

**Legal basis**

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

**NOTE:** the main Contract procedure is conducted on delivery of electrical and optical measuring equipment for electrical prober.

**TERMS OF REFERENCE**

**Delivery of electric prober**

**CPV Glossary**

**38540000-2**

**I. Name and address of the Contracting Authority:**

Łukasiewicz Research Network – Institute of Microelectronics and Photonics

32/46 Lotników Avenue

02-668 Warsaw

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

E-mail address:

[michal.urbanski@imif.lukasiewicz.gov.pl](mailto:michal.urbanski@imif.lukasiewicz.gov.pl)

Phone number: 22 548 77 43

Address of the website of the ongoing procedure:

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

Address of the website, where all modifications and explanations to these Terms of Reference will be published along with other Contract documents directly related to the procedure for awarding a public Contract:

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

## II. Mode of awarding the Contract:

1. The public Contract awarding procedure is conducted in the open tender mode, pursuant to Art. 132-139 of the PPL Act.
2. The value of the Contract is equal or higher than the EU thresholds specified in Art. 3 of the PPL Act.
3. In cases unregulated in these Terms of Reference (hereinafter: "ToR"), the provisions of the PPL Act shall apply.

## III. Description of the subject of Contract:

1. The subject of Contract is the **delivery, installation, start-up, testing of a brand new electric prober together with guarantee and support services, documentation and trainings**, hereinafter referred to as the "**Subject of the Contract**" or "**Equipment**".
2. The requirements and technical parameters of the Subject of Contract are defined in **Appendix No. 1** hereto.
3. The Contractor shall specify the properties of the offered Subject of Contract to enable its identification, pursuant to the table provided in **Appendix No. 1** hereto.
4. The offered Subject of Contract shall be compliant with the detailed description of the Subject of Contract and meet the provided requirements. Failure to meet at least one of the minimum required parameters shall result in rejecting the bid.
5. The required minimum guarantee period is 12 months.
6. Equivalent solutions:
  - 1) If the Contracting Authority in the description of the subject of the contract indicated trademarks, patents or origins, sources or a specific process that characterizes the products or services provided by a specific Contractor, it is allowed to offer solutions equivalent to those described, provided that they maintain the same minimum technical and quality parameters and functional.
  - 2) The Contractor who refers to equivalent solutions is obliged to prove that the solution offered by him meets the requirements specified by the Awarding Party. In such a case, the Contractor attaches to the offer a list of equivalent solutions together with its description or standards.
  - 3) If the description of the subject of the contract includes references to standards, technical assessments, technical specifications, and technical reference systems referred to in Art. 101 item 1 point 2) and item 3 of the Public Procurement Law, the Contracting Authority allows solutions equivalent to the described ones.

## IV. Other information:

1. The Contracting Authority shall not accept submitting partial bids.
2. The Contracting Authority does not require submitting the relevant evidence with the bid.
3. The Contracting Authority shall not accept submitting variant bids.
4. The Contracting Authority neither requires nor accepts submitting bids in form of electronic catalogues.
5. The Contracting Authority does not foresee entering into a framework agreement.
6. The Contracting Authority shall not organise an electronic auction.
7. The Contracting Authority does not foresee the obligation to perform an on-site inspection and to verify the documents necessary to realise the Contract available on the premises of the Contracting Authority by the Contractor.
8. The Contracting Authority does not foresee contracts specified in Art. 214, item 1, items 7 and 8 of the PPL Act).
9. The Contracting Authority shall not reimburse the costs of participating in the procedure.
10. The Contracting Authority may first analyse and assess the bids, pursuant to Art. 139 item 1 of the PPL Act, and then perform a subjective qualification of the Contractor whose offer received the highest score in terms of lack of grounds for exclusion and meeting the conditions for participating in the procedure.

#### **V. Time of performing the Contract:**

The Contract shall be performed maximum until June 15, 2022.

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

##### **1. Terms and conditions for participating in the procedure:**

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

1.1st are not subject to exclusion;

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

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

###### **2.1st the capacity to participate in business trading**

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

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

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

###### **2.3.economic situation or financial standing**

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

#### **2.4. technical or professional capacity**

To confirm the fulfilment of this criterion, the Contracting Authority requires the Contractor to have performed at least 1 delivery of proper of a minimum net value of PLN 550.000,00 in the 3 years preceding the date of placing bids.

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

#### **2. Grounds for exclusion:**

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

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

- a) being a member of in an organised group or association having for its purpose the commission of offences or tax offences as stipulated in Art. 258 of the Polish Penal Code,
- b) human trafficking, as defined in Art. 189a of the Polish Penal Code,
- c) specified in Art. 228 – 230a, Art. 250a of the Polish Penal Code or in Art. 46 or Art. 48 of the Act of June 25 2010 on Sport,
- d) financing crimes if a terrorist nature, as specified in Art. 165a of the Polish Penal Code or the offence of preventing, or making it significantly more difficult to determine the criminal origin of profits or concealing their origin, as defined in Art. 299 of the Polish Penal Code,
- e) offences of a terrorist nature, as specified in Art. 115 § 20 of the Polish Penal Code or aimed at committing such offence,
- f) entrusting the performance of labour to a minor foreigner as specified in Art. 9, item 2 of the Act of June 15, 2012 on the Effects of Hiring Foreigners Unlawfully Present in Polish Territory (Journal of Laws of 2020, item 2023),
- g) offences against business trading as defined in Art. 296 – 307 of the Polish Penal Code, the offence of fraud defined in Art. 286 of the Polish Penal Code, offences against the credibility of documents specified in Art. 270 – 277d of the Polish Penal Code, or tax offences
- h) specified in Art. 9, item 1 and 3 and Art. 10 of the Act of June 15, 2012 on the Effects of Hiring Foreigners Unlawfully Present in Polish Territory  
- or for the respective offences specified in the regulations of foreign law;

1.2. if an active member of its governing or supervisory body, a partner in a civil partnership or partnership or a general partner in a private partnership or

partnership limited by shares, or a proxy has been lawfully convicted for an offence specified in Chapter VI, item 1 (1.1.) of these Terms of Reference;

- 1.3. against whom a valid legal judgment or a final administrative decision on the arrears in the payment of tax, levies, or social security or health security contributions has been issued, unless the Contractor has paid the due taxes, levies or social or health security premiums with interest or fines or entered into a binding agreement on the payment of the outstanding amounts before the expiry of the period for filing motions to participate in the procedure or of placing bids;
  - 1.4. Contractors against whom a valid decision forbidding them to apply for public contracts has been issued;
  - 1.5. if the Contracting Authority may determine based on credible grounds that the Contractor entered into an agreement with other Contractors to interfere with the competition, in particular if, belonging to the same capital group as defined in the Act of February 16 2007 on the Protection of Competition and Consumers, they have placed the same bids, partial bids, or motions to participate in the procedure, unless they prove that they prepared these motions independently;
  - 1.6. If, in the cases specified in Art. 85, item 1 of the PPL Act, the competition was disturbed as a result of previous involvement of the Contractor or of another Contractor belonging to the same capital group as defined in the Act of 16 February 2007 on the Protection of Competition and Consumers, unless the resulting disturbance of competition may be eliminated in a manner other than excluding the Contractor from the procedure to award a public Contract.
- b) The Contracting Authority shall exclude from the Procedure those Contractors who are subject to the grounds for exclusion specified in Art. 109, item 1 (4) of the PPL Act, i.e.
- 2.1. who are subject to an initiated liquidation procedure, whose bankruptcy has been declared, whose assets are managed by a receiver or court, who entered into a composition arrangement with creditors, whose business activity has been suspended or who is in another situation of a similar nature as a result of a similar procedure foreseen in the legal regulations of the place where the procedure was initiated..
- c) The Contracting Authority may exclude the Contractor from the procedure on any stage of the public tender procedure.

### **3. Self-clearing**

- 1) In the circumstances specified in Art. 108, item 1 (1), (2) and (5) or Art. 109, item 1 point 4 of the PPL Act, the Contractor shall not be excluded if it proves to the Contracting Authority that it has met all of the following conditions:
  - 1.1. repaired or committed itself to repair the damage caused by the offence, crime, or improper conduct, including by means of financial compensation;
  - 1.2. provided an exhaustive clarification of the facts and circumstances connected to the offence, crime, or improper conduct and the resulting damages, actively cooperating with the competent authorities, including law enforcement authorities or the Contracting Authority;

1.3. took specific technical, organisational, and personnel-related measures that are suitable for preventing further crimes, offences or improper conduct, including, but not limited to:

- a) broke all the relations with people or entities responsible for the improper conduct of the Contractor,
- b) reorganised its personnel,
- c) implemented a reporting and control system,
- d) created internal audit structures to monitor compliance with the law, internal regulations or standards,
- e) introduced internal regulations concerning the responsibility and compensations for non-compliance with the law, internal regulations or standards.

