting Authority

- 1.1. Sieć Badawcza Łukasiewicz – PORT Polski Ośrodek Rozwoju Technologii (Łukasiewicz Research Network – PORT Polish Centre for Technology Development) ul. Stabłowicka 147, 54-066 Wrocław
- 1.2. tel. +48 71,734 72 05
- 1.3. The address of the website on which the procedure is conducted and on which all documents relating to the procedure will be available:
<https://platformazakupowa.pl/pn/port>.
- 1.4. Email address:
marzena.krzyminska@port.lukasiewicz.gov.pl
- 1.5. Office hours: working days Monday to Friday, 08:00 to 15:00, excluding public holidays.

2. Procurement procedure.

- 2.1. This procedure is conducted as an open tendering procedure provided for in Article 132 of the PPL and in accordance with the provisions of these Terms of Reference, hereinafter referred to as the "ToR".
- 2.2. The estimated value of the contract exceeds the EU thresholds provided for in Article 3 of the PPL.
- 2.3. Pursuant to Article 257(1) of the PPL, the Contracting Authority provides for the possibility of cancellation of this procedure if the public funds which the Contracting Authority intended to allocate to finance all or part of the contract have not been granted thereto:
- 2.4. The Contracting Authority does not envisage an electronic auction:
- 2.5. The Contracting Authority does not envisage tender submission in the form of electronic catalogues or enclosing electronic catalogues with the tender.
- 2.6. The Contracting Authority will not accept variant tenders.
- 2.7. The Contracting Authority is not conducting proceedings with a view to concluding a framework contract.
- 2.8. The Contracting Authority does not reserve the right to compete for the contract to specific Economic Operators, referred to in Article 94 of the PPL.
- 2.9. The Contracting Authority does not envisage options.
- 2.10. The Contracting Authority had not conducted a preliminary market consultation prior to commencing the procedure.
- 2.11 The Contracting Authority provides for the application of the so-called reverse procedure referred to in Article 139(1) of the PPL, i.e. the



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Contracting Authority shall first carry out the examination and evaluation of tenders and then qualify the Economic Operator whose tender has been rated the highest, for the lack of grounds for exclusion and fulfilment of the conditions for participation in the procedure.

- 2.12. The Contracting Authority does not envisage employment of persons referred to in Article 96(2)(2) of the PPL.

3. Description of the object of the contract.

- 3.1. The object of the contract is the supply of consumables. The contract shall be executed in four lots, namely:

Lot 1: Consumables MOCVD

Lot 2: Consumables MOCVD

Lot 3: Consumables MOCVD

Lot 4: Consumables MOCVD

- 3.2. A detailed description of the object of the contract, along with the Contracting Authority's requirements regarding the object of the contract, have been specified in Appendix 2 to the ToR - Quotation Form and in Appendix 3 to the ToR - Model Contract.

- 3.3. Name and code according to the Common Procurement Vocabulary (CPV): 38000000-5 - Laboratory, optical and precision equipment (excl. glasses).

- 3.4. The Contracting Authority does not envisage awarding contracts referred to in Article 214(1) (7) and (8) of the PPL.

- 3.5. The Contracting Authority permits the submission of tenders for lots. The procedure consists of 4 lots, described in detail in section 3.2 of the ToR and Appendix 2 to the ToR. Each lot shall be considered separately. The Economic Operator may submit a tender for any lot of its choice. The Contracting Authority does not limit the number of lots for which one Economic Operator may submit a tender.

4. Contract completion date.

Delivery of the object of the contract shall be a maximum of 90 calendar days from the date of conclusion of the Contract (applicable to lots 1-4).

5. Conditions for participation in the procedure and grounds for exclusion from the procedure

- 5.1. Eligible to compete for the contract shall be Economic Operators who are not subject to exclusion pursuant to section 6 of the ToR, and meet the



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conditions for participation in the procedure defined by the Contracting Authority.

5.2. Eligible to compete for the contract shall be Economic Operators who meet the conditions related to:

1) **trading capacity:**

The Contracting Authority does not impose any condition in this respect.

2) **authorisation to pursue specific commercial or professional activities, if it results from separate regulations:**

The Contracting Authority does not impose any condition in this respect.

3) **economic or financial standing:**

The Contracting Authority does not impose any condition in this respect.

4) **technical or professional capacity:**

The Contracting Authority does not impose any condition in this respect.

