



Łukasiewicz

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TERMS OF REFERENCE

(ToR)

in the proceedings for the award of a public contract conducted under the basic non-negotiated procedure, with a contract value not exceeding the EU thresholds, as provided for in Article 3 of the Act of 11 September 2019 – Public Procurement Law (i.e., Journal of Laws of 2022, item 1710, as amended), hereinafter referred to as the "PPL", the subject of which is:

Delivery of laboratory apparatus for Łukasiewicz – PORT

Case no.: PO.271.47.2023

APPROVED BY:

June 2023



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Sieć Badawcza Łukasiewicz – PORT Polski Ośrodek Rozwoju Technologii (Łukasiewicz Research Network – PORT Polish Centre for Technology Development)

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District Court for Wrocław – Fabryczna in Wrocław, 6th Commercial Division of the

National Court Register,

KRS No.: 0000850580





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PREAMBLE

Expenses related to the public procurement procedure shall be incurred inter alia using the project funds of the following funding sources:

1. 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"

as well as future projects applied for by the Contracting Authority, which will be able to participate in the financing of the expenditure covered by the Contract and within the Contracting Authority's own costs.

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 77 77
- 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: aleksandra.orzechowska@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. The present procedure shall be conducted in accordance with the basic procedure provided for in Article 275 item 1 of the PPL and in accordance with the provisions of this Specification of Contract Terms, hereinafter referred to as the ToR.
- 2.2. The estimated value of the contract in question does not exceed the EU thresholds referred to in Article 3 of the PPL.
- 2.3. Pursuant to Article 310(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.





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2.8. The Contracting Authority does not reserve the right to compete for the contract to specific Contractors, referred to in Article 94 of the PPL.

3. Description of the subject of the contract.

- 3.1. The subject of the contract is the supply of laboratory apparatus for Łukasiewicz – PORT
- 3.2. A detailed description of the subject 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. A contractor submitting an equivalent offer, pursuant to the provisions of the PPL, is obliged to demonstrate in the content of its offer that the subject matter of the contract offered by it (each one separately) meets the requirements and technical and functional and other parameters specified in the ToR, or provides solutions better than those described, allowing for the continuation or performance of new scientific and research processes, experimental and scientific activity, exchange of experiences and comparison of research results, without the need to perform additional operations (procedures), including, for example, calibration of equipment.
- 3.4. Name and code according to the Common Procurement Vocabulary (CPV): 38000000-5- optical and precision laboratory equipment (except glassware).
- 3.5. The Contracting Authority does not envisage awarding contracts referred to in Article 214(1) (7) and (8) of the PPL.
- 3.6. The subject of the contract has been divided into parts, which are the subject of separate tender procedures.

4. Contract completion date.

The procedure contract will be concluded for the period offered by the Contractor, not exceeding 3 months from the date of conclusion of the contract, based on the provisions of the model contract constituting Appendix 3 to the ToR.

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

- 5.1. The contract may be applied for by Contractors who are not subject to exclusion pursuant to the rules specified in item 6 of the ToR, and meet the conditions for participation in the procedure as specified by the Contracting Authority.
- 5.2. Eligible to compete for the contract shall be Contractors 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 Contractors 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 Contractors.

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

6. Grounds for exclusion from the procedure.

6.1. Excluded from the procurement procedure shall be Contractors 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 Contractor pursuant to Article 109(1) of the PPL.

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

6.4. The Contractor 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 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 Contractor subject to exclusion in this respect.

7. Statements and documents to be provided by Contractors 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 is obliged to attach to his tender the statement referred to in Article 125 par. 1 of the PPL, stating that there are no grounds for exclusion – according to **Appendix 4 to the ToR**.

7.2. The information contained in the statement 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 shall call upon the economic operator whose tender has been awarded the highest score to submit, within a specified time limit, which shall not be shorter than 5 days from the date of the call, the subject-matter evidence, if it was required to be submitted in the contract notice or the contract documents, up-to-date as of the date of submission of the subject-matter evidence.
- 7.4. The subject-matter evidence required of the Contractor includes:
a declaration 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, uniformed text), with another contractor who submitted a separate tender or request to participate in the procedure, or a declaration of belonging to the same capital group, together with documents or information confirming the preparation of a tender or request to participate in the procedure independently of another economic operator belonging to the same capital group – sample declaration constitutes Appendix 5 to the PPL.
- 7.5. The Contractor shall not be required to submit the qualitative evidence which the Contracting Authority holds, provided that the Contractor indicates this evidence and confirms that it is correct and up-to-date.
- 7.6. In the scope not governed by the PPL or these ToR, the statements and documents submitted by the Contractor 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 Contractor 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.