2) The Contracting Authority shall evaluate whether the actions taken by the Contractor are sufficient to demonstrate its reliability, considering the significance and specific circumstances of the act of the Contractor. If they are deemed insufficient, the Contractor shall be excluded.

## VII. SUBJECTIVE AND OBJECTIVE EVIDENCE, OTHER STATEMENTS AND DOCUMENTATION

### 1. STATEMENTS AND DOCUMENTATION SUBMITTED WITH THE BID.

1.1st The bid shall be placed in electronic form, otherwise it shall be considered null and void. The bid shall be prepared on the template constituting [Appendix No. 3 to these Terms of Reference].

1.2nd The Contractor shall attach a statement confirming the absence of grounds for exclusion and the fulfilment of the conditions for participating in the procedure, within the scope specified by the scope specified by the Contracting Authority. The statement shall be made on the form of the **European Single Procurement Document (ESPD)**, pursuant to the template of the standard form specified in the Regulation (EU) 2016/7 of 5 January 2016 establishing the standard form for the European Single Procurement Document, hereinafter referred to as the “**ESPD**”. The instructions how to complete the ESPD are available at: <https://www.uzp.gov.pl/baza-wiedzy/prawo-zamowien-publicznych-regulacje/prawo-krajowe/jednolity-europejski-dokument-zamowienia>

1.3rd If two or more Contractors apply jointly for the Contract, each of them shall file the ESPD. The ESPD confirms the absence of grounds for the exclusion of the Contractor and the fulfilment of the conditions for the participation in the procedure to the extent, to which each of the Contractors demonstrates that it fulfils these conditions.

1.4th The Contractor who relies on the capacity or financial standing of the entities that provide access to resources shall provide, along with the ESPD, also the ESPD of the entity that provides access to resources, confirming the absence of grounds for exclusion of such entity and the fulfilment of the conditions for the participation in the procedure to the extent, to which the Contractor references its resources.

- 1.5th The ESPD, prepared on the template that constitutes [Appendix No. 2 to these Terms of Reference] should be filed through the Platform with use of the ESPD tool/website. The ESPD shall be prepared in electronic form, with an affixed qualified electronic signature; otherwise it shall be null and void.
- 1.6th The Contractor may use the ESPD previously used in a different procedure for awarding a Contract, provided that it confirms that the contained information remains accurate.
- 1.7th If the ESPD or subjective evidence filed by the Contractor raise doubts of the Contracting Authority, then the latter may refer directly to the entity that possesses the information or documents that are important for the evaluation of the fulfilment of the conditions for participating in the procedure or absence of grounds for exclusion, to present such information or documents.
- 1.8th The Contracting Authority shall not call for the submission of subjective evidence, if:
- a) it may be obtained free of charge from publicly available databases, including but not limited to public records as defined in the Act of February 17 2005 on the computerization of business entities pursuing public tasks, if the Contractor specified the data that enable access to these resources in the ESPD;
  - b) the subjective evidence is the statement whose content corresponds to the scope of the statement specified in Art. 125, item 1 of the PPL Act.
- 1.9th The Contractor is not obliged to submit subjective evidence that is in the possession of the Contracting Authority, if the Contractor specifies such evidence and confirms its correctness and up-to-dateness.
- 1.10th If the Contractor failed to submit the ESPD specified in item 2) of these ToR, the subjective evidence, other documents or statements filed in the procedure, or if these documents are incomplete or contain errors, the Contracting Authority shall demand the Contractor, respectively, to file, correct or complete them within a specific period, unless the Contractor's bid is rejected regardless of filing, correcting or completing them, or there are grounds for cancelling the procedure.
- 1.11th If the Contractor fails to submit the required powers of attorney or the submitted powers are defective, the Contracting Authority shall demand the Contractor to file them within a specified period, unless the Contractor's bid is rejected even if they are submitted or unless it would be necessary to cancel the procedure.
- 1.12th The Contracting Authority may demand the Contractors to provide explanations concerning the content of the ESPD or of the submitted subjective evidence, other documents or statements submitted in the procedure.
- 1.13th If it is necessary to ensure the proper course of the procedure for awarding the Contract, the Contracting Authority may, on every stage of the procedure, call the Contractors to submit some or all of the subjective evidence valid as of the date of submission.
- 1.14th If there are reasonable grounds to consider that the previously filed subjective evidence is outdated, the Contracting Authority may at any time demand the Contractor(s) to file some or all the subjective evidence that is valid as of the date of submission.

- 1.15th In the event specified in item 1.8 of these Terms of Reference, the Contracting Authority may demand the Contractor to present a Polish translation of the documents specified by the Contractor and obtained independently by the Contracting Authority.
- 1.16th If the subjective evidence, objective evidence, other documents or documents that confirm the authorisation to represent, respectively, the Contractor, Contractors jointly applying for the public Contract, the entity providing access to resources on the conditions specified in Art. 118 of the PPL Act or subcontractors not being entities providing access to resources on these conditions, hereinafter, in this Section, referred to as “documents confirming the powers of representation” were issued by authorised entities other than the Contractor, Contractors jointly applying for the public Contract, the entity providing access to resources or subcontractor, hereinafter, in this Section, referred to as “authorised entities” in electronic form, this document shall be submitted.
- 1.17th If the subjective evidence, objective evidence, other documents or documents that confirm the powers of representation were issued by the authorised entities as a document in hardcopy format, a digital representation of this document shall be submitted, with the affixed qualified electronic signature to certify the compliance of the digital representation with the printed document.
- 1.18th The compliance of the digital representation with the hardcopy document, as specified in item 1.17 shall be made:
- a) for subjective evidence and documents confirming the powers of representation – respectively by the Contractor, Contractors jointly applying for the public Contract, the entity providing access to resources or the subcontractor, for these subjective evidence or documents confirming the powers of representation that refer to each of them;
  - b) for objective evidence – respectively, the Contractor or Contractors jointly applying for the public Contract;
  - c) for other documents, respectively, the Contractor or Contractors jointly applying for the public Contract, for these documents that refer to each of them.
- 1.19th The compliance of the digital representation with the hardcopy document, as specified in item 17) may also be certified by a notary public.
- 1.20th Digital representation is understood as an electronic document that is an electronic copy of the content recorded in hardcopy form, which enables reading and understanding its content without the need to access the original document.
- 1.21st Bids and statements specified in Art. 125, item 1 of the PPL Act, subjective evidence, including the statement specified in Art. 117, item 4 of the PPL Act and the statement of the entity providing access to resources specified in Art. 118, item 3 of the PPL Act, hereinafter referred to as the “statement of the entity providing access to resources”, the power of attorney, shall be made in electronic form, in the data formats specified in the regulations issued under Art. 18 of the Act of February 17 2005 on computerisation of activity of entities implementing public tasks (Journal of Laws of 2020, item 346, 568, 695, 1517, and 2320), with the reservation of the formats specified in Art. 66, item 1 of the PPL Act, considering the type of the data submitted.

## **2. STATEMENTS AND DOCUMENTS SUBMITTED ON DEMAND.**



1) Pursuant to art. 126, item 1 of the PPL Act, before selecting the best bid, the Contracting Authority shall demand the Contractor whose offer received the highest score to submit within a specific period, not shorter than 10 days, the following evidence that are valid on the day of submission:

1.1st **an excerpt or information from the National Court Register, the Central Registration and Information on Business** in terms of art. 109 paragraph. 1 point 4 of the PPL, prepared not earlier than 3 months before its submission, if separate provisions require registration.

1.2nd **Information from the National Criminal Register**, in the scope specified in Art. 108, item 1 (1) and (2) of the PPL Act, issued not earlier than 6 months before submission;

1.3rd **Information from the National Criminal Register**, in the scope specified in Art. 108, item 1 (4) of the PPL Act concerning the decision forbidding to apply for public contracts as a penal measure, issued not earlier than 6 months before submission;

1.4th **Statement of the Contractor** confirming that the information provided in the statement specified in Art. 125, item 1 of the PPL Act on the grounds for exclusion specified by the Contracting Authority and foreseen in:

- Art. 108, item 1 (3) of the PPL Act,

- Art. 108 item 1 (4) of the PPL Act on the decision forbidding to apply for public contracts as a preventive measure,

- Art. 108, item 1 (5) of the PPL Act on entering into an agreement with other Contractors with the aim to disturb competition,

- Art. 108, item 1 (6) of the PPL Act.