5.3. In relation to Economic Operators competing jointly for the contract, with regard to the condition relating to technical or professional capacity - the Contracting Authority allows the condition to be fulfilled jointly by the Economic Operators.

5.4. The Contracting Authority may, at any stage of the procedure, conclude that the Economic Operator does not have the required capacities if the Economic Operator's conflicting interests, in particular the involvement of the Economic Operator's technical or professional resources in other economic undertakings of the Economic Operator may negatively affect the execution of the contract.

6. Grounds for exclusion from the procedure.

6.1. Excluded from the procurement procedure shall be Economic Operators in relation to whom any of the circumstances described in **Article 108(1) of the PPL** occur.

6.2. The Contracting Authority does not provide for the exclusion of the Economic Operator pursuant to Article 109(1) of the PPL.

6.3. Exclusion of the Economic Operator shall take place in accordance with Article 111 of the PPL.

6.4. The Economic Operator shall be excluded from the contract award procedure in the cases referred to in Article 7(1) of the Act of 13 April 2022 on special solutions in the field of counteracting the support of



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aggression against Ukraine and serving the protection of national security (Journal of Laws 2022, item 835). Article 7(3) of the Act indicated in the previous sentence shall apply to the Economic Operator subject to exclusion in this respect.

7. Statements and documents to be provided by Economic Operators to prove the fulfilment of conditions for participation in the procedure and the absence of grounds for exclusion (qualitative evidence).

- 7.1. The Economic Operator shall attach to its tender a statement of absence of grounds for exclusion, valid on the date of submission of tenders – on the form of the European Single Procurement Document (hereinafter referred to as the 'Single Document' or ESPD), constituting Appendix 4 set out in Commission Implementing Regulation (EU) 2016/7 of 5 January 2016 establishing the standard form for the European Single Procurement Document (Official Journal of the EU L 3 of 06.01.2016, p. 16)
- 7.2. The information contained in the Single Document referred to in section 7.1. constitutes proof of the absence of grounds for exclusion, as at the date of submission of tenders, temporarily replacing the qualitative evidence required by the Contracting Authority.
- 7.3. The Contracting Authority informs that an editable version of the Single Document can be found at the following address: <https://espd.uzp.gov.pl/>. Instructions for filling in the Single Document are contained in Appendix 8 to the ToR.
- 7.4. When submitting the ESPD, Economic Operators are required to complete:
 - 7.4.1 Part II: Information concerning the Economic Operator:
 - 7.4.1.1. section A: Information about the Economic Operator (with the exception of the point on restricted procurement)
 - 7.4.1.2. section B: Information about representatives of the Economic Operator
 - 7.4.1.3. section D: Information concerning subcontractors on whose capacity the Economic Operator does not rely
 - 7.4.2. Part III: Exclusion grounds:
 - 7.4.2.1. section A: Grounds relating to criminal convictions
 - 7.4.2.3. section C: Grounds relating to insolvency, conflicts of interests or professional misconduct, while limiting itself within section C to statements, to the extent indicated below:
 - 7.4.2.3.1. „Breaching of obligations in the field of environmental law”



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7.4.2.3.2. „Breaching of obligations in the field of social law”

7.4.2.3.3. „Breaching of obligations in the fields of labour law”

7.4.2.3.4. „Agreements with other economic operators aimed at distorting competition”

7.4.2.3.5. „Direct or indirect involvement in the preparation of this procurement procedure”

7.4.2.4 section D: Purely national exclusion grounds, which also include the exclusion grounds referred to in section 6.4. above.

7.4.4. Part VI: Concluding statements (indicate date, place).

7.5. Before selecting the most advantageous tender, the Contracting Authority shall call upon the Economic Operator whose tender has been awarded the highest score to submit, within a time limit which shall not be shorter than 10 days, the qualitative evidence which is up-to-date as of the date of submission.

7.6. The qualitative evidence required of the Economic Operator includes:

- 1) **statement of the Economic Operator, within the scope of Article 108(1)(5) of the PPL**, 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 2021, item 275 the consolidated text) with another Economic Operator who has submitted a separate tender, a tender for lots or a request to participate in the procedure, or a statement of belonging to the same capital group together with documents or information confirming preparation of the tender, the tender for lots or the request to participate in the procedure independently of another Economic Operator belonging to the same capital group - a model statement is attached as Appendix 4 to the ToR.
- 2) Information from the **National Criminal Register** as regards the grounds for exclusion laid down in Article 108(1)(1), (2), (4) of the PPL, drawn up not earlier than 6 months before submission.
- 3) **Statement of the Economic Operator on the validity of the information contained in the statement** referred to in Article 125(1) of the PPL regarding the grounds for exclusion from procedure indicated in Article 108(1) (3)-(6) of the PPL - a model statement is attached as Appendix 6 to the ToR.