8. Relying on the resources of other entities.

Not applicable.

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

- 9.1. Contractors may jointly compete for the contract. In such a case Contractors 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 award of the contract, the statements referred to in item 7.1 of the ToR, shall be





submitted by each Contractor. These statements shall confirm the absence of grounds for exclusion.

- 9.3. Contractors competing jointly for the award of the contract shall attach to their tender a declaration stating which deliveries will be made by each of the contractors, referred to in Article 117(4) of the PPL (Annex 7 to 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 Contractor, 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 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 Contractors 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 Contractor 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 the Contractors: for tender documentation: Ms Aleksandra Orzechowska: aleksandra.orzechowska@port.lukasiewicz.gov.pl .
- 10.7. The Contractor, 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.





10.8. The Contracting Authority, in accordance 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, Intel IV 2 GHZ processor or newer version, one of the operating systems – MS Windows 7, Mac Os x 10 4, Linux, or newer versions thereof,
- 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 Contractor:

- 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/1Kd1DttbBeiNWt4q4sIS4t76IZVKPbkyD/view](https://drive.google.com/file/d/1Kd1DttbBeiNWt4q4sIS4t76IZVKPbkyD/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 Contractors' tab on the website at: <https://platformazakupowa.pl/strona/45-instrukcje>





- 10.12. In correspondence addressed via e-mail to the Contracting Authority, Contractors 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, the report confirming the sending of the e-mail shall be deemed to be the confirmation of delivery.
- 10.13. The Contractor 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 2 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 4 days before the time limit for submission of tenders.
- 10.15. If the Contracting Authority does not provide explanations within the time limit referred to in paragraph 10.14 it extends the deadline for submission of tenders by the time necessary for all interested contractors 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 has not been received by the deadline referred to in paragraph 10.14, the Contracting Authority is not obliged to provide explanations of the ToR and is not obliged to extend the deadline for submission of tenders.
- 10.16. The extension of the deadline for submission of tenders referred to in paragraph 10.15 shall not affect the time limit for submitting a request 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 Contractors.

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

- 11.1. The Contractor may submit only one quotation. If the Contractor submits more than one tender, all tenders submitted by the Contractor will be rejected.
- 11.2. The tender is to be drawn up in Polish. The Contracting Authority does not accept submission of the tender and other documents in one of the languages commonly used in international trade. Documents drawn up in a foreign language shall be submitted together with their translation into Polish.
- 11.3. The contents of the tender should correspond to the contents of the ToR.
- 11.4. A tender must be signed by persons authorised to represent the Contractor (Contractors 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 Contractor, 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 a tender contains information constituting a business secret within the meaning of the Act on combating unfair competition of 16 April 1993 (Journal of Laws of 2019, item 1010, as amended), the Contractor should, not later than by the deadline for submission of tenders, reserve that it cannot be made available and demonstrate that the reserved information constitutes a business secret.

11.8. All costs related to the preparation and submission of the tender shall be borne by the Contractor.

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.
- 3) Completed and signed statement referred to in item 7.1. of the ToR – a model statement is provided in Appendix 4 to ToR.
- 4) An excerpt or information from the National Court Register, Central Register of Business Activity Information or other appropriate register in order to confirm that the person acting on behalf of the economic operator is authorised to represent them. The Contractor is not obliged to submit the above-mentioned documents if the Contracting Authority can obtain them using free and generally available databases, provided that the economic operator indicates the data enabling access to those documents.
- 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 Contractors 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 Contractor shall indicate in the Quotation Form for each item the maximum anticipated net unit values for which the Contractor will offer these items during the performance of the contract. The gross bid price for an item will be calculated as the sum of the net value of the item and the value of VAT for the item. The total gross bid price will be calculated as the sum of the maximum gross prices of the individual product types.