Pursuant to [Appendix No. 4 to these Terms of Reference]

1.5th **Statement of the Contractor** required under Art. 108, item 1 (5) of the PPL Act, on not being a member of the same capital group, as defined in the Act of February 16 2007 on the Protection of Competition and Consumers (Journal of Laws of 2020, items 1076 and 1086) as another Contractor who placed a separate bid or a partial bid or a statement on being a member of the same capital group, along with the documents or information that confirm that the bid or partial bid has been prepared independently from another Contractor belonging to the same capital group.

Pursuant to [Appendix No. 5 to these Terms of Reference]

1.6th **List of deliveries performed** – confirming that the Contractor has performed at least 1 order of the minimum net value of PLN 550 000,00 within the 3 years preceding the date of placing bids, and if the period of business activity is shorter – during that period. The statement should specify the value, subject, date of realisation and the entity to which the delivery was made, as well as evidence to prove that the said delivery was duly performed. Such evidence may be references or other documents made by the entity to whom the delivery was made. If the Contractor is unable to obtain such evidence due to reasons beyond its control – the statement of the Contractor.

Pursuant to [Appendix No. 8 to these Terms of Reference].

2) The Contracting Authority shall demand Contractors who rely on the capacity of other entities on the terms and conditions specified in Art. 118 of the PPL Act to present the subjective evidence listed hereinabove in item 2) (1.1. – 1.4.) of these Terms of Reference with respect to those entities.

- 3) If two or more Contractors apply jointly for the Contract, the subjective evidence listed hereinabove in item 2) (1.1. – 1.5.) of these Terms of Reference shall be placed by each of them separately.
- 4) The Contractor shall not be obliged to submit the documents specified in Chapter VII, item 2, point 1 (1.1.) of these Terms of Reference if the Contracting Authority may obtain them from generally available databases free of charge, provided that the Contractor has specified the data that enable access to these documents.
- 5) If the seat or place of residence of the Contractor is located outside the territory of the Republic of Poland, then such Contractor shall submit:
  - a) instead of the information from the National Criminal Register as defined in Chapter VII, item 2, point 1 (1.2) and (1.3.) – information from the relevant register, such as the court register or, if such register does not exist – another, equivalent document issued by the competent administrative or judicial authority of the country of the Contractor’s seat or place of residence, to the extent specified in Chapter VII, item 2, point 1 (1.2.) and (1.3.);
  - b) instead of the excerpt from the National Court Register, the Central Registration and Information on Business as defined in Chapter VII item 2 point 1 (1.1.) – document(s) issued in the country of the Contractor’s seat or place of residence, confirming, respectively, that it is not subject to an open liquidation procedure, its bankruptcy has not been declared, its assets are not managed by a receiver or court, it has not entered into a composition arrangement with creditors, its business activity has not been suspended and that it is not in another situation of a similar nature as a result of a similar procedure foreseen in the legal regulations of the place where the procedure was initiated.
- 6) The document specified in Chapter VII item 2 point 5) (a) should be issued not earlier than 6 months before submission. The documents specified in Chapter VII item 2 point 5) (a) should be issued not earlier than 3 months before submission.
- 7) If the country where the Contractor’s seat or place of residence is located does not issue the documents specified in Chapter VII item 2 point 5) or if such documents do not refer to all the cases specified in Art. 108, item 1 points 1, 2, and 4, then these documents shall be replaced, in whole or in part, by a document containing an affidavit of the Contractor, specifying the person(s) authorised to represent it or an affidavit of the person whom the document should concern, or, if the country where the registered seat or place of residence of the Contractor are located does not issue affidavits – a statement made under an oath before a judicial or administrative authority, a notary public, a professional or business self-government organ that is competent for the registered seat or place of residence of the Contractor. The provisions of item 6) shall apply.

### **3. COMPANY SECRET**

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

cited Act on combating unfair competition, the Contractor shall submit such information in a separate, appropriately marked file in order to maintain the confidentiality.

#### **4. THE CONTRACTOR**

- 1) The Contractor shall be defined as a natural person, legal entity, or an organisational unit without legal personality that offers on the market the performance of construction works or building structures, delivery of goods or provision of services, or applies for a Contract, has placed a bid, or entered into an agreement concerning a public procurement Contract.
- 2) The Contracting Authority does not reserve the possibility to apply for the Contract only to Contractors specified in Art. 94 of the PPL Ac, i.e. those that have the status of a supported employment enterprise, social cooperative, or other Contractors whose main aim or the main aim of their separate organisational units that will perform the Contract is to ensure social and professional integration of socially marginalised groups.

#### **5. CONTRACTORS WHO JOINTLY APPLY FOR A PUBLIC CONTRACT**

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

#### **6. ACCESSIBILITY OF RESOURCES**

- 1) In order to confirm the fulfilment of the conditions for participating in the procedure on terms provided in Art. 118 – 123 of the PPL Act, the Contractor may rely on the technical or professional abilities or the economic or financial standing of entities that provide access to its resources, regardless of the legal nature of the relationship between them and the Contractor. The entity, whose resources the Contractor references in order to demonstrate the fulfilment of the conditions for participating in the procedure cannot be subject to exclusion based on 108, item 1 and 109, items 1 and 4 of the PPL Act.
- 2) As for the conditions concerning the education, professional qualifications or experience, the Contractors may rely on the capacity of the entities that provide access to resources, if these entities will perform the construction works that require such capacity.

- 3) The Contracting Authority shall demand Contractors who rely on the capacity and standing of other entities on the terms and conditions specified in Art. 118 of the PPL Act to present the subjective evidence listed hereinabove in Chapter VII item 2) of these Terms with respect to these entities.
- 4) The Contractor who relies on the capacity or financial standing of the entities that provide access to resources shall place, together with the bid, a statement of such entity that confirms that it is obliged to provide it with access to the necessary resources for the purposes of realisation of the given Contract, or another motion of evidence confirming that the Contractor may use the resources of these entities for the realisation of the Contract.
- 5) The statement of the entity providing access to resources specified in Chapter VII, item 6 (3) of these Terms of Reference, shall confirm that the relationship between the Contractor and the entity providing access to resources guarantees actual access to these resources and define, in particular:
  - 5.1. the scope of resources of the entity that are available for the Contractor;
  - 5.2. the manner and duration of making the resources accessible to the Contractor and the use of these resources by the Contractor during the realisation of the Contract;
  - 5.3. whether and to what extent the entity that provides access to resources, on whose capacity the Contractor will rely with respect to the condition for participating in the procedure that refer to education, professional skills or experience will realise the construction works to which the specific capacity applies.
- 6) The Contracting Authority shall evaluate whether the technical or professional skills or the economic or financial standing of the entities providing resources to the Contractor enable the Contractor to prove that it fulfils the conditions for participation in the procedure specified in Chapter III of these Terms of Reference, and whether the entity is not subject to the grounds for exclusion that are foreseen for the Contractor.
- 7) The entity that is obliged to provide access to resources shall bear joint and several liability with the Contractor for any damages suffered by the Contracting Authority as a result of failure to provide access to these resources, unless the fault for such failure does not lie on part of the entity.

## **7. SUBCONTRACTING**

- 1) The Contractor may entrust the performance of part of the Contract to a subcontractor.
- 2) The Contractor shall specify the parts of the Contract that it intends to entrust to subcontractors in the bid form and provide the names of potential subcontractors, if they are already known.

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

- 1) The procedure shall be conducted in Polish and English languages. All statements and notifications shall be prepared in Polish or English language versions. The Agreement shall be drawn up in Polish and English language versions. The Contracting Authority shall conduct the

procedure in two languages pursuant to Art. 20, item of the PPL Act due to the possibility to expand the group of contractors and the specialist nature of the Contract.