7.7. If the Economic Operator has its registered office or place of residence outside the territory of the Republic of Poland, instead of the document referred to in section 7.6(2), it shall submit information from a relevant register, such as a court register, or, if there is no such register, another equivalent document issued by a competent judicial or



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administrative authority of the country in which the Economic Operator has its registered office or place of residence, issued no earlier than 6 months before its submission.

- 7.8. If in the country in which the Economic Operator has its registered office or where the person to whom the document refers has his or her place of residence, the document referred to in section 7. 7 is not issued, or if such documents do not refer to all cases indicated in the ToR, they shall be replaced in whole or in part, respectively, with a document containing a statement of the Economic Operator indicating the person(s) authorised to represent it, or a statement of the person to whom the document refers, made under oath, or if the legislation of the country where the Economic Operator's registered office or place of residence does not provide for a statement under oath, a statement made before a judicial or administrative authority, a notary, a professional or economic self-government authority competent with regard to the Economic Operator's registered office or place of residence.
- 7.9. The Contracting Authority shall not call to submit the qualitative evidence if:
- 1) it may obtain it by means of free and generally available databases, in particular public registers within the meaning of the Act of 17 February 2005 on computerisation of the activity of entities performing public tasks, provided that the Economic Operator has indicated in the statement referred to in Article 125(1) of the PPL the data enabling access to those means;
 - 2) the qualitative evidence is a statement whose content corresponds to the scope of the statement referred to in Article 125(1) of the PPL.
- 7.10. The Economic Operator shall not be required to submit the qualitative evidence which the Contracting Authority holds, provided that the Economic Operator indicates this evidence and confirms that it is correct and up-to-date.
- 7.11. In the scope not regulated by the PPL or these ToR, the statements and documents submitted by the Economic Operator in the procedure shall be subject in particular to the provisions of the Regulation of the Minister of Labour and Technology Development of 23 December 2020 on the qualitative evidence and other documents or statements which may be demanded by the Contracting Authority from the Economic Operator and the Regulation of the Prime Minister of 30 December 2020 on the method of preparing and submitting information and technical requirements for electronic documents and means of electronic communication in a public procurement procedure or competition.



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8. Relying on the resources of other entities.

Not applicable.

9. Information for Economic Operators jointly competing for the contract (consortia and civil law partnerships).

- 9.1. Economic Operators may jointly compete for the contract. In such a case Economic Operators shall appoint a proxy to represent them in the proceedings or to represent them and conclude the Public Procurement Contract. The power of attorney shall be attached to the tender.
- 9.2. In the case of Economic Operators competing jointly for the contract, the ESPD form, referred to in section 7.1 of the ToR, shall be submitted by each of them. These statements shall confirm the absence of grounds for exclusion.
- 9.3 The Contracting Authority shall require Economic Operators who are jointly competing for the contract to submit in respect of those entities (in addition to the ESPD form):
- 1) A statement of each of the Economic Operators jointly competing for the contract, within the scope of Article 108(1)(5) of the PPL, 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 2019, item 369) with another Economic Operator who has submitted a separate tender or a statement of belonging to the same capital group together with documents or information confirming preparation of a tender independently of another Economic Operator belonging to the same capital group (a model statement is attached as Appendix 5 to the ToR.
 - 2) A statement of each of the Economic Operators jointly competing for the contract on the validity of the information contained in the ESPD form, regarding the grounds for exclusion from procedure indicated in Article 125(1) of the PPL.

10. Means of communication and clarification of the content of the ToR

- 10.1. Communication in the procurement procedure and in a competition, including submission of tenders, requests to participate in the procedure or competition, exchange of information and transfer of documents or statements between the Contracting Authority and the Economic Operator, subject to the exceptions provided for in the PPL, shall be carried out via electronic communication means. Electronic communication means shall be understood as electronic communication



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means defined in the Act of 18 July 2002 on the provision of services by electronic means (Journal of Laws of 2019, item 123 and 730).

10.2. The tender, the Single Document, the qualitative evidence, powers of attorney and the commitment of the entity providing the resources shall be drawn up in generally available data formats, in particular .txt, .rtf, .pdf, .doc, .docx, .odt. **In order to be valid, the tender, including the Single Document, shall be submitted in electronic form (signed with a qualified electronic signature).**

10.3. Qualified signatures used by the Economic Operators to sign any files must meet the requirements of Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC - so-called eIDAS.