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- 12.2. In the event of a calculation error, the Contracting Authority shall consider the net unit value to be correct and shall correct the values given in the quotation form and the tender form accordingly.
- 12.3. The Contractor shall indicate in its 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. If there is more than one VAT rate, the Contractor shall indicate the net bid value and the gross tender price in the Tender Form (Appendix 1 to the ToR).
- 12.4. The tender price is the gross price indicated in the Quotation Form for a given lot in the scope defined in Appendix 2 to the ToR.
- 12.5. The tender price should be calculated on the basis of the Quotation Form constituting Appendix 2 to the ToR. The Quotation Form should specify in all items for a given product: the net unit price, the VAT rate and the gross tender price.
- 12.6. The tender price for 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.
- 12.7. The tender price indicated in the Tender Form, as well as the prices indicated in the Quotation Form, 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.
- 12.8. If a tender is submitted, the selection of which would lead to the creation of a tax obligation for the Contracting Authority pursuant to the provisions on VAT, the Contracting Authority, in order to evaluate such a tender, will add to the price presented in it the VAT which it would be obliged to settle pursuant to these provisions. When submitting a tender, the Contractor shall inform the Contracting Authority, in the content of Appendix 1 to the Terms of Reference, whether the selection of a tender will lead to the creation of a tax obligation for the Contracting Authority, indicating the name (type) of goods or services the supply or provision of which will lead to its creation, and indicating their value without the amount of tax.
- 12.9. The Contracting Authority does not envisage granting an advance payment for the execution of the public contract.
- 12.10. The Contractor must specify the catalogue number of the offered product and the name of the manufacturer of the offered product in the space provided by the Purchaser in the quotation form (Appendix 2 to the ToR). If the Contractor fails to specify the offered catalogue number and the name of the manufacturer, the offer shall be subject to rejection pursuant to Article 226(1)(5) of the PPL.

13. Deposit requirements.

The Contracting Authority does not require a deposit.





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14. Tender validity period.

- 14.1. The Contractor shall be bound by its tender for 30 days, i.e., until 26.07.2023 r. The period, during which the Contractor must maintain its tender, shall commence with the expiry of the time limit for submission of tenders.
- 14.2. In the event that the selection of the most advantageous tender does not take place before the expiry of the tender binding period indicated in item 1, the Contracting Authority shall, before the expiry of the tender validity period, request the contractors, once, to agree to an extension of that period by the period indicated by the Contracting Authority, which shall not exceed 30 days. Extension of the time limit for being bound by a tender requires a written statement of consent by the contractor to extend the time limit for being bound by a tender. The extension of the tender validity period requires the Contractor 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 27.06.2023 r. by 10:00.
- 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 Contractors on how to submit, amend and withdraw a tender can be found on the website at: <https://platformazakupowa.pl/strona/45-instrukcje>
- 15.5. The opening of the tenders will take place on 27.06.2023 r. at 10:30.
- 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 Contractors 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 Contracting Authority shall evaluate and compare only those tenders that are not rejected by the Contracting Authority.

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

Criterion 1: **price** – weight of the criterion 80%

Criterion 2: **delivery time** – weight of the criterion 20%

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

*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 date from the date of award of the contract in accordance with the model contract	Number of points to be awarded to the Contractor
from 2 to 3 months	0.00 points
from 1 to 2 months	10.00 points
up to 1 month (including)	20.00 points

The delivery date indicated in the tender must be a single whole number and may not be given in the time interval "from ... to ...". In the event that a date other than a whole number is indicated, the Contracting Authority will take the largest number of months from the specified time interval as the delivery date. The delivery date may not be longer than 3 months from the date of award of the contract.





Should the Contractor offer a delivery time longer than the one indicated in the above section, the Contractor's tender shall be subject to rejection pursuant to Article 226(1)(5) of the PPL.

Should the Contractor fail to specify the delivery date in its tender, the tender shall be subject to rejection on the basis of Article 226(1)(5) of the PPL.

Information regarding criterion 2 should be given by the Contractor at the place indicated in the Quotation Form (Annex 1 to the ToR).

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. 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 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 Contractors 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 Contractor whose tender has been selected as the most advantageous shall provide the Contracting Authority, if a tender of Contractors jointly competing for the contract is selected, with a copy of the agreement regulating the cooperation of those Contractors. 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 Contractor.

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





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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 Contractor 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 Contractor's performance resulting from the Contract shall be identical with the commitment undertaken in the tender.
- 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 Contractor may entrust part of the contract to subcontractor(s).
- 20.2. The Contracting Authority does not reserve the obligation for the Contractor 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 Contractor 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.

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 Contractors can be made.

Settlements between the Contracting Authority and the Contractor shall be made in Polish zloty (PLN). The Contracting Authority also allows for settlements with the Contractor in a foreign currency, i.e. in EUR or USD. If the Contractor 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.

23. Instructions on the legal remedies available to the Contractors.





- 23.1. The Contractor, 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 5 days from the publication of the contract notice in the Public Procurement Bulletin or content of the ToR on the website.
- 23.6. The appeal shall be lodged within:
- 1) 5 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) 10 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 5 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.
- 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.





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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 6 to the ToR.

25. List of appendices.

Appendix 1 – Tender form;

Appendix 2 – Quotation Form;

Appendix 3 – Model Contract;

Appendix 4 – Contractor's statement on grounds for exclusion from the procedure;

Appendix 5 – Declaration on belonging or not belonging to the same capital group;

Appendix 6 – GDPR Information Clause;

Appendix 7 – Declaration of contractors submitting a joint tender Article 117(4).