- 2) The communication between the Contracting Authority and the Contractors, in particular placing bids and submitting statements, shall take place through means of electronic communication as defined in the Act of July 18 2002 on the Provision of Electronic Services (Journal of Laws of 2017, item 1219, and of 2018, item 650 incl. amendments).
- 3) In order to shorten the time to provide answers to all inquiries, the communication between the Contracting Authority and the Contractors, including all statements, motions, notifications and information, should be sent through [platformazakupowa.pl](https://platformazakupowa.pl) and the form "Send message to the Contracting Authority".
- 4) The date of delivery of statements, motions, notifications, and information shall be deemed as the date of sending them through the website [platformazakupowa.pl](https://platformazakupowa.pl) by clicking on the button "Send message to the Contracting Authority", after which the message will be displayed to confirm that the message has been sent to the Contracting Authority. In emergency situations, the Contracting Authority accepts communication by e-mail. E-mail address of the person authorised to contact the Contractors: [michal.urbanski@imif.lukasiewicz.gov.pl](mailto:michal.urbanski@imif.lukasiewicz.gov.pl)
- 5) The Contracting Authority shall send information to Contractors through the website [platformazakupowa.pl](https://platformazakupowa.pl). Information concerning responses to inquiries, changes to specifications, changes of the date of placing and opening the bids shall be published on the platform in the "Announcements" section. Correspondence that is addressed to a specific Contractor pursuant to binding regulations shall be sent electronically through the website [platformazakupowa.pl](https://platformazakupowa.pl) to the given Contractor.
- 6) The Contractor as a professional entity is obliged to check the messages and announcements sent by the Contracting Authority directly on [platformazakupowa.pl](https://platformazakupowa.pl) as the notification system may be down or the notification may be directed to the SPAM folder.
- 7) Pursuant to §11 item 2 of the Ordinance of the Prime Minister of December 30 2020 on the manner of preparing and transmitting information and the technical requirements for electronic documents in procedures to award a public Contract or competitions, the Contracting Authority hereby defines the necessary hardware and software requirements that enable working on [platformazakupowa.pl](https://platformazakupowa.pl), i.e.:
  - a) continuous access to the Internet of a guaranteed bandwidth of 512 kb/s,
  - b) PC or MAC computer in the following configuration: minimum memory 2 GB RAM, Intel IV 2 GHz processor or newer version, one of the operating systems: MS Windows 7, Mac OS X 10.4, Linux, or newer versions,
  - c) any Internet browser installed, for Internet Explorer version 10.0 at the minimum,
  - d) JavaScript enabled,
  - e) Adobe Acrobat Reader or another application that supports the .pdf format,
  - f) Platformazakupowa.pl operates according to the standard adopted for network communication – UTF8 coding,
  - g) The time of data reception by [platformazakupowa.pl](https://platformazakupowa.pl) is designated as the date and exact time (hh:mm:ss) generated according to local server time synchronised with the clock of the Central Office of Measures.

- 8) By participating in the procedure to award a public Contract, the Contractor:
- a) accepts the terms and conditions of using the website [platformazakupowa.pl](https://platformazakupowa.pl) specified in the Terms and Conditions published at: <https://platformazakupowa.pl/strona/1-regulamin> in the “Terms and Conditions” tab and accepts them as binding,
  - b) has read and undertakes to comply with the instructions on placing bids and submitting documents available at: <https://drive.google.com/file/d/1Kd1DttbBeiNWt4g4sIS4t76lZVKPbkyD/view>.
- 9) **The Contracting Authority shall not be responsible for bids placed in a manner not compliant with the instructions of use of [platformazakupowa.pl](https://platformazakupowa.pl)**, in particular for situations when the Contracting Authority will become familiar with the content of the bid before the expiry of the period for placing bids (e.g. bids placed through the “Send message to the Contracting Authority” function).
- 10) The Contracting Authority hereby informs that the instructions for using [platformazakupowa.pl](https://platformazakupowa.pl) in particular logging in, submitting motions for explanations of the Terms of Reference, placing bids and other actions taken in this procedure with use of [platformazakupowa.pl](https://platformazakupowa.pl) are available in the tab “Instructions for Contractors” on the website, at: <https://platformazakupowa.pl/strona/45-instrukcje>.

## 2. Recommendations of the Contracting Authority:

- 1) **The extensions of files used by Contractors should be compliant with** Appendix No. 2 to the "Ordinance of the Council of Ministers on the National Framework of Interoperability, minimum requirements for public registers and sharing information in electronic form and the minimum requirements for ICT systems", hereinafter: the KRI Ordinance.
- 2) The Contracting Authority recommends using the following formats: . pdf .doc .docx .xls .xlsx .jpg (.jpeg) **in particular .pdf**
- 3) For optional data compression, the Contracting Authority recommends using one of the following extensions:
  1. . zip
  2. . 7Z
- 4) Common extensions **not listed** in the KRI Ordinance include: . rar .gif .bmp .numbers .pages.  
**Documents submitted in form of such files shall not be deemed as delivered effectively.**
- 5) Recommendations for Contractors who use a qualified electronic signature:
  - a) Due to low risk of damaging the integrity of the file and easier verification of the signature, the Contracting Authority recommends, if possible, **converting the files constituting the bid into the .pdf format and affixing a qualified signature in the PAdES format.**
  - b) Files in formats other than PDF **should be signed in the XAdES format, external type.** The Contractor should remember to submit the file with the signature together with the signed document.
  - c) The Contracting Authority recommends using a signature with a qualified time stamp.

**Note: Bids with affixed trusted signatures or personal signatures shall not be accepted.**

## IX. FORM OF THE SUBMITTED STATEMENTS AND DOCUMENTS

1. Bids and statements specified in Art. 125, item 1 of the PPL Act shall be submitted in electronic form, otherwise they shall be considered null and void.
2. Bids and statements specified in Art. 125, item 1 of the PPL Act, subjective evidence, including the statement specified in Art. 117, item 4 of the PPL Act and the statement of the entity providing access to resources specified in Art. 118, item 3 of the PPL Act, in this Chapter further referred to as “the obligation of the entity providing access to resources”, objective evidence, power of attorney, and the documents specified in Art. 94, item 2 of the PPL Act shall be made in electronic form, in data formats specified in the provisions issued pursuant to Art. 18 of the Act of February 17 2005 on computerisation of activity of entities implementing public tasks (Journal of Laws of 2020, item 346, incl. amendments).
3. Subjective evidence, objective evidence, and other documents or statements made in a language other than Polish shall be submitted together with Polish translation.
4. If the subjective evidence, objective evidence, other documents or documents that confirm the authorisation to represent, respectively, the Contractor, Contractors jointly applying for the public Contract, the entity providing access to resources on the conditions specified in Art. of the PPL Act or of a subcontractor not being an entity that provides access to resources, hereinafter, in this Chapter, referred to as “documents confirming powers of representation” were issued by authorised entities other than the Contractor, Contractors jointly applying for the Contract, entity providing access to resources or a subcontractor, hereinafter, in this Chapter, referred to as “authorised entities”, in electronic form, this document shall be submitted.
5. If the subjective evidence, objective evidence, other documents or documents confirming the powers of representation were issued by authorised entities in hardcopy form, a digital representation of such document shall be submitted, with an affixed qualified electronic signature to certify the compliance of the digital representation with the hardcopy document.
6. The compliance of the digital representation with the hardcopy document shall be certified:
  - 1) for subjective evidence and documents confirming the powers of representation – respectively by the Contractor, Contractors jointly applying for the public Contract, the entity providing access to resources or the subcontractor, for these subjective evidence or documents confirming the powers of representation that refer to each of them;
  - 2) for objective evidence – respectively, the Contractor or Contractors jointly applying for the public Contract;
  - 3) for other documents, respectively, the Contractor, Contractors jointly applying for the public Contract, for these documents that refer to each of them.
7. Digital representation is understood as an electronic document that is an electronic copy of the content recorded in hardcopy form, which enables reading and understanding its content without the need to access the original document.
8. Subjective evidence, including the statement specified in Art. 117, item 4 of the PPL Act and the obligation of the entity providing access to resources, objective evidence not issued by authorised entities and the power of attorney shall be submitted in electronic form, with the affixed qualified electronic signature.
9. If the subjective evidence, including the statement specified in Art. 117 item 4 of the PPL Act, and the obligation of the entity providing access to resources, objective evidence not issued by authorised entities

or power of attorney were prepared in hardcopy form with an affixed handwritten signature, a digital representation of such document shall be submitted, with an affixed qualified electronic signature to certify the compliance of the digital representation with the hardcopy document.

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

#### **X. Requirements concerning security**

Not required.

#### **XI. Bid validity period**

1. Pursuant to art. 220 item 1 of the PPL Act, the Contractor shall be bound by the bid for a period of **90 days**. The bid validity period shall commence upon the expiry of the bid placement date, provided that the first day of validity is the date of expiry of the bid placement period. **The bid validity period shall expire on the 20.02. 2022.**
2. If the best bid has not been selected before the expiry of the bid validity period specified in item 1 hereinabove, the Contracting Authority shall ask the Contractors once before the expiry of the bid validity period to agree to prolong the period for the specified time, however not longer than **60 days**.
3. The prolongation of the bid validity period specified in item 2 hereinabove requires the written consent of the Contractor to prolong the bid validity period.