10.4. If the XAdES external signature format is used, the Contracting Authority requires the inclusion of the appropriate number of files, i.e. signed data files and signature files in XAdES format.

10.5. Communication between the Economic Operator and the Contracting Authority as well as transfer of information, statements, requests, notices and documents shall take place via electronic means. Communication between the Contracting Authority and Economic Operators, including all statements, requests, notices and information shall be transmitted electronically via the Platform and the 'Send a message' form available at <https://platformazakupowa.pl/pn/port> or by e-mail of the Contracting Authority indicated in section 10.6 of the ToR.

10.6. Persons authorised by the Contracting Authority to contact Economic Operators: for tender documentation: Ms Marzena Krzyminska: marzena.krzyminska@port.lukasiewicz.gov.pl.

10.7. The Economic Operator, as a professional entity, is obliged to check messages and communications sent by the Contracting Authority directly on <https://platformazakupowa.pl>, because the notification system may fail or the notification may end up in the SPAM folder.

The Contracting Authority, in accordance with the Regulation of the Prime Minister of 31 December 2020 on the method of preparing and submitting information and technical requirements for electronic documents and means of electronic communication in a public procurement procedure or competition (Journal of Laws of 2020, item 2452), specifies the necessary hardware and application requirements to work on platformazakupowa.pl, i.e.:

- 1) permanent access to the Internet with a guaranteed bandwidth of not less than 512 kb/s;
- 2) PC or MAC computer with the following configuration: min. 2 GB Ram, processor Intel IV 2 GHZ or its newer version, one of the operating systems - MS Windows 7, Mac Os x 10 4, Linux, or their newer versions,



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- 3) any web browser installed, in the case of Internet Explorer at least version 10.0,
 - 4) JavaScript enabled,
 - 5) Adobe Acrobat Reader or other software supporting .pdf file format installed.
 - 6) Encryption at <https://platformazakupowa.pl> is using TLS 1.3 protocol.
 - 7) Indication of data reception time by the purchasing platform is the date and the exact time (hh:mm:ss) generated according to the local time of the server synchronised with the clock of the Central Office of Measures.
 - 8) The maximum size of one file sent via dedicated forms for: submission, modification, withdrawal of a tender is 150 MB, while for communication the file size is maximum 500 MB.
- 10.9. By entering into this public procurement procedure, the Economic Operator:
- 1) accepts the terms and conditions of using platformazakupowa.pl as defined in the regulations placed on the website under the link in the 'Regulations' tab and acknowledges them as binding;
 - 2) has read and follows the Instructions for Submission of Tenders available at the [link https://drive.google.com/file/d/1Kd1DttbBeiNWt4g4sIS4t76lZVKPbkyD/view](https://drive.google.com/file/d/1Kd1DttbBeiNWt4g4sIS4t76lZVKPbkyD/view).
- 10.10. **The Contracting Authority shall not be liable for submission of a tender in a manner contrary to the instructions for use of platformazakupowa.pl**, in particular for a situation where the Contracting Authority reads the content of the tender before the time limit for submission of tenders (e.g. submission of a tender in the 'Send a message to the Contracting Authority' tab). Such a tender shall be considered by the Contracting Authority as a commercial offer and shall not be taken into account in the proceedings, because an obligation imposed in Article 221 of the Public Procurement Law has not been met.
- 10.11. The Contracting Authority informs that the instructions for using platformazakupowa.pl regarding in particular logging in, submitting requests for clarification of the content of the ToR, submitting tenders and other actions undertaken in this procedure using platformazakupowa.pl can be found in the 'Instructions for Economic Operators' tab on the website at: <https://platformazakupowa.pl/strona/45-instrukcje>
- 10.12. In correspondence addressed via e-mail to the Contracting Authority, Economic Operators should use the case number of the procedure. All notices, statements, requests and information submitted by e-mail require immediate confirmation of their receipt at the request of each party. If the receipt of correspondence sent by e-mail is not confirmed,



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the report confirming the sending of the e-mail shall be deemed to be the confirmation of delivery.

10.13. The Economic Operator may request the Contracting Authority for clarification of the content of the ToR.

10.14. The Contracting Authority shall be obliged to provide explanations immediately, however no later than 6 days before the time limit for submission of tenders, provided that the request for clarification of the content of the ToR was received by the Contracting Authority no later than 14 days before the time limit for submission of tenders.