4. Pursuant to Art. 226, item 12 of the PPL Act, if the Contractor fails to grant the written consent specified in item 11.3 to prolong the bid validity period, the bid shall be rejected.

## XII. Description of the manner of preparing bids:

1. The bid shall be prepared in electronic form on the Bid Template constituting [Appendix No. 3 hereto]. The bid shall contain, in particular:
- 1) the complete name and address of the Contractor,
  - 2) the date of preparing the bid,
  - 3) the price – prices may be quoted in one of the following currencies: PLN, EUR, USD, or GBP. For bids with prices in EUR, USD or GBP, prices will be compared after conversion into Polish zloty – PLN. Prices will be converted at the foreign currency exchange rate of the NBP valid as of the day preceding the day of opening the bids.
2. The following should be attached to the bid:
- 1) Completed and signed [Appendix No. 1 to these Terms of Reference],
  - 2) European Single Procurement Document [Appendix No. 2 to these Terms of Reference],
  - 3) Power of attorney or another document confirming the authorisation to represent the Contractor if such authorisation of the person placing the bid does not result from the submitted documents,
  - 4) The statement of the entity that provides access to resources, confirming that it is obliged to provide the Contractor with access to the necessary resources for the purposes of realisation of the given Contract, or another subjective evidence confirming that the Contractor may use the resources of these entities for the realisation of the Contract in the event if the Contractor relies on the capacity or standing of such entities.
  - 5) for Contractors applying jointly for the Contract:
    - a) power of attorney for Contractors applying jointly for the Contract, which will imply the authorisation to represent them in the procedure for awarding the Contract or to represent them in the procedure and to enter into an agreement concerning the public Contract. The power of attorney should specify, in particular:
      - the public procurement procedure to which it refers,
      - the names and registered seat addresses of all Contractors who apply jointly for the Contract,
      - the appointed authorised representative and the scope of their powers.
    - b) Statement which indicate which construction works, supplies or services are performed by individual contractors, constituting Appendix No. 9 to ToR.

- 6) Partners of a civil partnership are treated as Contractors jointly applying for the award of a public contract and the provisions specified for Contractors jointly applying for a public contract apply to them.

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

1. Bid shall be placed at <https://platformazakupowa.pl/pn/imif> by the **23.11.2021** by **09:00 hours**.
2. Bids shall be opened on the **23.11.2021**, at **10:00 hours**.
3. The Contracting Authority shall publish on the website of the conducted procedure the information about the amount that it intends to spend on financing the Contract at the latest before opening the bids.
4. Immediately after opening the bids, the Contracting Authority shall publish the following information on the website of the conducted procedure:
  - a) names or first names and surnames and the registered seats or places of conducting business activity or places of residence of the Contractors whose bids have been opened;
  - b) prices or costs contained in the bids.
5. The Contractor may change or withdraw the bid through the website [platformazakupowa.pl](https://platformazakupowa.pl) before the end of the period for placing the bids. The manner of withdrawing or changing bids is described in the instructions published online, at: <https://platformazakupowa.pl/strona/45-instrukcje>.
6. If the bids are opened with use of an ICT system, in the event of a failure of such system that makes it impossible to open the bids at the time scheduled by the Contracting Authority, the bids shall be opened immediately after the failure has been removed.
7. The Contracting Authority shall inform about the change in the time of opening the bids on the website of the conducted procedure.
8. Pursuant to the definition of an electronic document provided in Art. 3 item 2 of the Act on computerisation of activity of entities implementing public tasks, affixing a qualified electronic signature to a file that contains compressed data is equivalent to signing the original document, with the exception of copies certified by another contractor who jointly applies for the Contract, by the entity on whose capacity or standing the Contractor relies or by a subcontractor.
9. The maximum size of one file sent through the dedicated forms to: place, change, or withdraw a bid is 150 MB, while the maximum size of file for communication purposes is 500 MB.

### **XIV. Description of the manner of calculating the price:**

1. The gross price of the bid provided in PLN/EUR/USD/GBP shall include all costs that the Contractor has to bear in order to lawfully realise the subject of the Contract specified in the present Terms of Reference, including:
  - a) the price of the subject of the Contract specified in Section III of the Terms of Reference,
  - b) installation price,
  - c) start-up price,
  - d) testing of the equipment,



1. Contractors who have placed the bids on the terms and in the scope specified in Art. 253 item 1 of the PPL Act will be notified about the selection of the bid.
2. The Contracting Authority shall inform the Contractor whose bid has been selected about the time and place of signing the agreement.
3. The agreement shall be concluded not earlier than 10 days after sending the notification about the selection of best bid.
4. If the Contractor whose bid has been selected as the best one avoids signing the agreement on the public procurement Contract or fails to pay the required performance guarantee (if required), the Contracting Authority may reanalyse and reassess the offers of the remaining Contractors in the procedure and select the best bid or cancel the procedure.
5. Immediately after selecting the best bid, the Contracting Authority shall simultaneously notify the Contractors who have placed the bids about:
  - 1) the best bid selected, by providing the name, or first name and surname, the registered seat or place of residence, if it is the place of conducting business activity for the Contractor, whose offer was selected, and the names, or first names and surnames, the registered seats or places of residence, if they are places of conducting business activity of the Contractors who placed their bids, as well as the score assigned to all offers for each criterion and the total score.
  - 2) Contractors, whose bids have been rejected, providing the factual and legal basis for rejection.
6. The Contractor shall pay the performance guarantee in the amount and form and at the time specified in the notification before signing the agreement.
7. In cases not regulated in the present Terms of reference, the provisions of the Act – Public Procurement Law and of the Polish Civil Code shall apply.
8. Persons authorised to represent the Contractor in signing the agreement should possess the documents that confirm their authorisation to sign the agreement, unless such authorisation results from the documents attached to the submitted bid.

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

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

**XVIII. Requirements concerning the due performance of the agreement**

The Contracting Authority does not require a performance guarantee.

**XIX. Instruction concerning legal remedies**

1. The aforementioned entities may appeal against:

- 1) actions of the Contracting Authority taken in the procedure for awarding the Contract, including the draft provisions of the agreement that violate the provisions of the Act;
  - 2) failure to perform an action in the procedure for awarding the Contract to which the Contracting Authority was obliged under the Act;
  - 3) failure to conduct the procedure for awarding a public Contract, although the Contracting Authority was obliged to do so.
2. The appeal should specify the action or omission of the Contracting Authority that is allegedly in violation of the provisions of the PPL Act, and contain a brief presentation of the charges, specify the claim and the factual and legal circumstances that justify the appeal.
  3. Appeals shall be filed to the President of the Chamber.
  4. The appealing party shall deliver the lodged appeal to the Contracting Authority in electronic form or format, or a copy thereof if it has been filed in writing, before the expiry of the period for appeal in a way that will enable the Contracting Authority to become familiar with its content before the expiry of the said period. It is assumed that the Contracting Authority was able to become familiar with the content of the appeal before the expiry of the period of appeal, if the appeal or a copy thereof has been delivered before the expiry of this period through means of electronic communication.
  5. The appeal shall be lodged within 10 days from the date of notification about the action of the Contracting Authority constituting grounds for the appeal, if the notification was made through means of electronic communication, or within 15 days if it has been made in a different manner.
  6. Appeals against the content of the announcement initiating the procedure for awarding a public Contract or against the content of the Contract documents shall be lodged within 10 days from the date of publication of the announcement in the Official Journal of the European Union or of publication of Contract documents on a website (Platform).
  7. Appeals against actions other than those specified in items 19.5 and 19.6 hereinabove shall be filed within 10 days from the date of becoming aware (or the date when one could become aware with all due diligence) of the circumstances constituting grounds for appeal.
  8. If the Contracting Authority failed to fulfil its obligation to notify the Contractor about the selection of best bid, the appeal shall be lodged not later than:
    - 1) 30 days from the date of publication of the announcement about awarding the Contract in the Official Journal of the European Union;
    - 2) 6 months from the date of concluding the agreement, if the Contracting Authority has not published an announcement about awarding the Contract in the Official Journal of the EU.
  9. If an appeal is lodged after the expiry of the period for placing bids, the bid validity period shall be suspended until the decision of the National Chamber of Appeal is published.
  10. The Contractor may inform about the intention to join the appeal procedure within 3 days from the date of receipt of a copy of the appeal, specifying the party which it wishes to join and its interest in obtaining a decision in favour of the party that it intends to join. The notification on joining the

procedure shall be delivered to the President of the Chamber, and copies shall be sent to the Contracting Authority and the Contractor who lodged the appeal.

11. Contractors who have joined the appeal procedure become parties to the procedure if they have an interest in issuing a decision in favour of one of the parties.
12. The Contracting Authority or the appealing party may file an objection against joining the procedure by another Contractor not later than until the opening of the hearing.
13. In cases not regulated in these Terms of Reference with respect to lodging appeals and complaints, the provisions of Art. 505-590 of the PPL Act shall apply.

## XX. Other:

1. In cases not regulated in these Terms of Reference, the provisions of the PPL Act shall apply.

2. For natural persons:

Pursuant to art. 13, item 13 of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) (Official Journal of the EU L 119 of the 04.05.2016, page 1), hereinafter: the "GDPR", we inform you that:

- a) the data controller is the Contracting Authority (contact data provided hereinabove);
- b) contact to the personal data inspector: [iod@imif.lukasiewicz.gov.pl](mailto:iod@imif.lukasiewicz.gov.pl)
- c) personal data will be processed pursuant to Art. 6, item 1 (c) of the GDPR for the purposes related to awarding a public Contract;
- d) recipients of personal data will be persons or entities to whom the documentation of the procedure will be disclosed pursuant to Art. 18, 19 and Art. 74-76 of the PPL Act;
- e) Personal data will be stored, pursuant to Art. 71-79 of the PPL Act, for the period of 4 years from the date of closing the procedure for awarding a public Contract, and if the period of the agreement exceeds 4 years, the period of storage shall be the whole duration of the agreement;
- f) the obligation to provide your personal data is a statutory requirement defined in the provisions of the PPL Act, connected with the participation in the procedure for awarding a public contract; the consequences of failure to provide specific data result from the PPL Act;
- g) Scope of data processing: Name and surname;
- h) Your personal data will not be subject to automated decision-making pursuant to Art. 22 of the GDPR;
- i) You have the right:
  - Pursuant to Art. 15 of the GDPR – to access your personal data;
  - Pursuant to Art. 16 of the GDPR – to rectify your personal data\*;
  - Pursuant to Art. 18 of the GDPR – to obtain from the controller restriction of processing with the reservation of cases specified in Art. 18, item 2 of the GDPR\*\*;
  - the right to file a complaint to the President of the Personal Data Protection Office if you consider that the processing of your personal data violates the provisions of the GDPR;

j) You are not entitled to:

- pursuant to Art. 17, item 3 (b) (d) or (e) of the GDPR – the right to erase your personal data;
- the right to data portability specified in Art. 20 of the GDPR;
- Pursuant to Art. 21 of the GDPR – the right to object to the processing of your personal data, as the legal basis for processing is Art. 6, item 1 (c) of the GDPR.

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

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

**Appendices:**

- 1) Appendix No. 1 – Requirements and technical parameters of the Subject of the Contract;
- 2) Appendix No. 2 – ESPD – template;
- 3) Appendix No. 3 – Bid form – template;
- 4) Appendix No. 4 – Statement on validity – template;
- 5) Appendix No. 5 – Statement on belonging to a capital group – template;
- 6) Appendix No. 6 – Obligation – template;
- 7) Appendix No. 7 – Draft provisions of the agreement;
- 8) Appendix No. 8 – List of deliveries performed;
- 9) Appendix No. 9 – Statement

**Appendix No. 1 to the Terms of Reference**

**Contractor:**

**Date:** .....

.....  
 .....

Requirements and technical parameters for the delivery of electric prober

No	Parameter	Requirement	To be completed by Bidder
1.	Type		Specify
2.	Manufacturer		Specify
3.	Country of origin		Specify
4.	Year of manufacture	2021/2022	Confirm
5.	Prober		
	Basic technical requirements	5.1 Cryogenic probe station for 100 mm semiconductor wafers with thermal testing capabilities in the range from sub-10 K to 475 K (or wider) temperatures, at a chamber pressure of 0.001 mBar or less, working in closed cycle.	Confirm
		5.2 Vacuum pump and cryo cooling equipment capable of reaching a temperature below 10 K and pressure below 0.001 mBar in less than 4 hours.	Confirm
		5.3 Station containing motorized movable table with stabilized temperature for semiconductor wafers with a diameter of 100 mm, with a range of movement in the X and Y axes min 80 mm, in the Z axis the range of motion min 2 mm, the range of Theta motion min 5 deg. Positioning uncertainty less than 2.5 µm. Top loading of the samples	Confirm
		5.4 At least five manipulators for measuring probes with external manual drive having a range of movement of min 12 mm in the X, Y and Z axes.	Confirm
		5.5 Ability for measurements C-V (up to 10 MHz) and I-V characteristics using Kelvin probes as well as characteristics of photodetectors using fiber source of light.	Confirm
		5.6 Digital vision system having variable magnification (12:1) with appropriate fixture for observing DUT and alternatively a fixture for mounting head of Polytec MSA 500 vibrometer (held by the ordering	Confirm



		party)	
		5.7 Motorized drives in the X and Y axes as well as the Z and Theta axes.	Confirm
		5.8 TRIAX electrical connectors (adapter connectors may be used) for I-V measurements, e.g. with Keithley 2636B SMU systems (held by the ordering party) or similar.	Confirm
		5.9 BNC electrical connectors (adapters may be used) for C-V measurements, e.g. with the Agilent 4249A LCZ analyzer system (held by the ordering party) or similar.	Confirm
		5.10 SMA connector with a 600 micron core fiber optic for cooperation with fiber light sources.	Confirm
		5.11 Standard connectors for probe station controller, vision system and movement controller (USB, LAN etc.),	Confirm
		5.12 Software licenses for controlling prober temperature, vision system and eventually movement.	Specify
6.	Installation and training	Delivery and installation to the customer's laboratory in Piaseczno	Confirm
		One-step training - after installation of the prober in the customer's laboratory	Confirm
7.	Testing the delivered prober	Checking the achieved temperature of the table and the achieved vacuum in the measurement chamber 4 hours after switching on. Then checking the range of motion and positioning uncertainty of the prober table.	Confirm
8.	User manuals, documentation and software	In Polish or English	Confirm
9.	Availability of spare parts	Assured within 7 years from the date of signing the acceptance protocol	Confirm
10.	Service requirements	On-site service intervention provided within a maximum of 120 hours after notification of failure	Confirm
11.	Technical support	Assured within 7 years from the date of signing the acceptance protocol	Confirm
12.	Post-warranty service	Assured within 7 years from the date of signing the acceptance protocol	Confirm

**Appendix No. 2 to the Terms of Reference**

## STANDARD FORM FOR THE EUROPEAN SINGLE PROCUREMENT DOCUMENT (ESPD)

### Part 1: Information concerning the procurement procedure and the contracting authority or contracting entity

**For procurement procedures in which a call for competition has been published in the Official Journal of the European Union (OJEU), the information required under Part 1 will be automatically retrieved, provided that the electronic ESPD<sup>1</sup> service is used to generate and fill in the ESPD. Reference of the relevant notice<sup>2</sup>, published in the Official Journal of the European Union:**

OJEU S number[,], date [,], page[.],

Notice number in the Official Journal(OJ) S: [ ][ ][ ][ ]/S [ ][ ][ ]-[ ][ ][ ][ ][ ][ ]

**If there is no call for competition in OJ, the contracting authority or contracting entity must fill in the information allowing the procurement procedure to be unequivocally identified.**

**In case the publication of a notice in the Official Journal of the European Union is not required, please give other information allowing the procurement procedure to be unequivocally identified (e.g reference of a publication at a national level): [.....]**

### INFORMATION ABOUT THE PUBLIC PROCUREMENT PROCEDURE

**The information required under Part I will be automatically retrieved, provided that the above-mentioned electronic ESPD-service is used to generate and fill in the ESPD. If not, this information must be filled in by the contractor.**

<b>Identity of the Contracting Entity<sup>3</sup></b>	Answer:
Name:	Łukasiewicz Research Network – Institute of Microelectronics and Photonics 02-668 Warsaw, 32/46 Lotników Av.
<b>Which procurement is concerned?</b>	Answer:
Title or short description of the procurement <sup>4</sup>	<b>Delivery of electric prober</b>
File reference number attributed by the contracting authority or contracting entity (if applicable) <sup>5</sup> :	<b>F2/92/2021</b>

**All other information in all sections of the ESPD is to be filled in by the contractor**

### Part II: Information concerning the contractor

<sup>1</sup> Commission Services will make the electronic ESPD-service available, free of charge, for contracting authorities, contracting entities, economic operators, providers of electronic services and other interested parties.