10.15. If the Contracting Authority fails to provide explanations within the time limit referred to in section 10.14, the Contracting Authority shall extend the time limit for submission of tenders by the time necessary for all interested Economic Operators to become familiar with the explanations necessary for proper preparation and submission of tenders. If a request for clarification of the content of the ToR was not received within the time limit referred to in section 10.14, the Contracting Authority shall not be obliged to provide explanations to the ToR or to extend the time limit for submission of tenders.

10.16. Extension of the time limit for submission of tenders referred to in section 10.15 shall not affect the time limit for submitting requests for clarification of the content of the ToR.

10.17. The Contracting Authority shall make the text of the queries along with the explanations available on the platform of the conducted procedure under the link <https://platformazakupowa.pl/pn/port>, without revealing the source of the query.

10.18. The Contracting Authority does not intend to convene a meeting of Economic Operators.

11. Description of the method for tender preparation and formal requirements concerning submitted statements and documents

11.1. The Economic Operator may submit only one tender for the selected lot of the procedure. If a Economic Operator submits more than one tender for the selected lot of the contract, all tenders submitted thereby for that lot shall be rejected.

11.2. The procedure shall be conducted in Polish and in English. The Contracting Authority agrees to the submission of the tender and other documents in Polish or English. Documents written in a foreign language (other than English) shall be submitted together with their translation into Polish.

11.3. The contents of the tender should correspond to the contents of the ToR.



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- 11.4. A tender must be signed by persons authorised to represent the Economic Operator (Economic Operators competing jointly for the award of the contract).
- 11.5. The authorisation of the persons signing the tender to sign it must be evident from the appropriate register. This means that if such authorisation does not derive directly from the appropriate register stating the legal status of the Economic Operator, the tender must be accompanied with a power of attorney.
- 11.6. The tender and other statements and documents for which the Contracting Authority has prepared the templates in the form of model forms included in the appendices to the ToR should be drawn up in accordance with these templates as regards the content and description of columns and lines.
- 11.7. If the tender contains information that constitutes a business secret within the meaning of the Act of 16 April 1993 on combating unfair competition (Journal of Laws of 2019, item 1010 as amended), the Economic Operator shall, not later than within the time limit for the submission of tenders, stipulate that it may not be made available and shall demonstrate that the proprietary information constitutes a business secret.
- 11.8. All costs related to the preparation and submission of the tender shall be borne by the Economic Operator.
- 11.9. The tender shall contain:
- 1) A completed and signed **Tender Form** - the model form is attached as Appendix 1 to the ToR.
 - 2) A completed and signed **Quotation Form** - the model form is attached as Appendix 2 to the ToR - the form has been divided into 4 lots (If the Economic Operator submits a tender for more than one lot, the form should be submitted separately for each lot),
 - 3) A completed and signed statement in the form of a **European Single Procurement Document**, referred to in section 7.1 of the ToR;
 - 4) In order to confirm that the person acting on behalf of the Economic Operator is authorised to represent it, the Contracting Authority requires from the Economic Operator a copy or information from the National Court Register, Central Register and Information on Business Activity or other relevant register.
The Economic Operator shall not be obliged to submit the documents referred to in sentence 2 if the Contracting Authority can obtain them using free and publicly available databases, provided that the Economic Operator has indicated the data enabling access to such documents.



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- 5) Appropriate power of attorney(s) - if the power to sign the tender does not derive directly from the appropriate register (if applicable),
- 6) In the case of Economic Operators jointly competing for the contract, a document appointing a Representative to represent them in the contract award procedure or to represent them in the procedure and to conclude the Public Procurement Contract (if applicable).

12. Price calculation method

12.1. The Economic Operator shall indicate in the Tender Form the gross tender price calculated on the basis of the Quotation Form attached as Appendix 2 to the ToR. The net unit prices given in the Quotation Form are lump sum prices and any corrections of obvious calculation errors shall be made on the basis of the net unit prices.

In the Quotation Form, the Economic Operator shall specify the product offered for each item, i.e.: product catalogue number and manufacturer. Should the Economic Operator fail to specify the product offered, its tender shall be subject to rejection on the basis of Article 226(1)(5) of the PPL - the provision refers to the lot for which the Economic Operator submits its tender.

12.2. The Economic Operator shall indicate in its tender, for each lot of the object of the contract in which it submits a tender, the net tender price, the gross tender price and the VAT due, in the manner specified in the Tender Form, which constitutes Appendix 1 to the ToR.