<sup>2</sup> For **contracting authorities**: either a **Prior Information Notice** used as a means of calling for competition or a **Contract Notice**. For **contracting entities**: a **Periodic Indicative Notice** used as a means of calling for competition, a **Contract Notice** or a **Notice on the Existence of a Qualification System**.

<sup>3</sup> Information to be copied from Section I, Point I.1, of the relevant notice, In case of joint procurement, please indicate the names of all involved contracting entities.

<sup>4</sup> See points II.1.1 and II.1.3 of the relevant notice

<sup>5</sup> See point II.1.1 of the relevant notice

A: INFORMATION ABOUT THE CONTRACTOR

Identification:	Answer:
Name:	[ ]
VAT-number, if applicable: If no VAT-number is applicable, please indicate another national identification number, if required and applicable	[ ] [ ]
Postal address:	[.....]
Contact person or persons <sup>6</sup>	[.....]
Telephone:	[.....]
E-mail:	[.....]
Internet address (web address) (if applicable):	[.....]
General information:	Answer:
Is the contractor a Micro, a Small or a Medium-Sized Enterprise <sup>7</sup> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Only in case the procurement is reserved<sup>8</sup>:</b> is the contractor a sheltered workshop, a 'social business' <sup>9</sup> or will it provide for the performance of the contract in the context of sheltered employment programmes? <b>If yes,</b> what is the corresponding percentage of disabled or disadvantaged workers? If required, please specify which category or categories of disabled or disadvantaged workers the employees concerned belong to?	<input type="checkbox"/> Yes <input type="checkbox"/> No  [.....]  [.....]
If applicable, is the contractor registered on an official list of approved economic operators or does it have an equivalent certificate (e.g. under a national (pre)qualification system)?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
<b>If yes:</b> <b>Please answer the remaining parts of this</b>	

<sup>6</sup> Please repeat the information concerning contact persons as many times as needed.

<sup>7</sup> Cf. Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, (Official Journal L 124, 20.5.2003, p. 36). This information is required for statistical purposes only. **Micro enterprises:** enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

**Small enterprises:** an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million;

**Medium enterprises, enterprises which are neither micro nor small** and which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.

<sup>8</sup> See contract notice point III.1.5

<sup>9</sup> I.e. its main aim is the social and professional integration of disabled or disadvantaged persons.

<p><b>Section, Sections B and, where relevant, C of this Part, complete Part V, where applicable, and, in any case, fill in and sign Part VI.</b></p> <p>a) Please provide the name of the list or certificate and the relevant registration or certification number, if applicable:</p> <p>b) If the certificate of registration or certification is available electronically, please state:</p> <p>c) Please state the references on which the registration or certification is based, and, where applicable, the classification obtained in the official list<sup>10</sup>:</p> <p>d) Does the registration or certification cover all of the required selection criteria?</p> <p><b>If no:</b></p> <p><b>In addition, please complete the missing information in Part IV, Sections A, B, C or D as the case may be ONLY if this is required in the relevant notice or procurement documents:</b></p> <p>e) Will the economic operator be able to provide <b>a certificate</b> with regard to the payment of social security contributions and taxes or provide information enabling the contracting authority or contracting entity to obtaining it directly by accessing a national database in any Member State that is available free of charge? If the relevant documentation is available electronically, please indicate:</p>	<p>(a) [.....]</p> <p>(b) (web address, issuing authority or body, precise reference of the documentation): [.....][.....][.....][.....]</p> <p>(c) [.....]</p> <p>(d) <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>(e) <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>(web address, issuing authority or body, precise reference of the documentation): [.....][.....][.....][.....]</p>
<p><b>Form of participation:</b></p>	<p><b>Answer:</b></p>
<p>Is the contractor participating in the procurement procedure together with others <sup>11</sup>?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>If yes, please ensure that the others concerned provide a separate ESPD form.</p>	
<p><b>If yes:</b></p> <p>a) Please indicate the role of the contractor in the group (leader, responsible for specific tasks ...):</p> <p>b) Please identify the other contractors participating in the procurement procedure together:</p> <p>c) Where applicable, name of the participating group:</p>	<p>(a): [.....]</p> <p>(b): [.....]</p> <p>(c): [.....]</p>

<sup>10</sup> The references and the classification data, if any, are set out on the certification.

<sup>11</sup> Notably as part of a group, consortium, joint venture or similar.

<b>Lots</b>	<b>Answer:</b>
Where applicable, indication of the lot(s) for which the contractor wishes to tender:	[ ]

**B: INFORMATION ABOUT REPRESENTATIVES OF THE CONTRACTOR**

<i>Where applicable, please indicate the name(s) and address(es) of the person(s) empowered to represent the contractor for the purposes of this procurement procedure:</i>	
<b>Representation, if any:</b>	<b>Answer:</b>
Full name; accompanied by the date and place of birth, if required:	[.....], [.....]
Position/Acting in the capacity of:	[.....]
Postal address:	[.....]
Telephone:	[.....]
E-mail:	[.....]
If needed, please provide detailed information on the representation (its forms, extent, purpose ...):	[.....]

**C: INFORMATION ABOUT RELIANCE ON THE CAPACITIES OF OTHER ENTITIES**

<b>Reliance of other entities:</b>	<b>Answer:</b>
Does the contractor rely on the capacities of other entities in order to meet the selection criteria set out under Part IV and the criteria and rules (if any) set out under Part V below?	<input type="checkbox"/> Yes <input type="checkbox"/> No

**If yes**, please provide a separate ESPD form setting out the information required under **Sections A and B of this Part and Part III** for **each** of the entities concerned, duly filled in and signed by the entities concerned. Please note that this should also include any technicians or technical bodies, not belonging directly to the contractor's undertaking, especially those responsible for quality control, and, in the case of public works contracts, the technicians or technical bodies upon whom the contractor can call in order to carry out the work.

Insofar as it is relevant for the specific capacity or capacities on which the contractor relies, please include the information under Parts IV and V for each of the documents concerned<sup>12</sup>.

**D: Information concerning subcontractors on whose capacity the contractor does not rely**

**(Section to be filled-in only if this information is explicitly required by the contracting authority or contracting entity)**

<b>Subcontracting:</b>	<b>Answer:</b>
Does the contractor intend to subcontract any share of the contract to third parties?	<input type="checkbox"/> Yes <input type="checkbox"/> No If <b>yes and in so far as known</b> , please list the proposed subcontractors:

<sup>12</sup> E.g. for technical bodies involved in quality control: Part IV, Section C, point 3: Procedure No. F2/92/2021

[...]

**If the contracting authority or contracting entity explicitly requests this information in addition to the information under this section, please provide the information required under Sections A and B of this Part and Part III for each of the (categories of) subcontractors concerned.**

### Part III: Exclusion grounds

#### A: GROUNDS RELATING TO CRIMINAL CONVICTIONS

Article 57, paragraph 1 of Directive 2014/24/EU sets the following reasons for exclusion:

1. Participation in a **criminal organization**<sup>13</sup>:  
**corruption**<sup>14</sup>:  
**fraud**<sup>15</sup>:  
**terrorist offences or offences linked to terrorist activities**<sup>16</sup>:  
**money laundering or terrorist financing**<sup>17</sup>  
**child labour and other forms of trafficking in human beings**<sup>18</sup>

<b>Grounds relating to criminal convictions under national provisions implementing the grounds set out in Article 57(1) of the Directive:</b>	<b>Answer:</b>
Has <b>the contractor</b> itself or any <b>person</b> who is a member of its administrative, management or supervisory body or has powers of representation, decision or control therein been the subject of a <b>conviction</b> by final judgment for one of the reasons listed above, by a conviction rendered at the most five years ago or in which an exclusion period set out directly in the conviction continues to be applicable?	<input type="checkbox"/> Yes <input type="checkbox"/> No  If the relevant documentation is available electronically, please indicate: (web address, issuing authority or body, precise reference of the documentation): [ ..... ] [ ..... ] [ ..... ] <sup>19</sup>
<b>If yes, please indicate</b> <sup>20</sup> : a) Date of conviction, specify which of points 1 to 6 is concerned and the reason(s) for the conviction,	(a) Date: [ ], point(s): [ ], reason(s): [ ]

<sup>13</sup> As defined in Article 2 of Council Framework Decision 2008/841/WSiSW of 24 October 2008 on the fight against organized crime (Official Journal L 300, 11.11.2008, p. 42).

<sup>14</sup> As defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, Official Journal C 195, 25.6.1997, p. 1, and in Article 2(1) of Council Framework Decision 2003/568/WSiSW of 22 July 2003 on combating corruption in the private sector (Official Journal L 192, 31.7.2003, p. 54). This exclusion ground also includes corruption as defined in the national law of the contracting authority (contracting entity) or the contractor.