12.3. The tender price for a given lot is the gross price indicated in the Quotation Form for a given lot in the scope defined in Appendix 2 to the ToR.

12.4. The tender price for a given lot should be calculated on the basis of the Quotation Form constituting Appendix 2 to the ToR. The Quotation Form has been divided into sections corresponding to individual lots of the contract, therefore, when calculating the tender price for a given lot, the Economic Operator should use the relevant part (section) of the form relating to the selected lot.

12.5. The tender price for a given lot indicated in the Tender Form and the prices indicated in the Quotation Form shall include the VAT due, in accordance with the applicable tax regulations at the rate as at the date of submission of the tenders.

12.6. The tender price for the selected lot(s) indicated in the Tender Form, as well as the prices indicated in the Quotation Form for the selected lot(s), should be given in Polish zloty to two decimal places (i.e. to the nearest 1 grosz). If the calculated prices have more decimal places (fractions of a grosz), they should be rounded in such a way that figures 1 to 4 are rounded down and figures 5 to 9 are rounded up.



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12.7. Should the selection of the submitted tender result in a tax liability on the Contracting Authority in accordance with the Act of 11 March 2004 on tax on goods and services (Journal of Laws of 2018, item 2174, as amended), for the purpose of applying the price criterion, the Contracting Authority shall add to the price presented in that tender the amount of tax on goods and services which it would be obliged to settle. In the tender, the Economic Operator is obliged to:

- 1) inform the Contracting Authority that the selection of its tender will result in the tax liability for the Contracting Authority;
- 2) indicate the name (type) of the goods or services whose delivery or provision shall result in the tax liability;
- 3) indicate the value of the goods or services subject to the Contracting Authority's tax liability, without the amount of the tax;
- 4) indicate the VAT rate which, to the Economic Operator's knowledge, will apply.

12.8. The Contracting Authority does not envisage granting an advance payment for the execution of the public contract.

13. Deposit requirements.

The Contracting Authority does not require a deposit.

14. Tender validity period.

14.1. The Economic Operator shall be bound by its tender for 90 days, i.e. until 13.11.2023. The period, during which the Economic Operator must maintain its tender, shall commence with the expiry of the time limit for submission of tenders.

14.2. If the most advantageous tender is not selected before the expiry of tender validity period defined in section 1, the Contracting Authority, before the expiry of the tender validity period, shall ask the Economic Operators once to agree to extend that period by a period specified by the Contracting Authority, not longer than 60 days. The extension of the tender validity period requires the Economic Operator to submit a written statement of consent to extend the tender validity period.

14.3. Refusal to agree to an extension of the tender period shall not result in the loss of the deposit.

15. Manner and date of tenders submission and opening.

15.1. The tender together with the required documents should be placed on the Platform at the following address: <https://platformazakupowa.pl/pn/port> on the website of the procedure conducted until 16.08.2023 by 11:00.



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15.2. After completing the tender submission form and uploading all required attachments, click the 'proceed to summary' button.

15.3. The date on which the tender is submitted shall be the date on which it is transmitted to the system (platform) in the second step of the tender submission by clicking on the 'Submit tender' button, after a message is displayed that the tender has been encrypted and submitted.

15.4. Detailed instructions for Economic Operators on how to submit, amend and withdraw a tender can be found on the website at:
<https://platformazakupowa.pl/strona/45-instrukcje>

15.5. Tenders shall be opened on 16.08.2023 at 11:30.

15.6. No later than before the opening of tenders, information on the amount intended to be spent to finance the contract shall be made available on the Platform.

15.7. Immediately after opening the tenders, the following information shall be provided on the website of the conducted procedure:

- 1) company names or names and surnames, registered offices or places of business activity or places of residence of Economic Operators whose tenders have been opened;
- 2) prices contained in the tenders.

The information shall be published on the website of the procedure at platformazakupowa.pl in the "Communications" section.

16. Description of the criteria for evaluation of tenders, together with the weights of these criteria and the method of evaluation of tenders.

16.1. The criteria listed below apply to each lot separately.

16.2. The Contracting Authority shall evaluate and compare only those tenders that are not rejected by the Contracting Authority.

16.3. The criteria for selecting the most advantageous tenders shall be:

Criterion 1: **price** - weight of the criterion 80.00 %

Criterion 2: **delivery time** - weight of the criterion 20.00 %

16.4. Principles of criteria evaluation - description of the way of calculating the scores:

16.4.1. **Criterion 1: price**, shall be calculated according to the following formula:

lowest gross price*

Number of points = ----- x 100 points x weight of the
criterion gross price of the evaluated tender



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*of all the submitted tenders not subject to rejection

For the purpose of comparing the tenders, the Contracting Authority shall accept the tender prices including VAT.

It is assumed that 1% = 1 point and this is how the number of points obtained will be calculated.

A maximum of 80.00 points can be obtained for criterion 1.

16.4.2. **Criterion 2: Delivery date**, shall be evaluated according to the following principles:

Offered delivery time in calendar days (for lots 1-4)	Number of points to be awarded to the Economic Operator
≤ 30 days	20 points
31 - 60 days	10 points
61 - 90 days	0 points

- The delivery time must be given in full days and may not be longer than: 90 calendar days from the date of award of the contract (conclusion of the Contract).
- Should the Economic Operator offer a delivery time longer than the one indicated in the above section, the Economic Operator's tender shall be subject to rejection pursuant to Article 226(1)(5) of the PPL.
- If the content of the Economic Operator's tender does not indicate the delivery time offered by the Economic Operator, the Economic Operator's tender shall be subject to rejection pursuant to Article 226(1)(5) of the PPL.
- Information regarding criterion 2 should be given by the Economic Operator at the place indicated in the Tender Form.
- A maximum of 20.00 points can be obtained for criterion 2.

16.5. Tenders shall be evaluated on a scale from 0.00 to 100.00 points.

16.6. For each lot of the object of the contract (Task) the Contracting Authority shall select one tender which will obtain in total the highest number of points (criterion 1 + criterion 2) and which will meet all the requirements of the PPL and the ToR.

16.7. Where the most advantageous tender cannot be selected as two or more tenders represent the same balance of price and other tender evaluation criteria, the Contracting Authority shall choose from among those tenders the one which has received the highest score in the



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criterion of the highest weighting (this refers to the situation when more than one criterion had been defined).

16.8. If tenders have received the same score for the criterion of highest weighting, the Contracting Authority shall choose the tender with the lowest price.

16.9. If it is not possible to select a tender in the manner referred to in section 16.6 of the ToR, the Contracting Authority shall invite the Economic Operators who have submitted those tenders to submit additional tenders containing a new price within the time limit set by the Contracting Authority.

16.10. When submitting additional tenders Economic Operators may not submit tenders with higher prices than those included in their previously submitted tenders.

17. Information concerning formalities which should be met following the selection of a tender in order to conclude a public procurement contract.

17.1. The Contract shall be concluded in accordance with the deadlines laid down in Article 308 (2) and (3) of the PPL.

17.2. Before signing the Contract, the Economic Operator whose tender has been selected as the most advantageous shall provide the Contracting Authority, if a tender of Economic Operators jointly competing for the contract is selected, with a copy of the agreement regulating the cooperation of those Economic Operators.

17.3. Failure to provide the above document before signing the Contract shall be treated as the conclusion of the Contract impossible due to reasons attributable to the Economic Operator.

18. Requirements concerning security on due performance of the contract.

The Contracting Authority does not require the security on due performance of the Contract.

19. Information about the content of the Contract to be concluded and the possibility of its amendment.

19.1. The selected Economic Operator shall be obliged to conclude a public procurement Contract on the terms and conditions specified in the Model Contract constituting Appendix 3 to the ToR.

19.2. The scope of Economic Operator's performance resulting from the Contract shall be identical with the commitment undertaken in the tender.



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19.3. The Contracting Authority provides for the possibility of amending the concluded Contract in relation to the content of the selected tender within the scope regulated in Articles 454-455 of the PPL and indicated in the Model Contract constituting Appendix 3 to the ToR.

20. Subcontracting.

20.1. The Economic Operator may entrust part of the contract to subcontractor(s).

20.2. The Contracting Authority does not reserve the obligation for the Economic Operator to personally execute key parts of the contract.

20.3. The Contracting Authority requires that in the case of entrusting a part of the contract to subcontractors, the Economic Operator indicates in the tender the part of the contract whose performance it intends to entrust to subcontractors and provides (if known at this stage) the names (company names) of these subcontractors.

20.4. The Contracting Authority shall not check whether there are grounds for exclusion referred to in Article 108 of the PPL against a subcontractor not being the entity providing the resources.

20.5. Pursuant to Article 5k(1) of Council Regulation (EU) No. 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine - it is prohibited to entrust any part of the contract to subcontractors (including subcontractors for services and supplies) on the grounds referred to in Article 5k(1)(a)-(c), where they account for more than 10% of the contract value.

21. On-site visit.

The Contracting Authority does not envisage the on-site visit.

22. Information concerning foreign currencies in which settlements between the Contracting Authority and the Economic Operators can be made.

Settlements between the Contracting Authority and the Economic Operator shall be made in Polish zloty (PLN). The Contracting Authority also allows for settlements with the Economic Operator in a foreign currency, i.e. in EUR or USD. If the Economic Operator submits a tender in a foreign currency, i.e. in EUR or USD, the Contracting Authority, in order to compare the tenders, shall convert the EUR/USD according to the average foreign exchange rate of the National Bank of Poland on the day the procedure is opened.



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Should the Economic Operator fail to specify the accounting currency in its tender, the tender shall be subject to rejection on the basis of Article 226(1)(5) of the PPL.

23. Instructions on the legal remedies available to the Economic Operators.

23.1. The Economic Operator, participant in the competition or other entity shall be entitled to legal remedies if it has or has had an interest in being awarded the contract and has suffered or may suffer damage as a result of breach of the provisions of the PPL by the Contracting Authority.

23.2. Legal remedies against the contract notice initiating the procurement procedure and against the contract documents shall also be available to organisations on the list referred to in Article 469(15) of the PPL and to the Ombudsman for Small and Medium Enterprises.

23.3. The appeal shall be available against:

- 1) Contracting Authority's action, non-compliant with the provisions of the Act, taken in the course of the procurement procedure, including the draft contractual provisions;
- 2) failure to act in the procurement procedure, to which the Contracting Authority was obliged under the PPL.

23.4. The appeal shall be lodged with the President of the Chamber. The appellant shall submit a copy of the appeal to the Contracting Authority before the expiry of the final date for the lodging of an appeal in such a way that the Contracting Authority can acquaint itself with the content of the appeal before that deadline expires.

23.5. The appeal against the content of the contract notice or the content of the ToR must be lodged within 10 days from the publication of the contract notice in the Official Journal of the European Union or posting the documents on the website.

23.6. The appeal shall be lodged within:

- 1) 10 days from the date of transmitting the information about the Contracting Authority's activities providing the grounds for its lodging, if the information was transmitted by means of electronic communication,
- 2) 15 days from the date of transmission of information on the Contracting Authority's activities providing the grounds for its lodging, if the information was transmitted in a manner other than that specified in point 1).

23.7. In cases other than those referred to in sections 23.5 and 23.6 the appeal shall be lodged within 10 days from the day of becoming aware, or, acting with due diligence, one could have become aware of the circumstances providing grounds for its lodging.



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23.8. The parties and participants of the appeal proceedings shall have the right to lodge a complaint with the court against the ruling of the Chamber and the decision of the President of the Chamber referred to in Article 519(1) of the PPL.

23.9. Appropriate provisions of the Code of Civil Procedure of 17 November 1964 concerning appeals shall apply accordingly to procedures pending as a result of a lodged petition, unless the provisions of this Chapter provide otherwise.

23.10. The complaint shall be filed with to the Regional Court in Warsaw - Court of Public Procurement, hereinafter referred to as the Court of Public Procurement.

23.11. The complaint shall be lodged through the President of the Chamber, within 14 days of the day of delivery of the Chamber's ruling or the President's decision referred to in Article 519(1) of the PPL, sending at the same time its copy to the complaint's opponent. Lodging a complaint at a post office of a designated operator within the meaning of the Act of 23 November 2012. - Postal Law is equivalent to filing a complaint.

23.12. The President of the Chamber shall deliver the complaint together with the files of the appeal procedure to the competent public procurement court within not more than 7 days from the date of its receipt.

24. Information obligation under Regulation (EU) 2016/679 of the European Parliament and of the Council.

Detailed information is provided in Appendix 7 to the ToR.

25. List of appendices.

Appendix 1 – Tender form;

Appendix 2 – Quotation Form;

Appendix 3 – Model Contract;

Appendix 4 – Model European Single Procurement Document;

Appendix 5 – Statement of belonging or not belonging to the same capital group;

Appendix 6 – Statement of the Economic Operator on validity of information contained in the statement referred to in Article 125(1) of the PPL;

Appendix 7 – GDPR Information Clause;

Appendix 8 – Instructions for filling in the Single Document.



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