<sup>15</sup> Within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests (Official Journal C 316, 27.11.1995, p. 48).

<sup>16</sup> As defined in Articles 1 and 3 of Council Framework Decision of 13 June 2002 on combating terrorism (Official Journal L 164, 22.6.2002, p. 3). This exclusion ground also includes inciting or aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision.

<sup>17</sup> As defined in Article 1 of Directive 2005/60/WE of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (Official Journal L 309, 25.11.2005, p. 15).

<sup>18</sup> As defined in Article 2 of Directive 2011/36/WE of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/WSiSW (Official Journal L 101, 15.4.2011, p. 1).

<sup>19</sup> Please repeat as many times as needed.

<sup>20</sup> Please repeat as many times as needed.

<p>b) Identify who has been convicted [ ];</p> <p>c) <b>Insofar as established directly in the conviction:</b></p>	<p>(b) [.....]</p> <p>(c) Length of the period of exclusion.[..... ] and the point(s) concerned [ 1</p> <p>If the relevant documentation is available electronically, please indicate: (web address, issuing authority or body, precise reference of the documentation):</p> <p>[ ..... ][.....][.....]<sup>21</sup></p>
<p>In case of convictions, has the contractor taken measures to demonstrate its reliability despite the existence of a relevant ground for exclusion <sup>22</sup> ('Self-Cleaning')?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p><b>If yes</b>, please describe the measures taken<sup>23</sup> :</p>	<p>[ .....]</p>

B: GROUNDS RELATING TO THE PAYMENT OF TAXES OR SOCIAL SECURITY CONTRIBUTIONS

<p><b>Payment of taxes or social security contributions:</b></p>	<p><b>Answer:</b></p>	
<p>Has the contractor met all <b>its obligations relating to the payment of taxes or social security contributions</b>, both in the country in which it is established and in Member State of the contracting authority or contracting entity if other than the country of establishment?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p><b>If not</b>, please indicate:</p> <p>a) Country or Member State concerned;</p> <p>b) what is the amount concerned;</p> <p>c) How has this breach of obligations been established:</p> <p>1) through a judicial or administrative <b>decision</b>:</p> <p style="padding-left: 40px;">Is this decision final and binding?</p> <p style="padding-left: 40px;">– Please indicate the date of conviction or decision.</p> <p style="padding-left: 40px;">– In case of conviction, <b>insofar as established directly therein</b>, the length of the period of exclusion:</p>	<p><b>Taxes</b></p>	<p><b>Social contributions</b></p>
	<p>(a) [ .....]</p> <p>(b) [ ..... ]</p> <p>(c1) <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>– <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>– [ .....]</p> <p>– [ .....]</p>	<p>(a) [ .....]</p> <p>(b) [ .....]</p> <p>(c1) <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>– <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>– [ .....]</p> <p>– [ .....]</p> <p>(c2) [ ..... ]</p>

<sup>21</sup> Please repeat as many times as needed.

<sup>22</sup> In accordance with national provisions implementing Article 57(6) of Directive 2014/24/EU.

<sup>23</sup> Taking into account the character of the crimes committed (punctual, repeated, systematic ...), the explanation should show the adequacy of the measures to taken.

2) by <b>other means</b> ? Please specify:  d) has the contractor fulfilled its obligations by paying or entering into a binding arrangement with a view to paying the taxes or social security contributions due, including, where applicable, any interest accrued or fines?	(c2) [ ..... ]  (d) <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide details: [ .....]	(d) <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide details: [ .....]
If the relevant documentation concerning payment of taxes or social contributions is available electronically, please indicate:	(web address, issuing authority or body, precise reference of the documentation) <sup>24</sup> : [ ..... ][ ..... ][ .....]	

C: GROUNDS RELATING TO INSOLVENCY, CONFLICTS OF INTERESTS OR PROFESSIONAL MISCONDUCT <sup>25</sup>

<b>Please note that, for the purpose of this procurement, some of the following exclusion grounds may have been defined more precisely, in national law, in the relevant notice or the procurement documents. Thus, national law may for instance provide that the notion of ‘grave professional misconduct’ may cover several different forms of conduct.</b>	
<b>Information concerning possible insolvency, conflict of interest or professional misconduct</b>	<b>Answer:</b>
<del>Has the contractor, to its knowledge, breached its obligations in the fields of environmental, social and labour law <sup>26</sup>?</del>	<input type="checkbox"/> Yes <input type="checkbox"/> No  <del>If yes, has the contractor taken measures to demonstrate its reliability despite the existence of this ground for exclusion ('Self-Cleaning')? <input type="checkbox"/> Yes <input type="checkbox"/> No If it has, please describe the measures taken:[ .....]</del>
Is the contractor in any of the following situations: a) <b>Bankrupt</b> , or  b) The <b>subject of insolvency</b> or winding-up proceedings, or  c) In an <b>arrangement with creditors</b> , or  d) In any analogous situation arising from a similar procedure under national laws and regulations <sup>27</sup> , or  e) That its assets are being administered by a liquidator or by the court, or  f) That its business activities are	<input type="checkbox"/> Yes <input type="checkbox"/> No

<sup>24</sup> Please repeat as many times as needed.

<sup>25</sup> See Article 57(4) of Directive 2014/24/WE

<sup>26</sup> As referred to for the purposes of this procurement in national law, in the relevant notice or the procurement documents or in Article 18(2) of Directive 2014/24/EU.

<sup>27</sup> See national law, the relevant notice or the procurement documents.



<p>suspended?</p> <p><b>If yes:</b></p> <p>— Please provide details:  — Please indicate the reasons for being able nevertheless to perform the contract, taking into account the applicable national rules and measures on the continuation of business in those circumstances<sup>28</sup>?  If the relevant documentation is available electronically, please indicate:</p>	<p>— [..... ]  — [.....]</p> <p>(web address, issuing authority or body, precise reference of the documentation):  [.....][.....][.....]</p>
<p>Is the economic operator guilty of <b>grave professional misconduct</b> <sup>29</sup>?</p> <p>If yes, please provide details:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No,  [.....]</p> <p><b>If yes,</b> has the economic operator taken self-cleaning measures? <input type="checkbox"/> Yes <input type="checkbox"/> No  <b>If it has,</b> please describe the measures taken:  [.....]</p>
<p><b>Has the contractor</b> entered into <b>agreements</b> with other economic operators aimed at <b>distorting competition</b>?</p> <p><b>If yes,</b> please provide details:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No  [.....]</p> <p><b>If yes,</b> has the contractor taken self-cleaning measures? <input type="checkbox"/> Yes <input type="checkbox"/> No  <b>If it has,</b> please describe the measures taken:  [.....]</p>
<p><b>Is the contractor aware of any conflict of interest</b><sup>30</sup> due to its participation in the procurement procedure?</p> <p><b>If yes,</b> please provide details:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No  [.....]</p>
<p>Has <b>the contractor</b> or an undertaking <b>related</b> to it <b>advised</b> the contracting authority or contracting entity or otherwise been <b>involved in the preparation</b> of the procurement procedure?</p> <p><b>If yes,</b> please provide details:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No  [.....]</p>
<p>Has the contractor experienced that a prior public contract, a prior contract with a contracting entity or a prior concession contract was <b>terminated early</b>, or that damages or other comparable sanctions were imposed in connection with that prior contract?</p> <p><b>If yes,</b> please provide details:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No  [.....]</p> <p><b>If yes,</b> has the contractor taken self-cleaning measures?  <input type="checkbox"/> Yes <input type="checkbox"/> No  <b>If it has,</b> please describe the measures taken:</p>

<sup>28</sup> This information needs not be given if exclusion of contractors in one of the cases listed under letter a to f has been made mandatory under the applicable national law without any possibility of derogation where the contractor is nevertheless able to perform the contract.

<sup>29</sup> Where applicable, see definitions in national law, the relevant notice or the procurement documents.

<sup>30</sup> As indicated in national law, the relevant notice or the procurement documents.

	[.....]
<p>Can the contractor confirm that:</p> <p>a) <b>It has not been</b> guilty of serious <b>misrepresentation</b> in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria,</p> <p>b) It has <b>not withheld</b> such information,</p> <p>c) It has been able, without delay, to submit the supporting documents required by a contracting authority or contracting entity, and</p> <p>d) It has not undertaken to unduly influence the decision making process of the contracting authority or contracting entity, to obtain confidential information that may confer upon it undue advantages in the procurement procedure or to negligently provide misleading information that may have a material influence on decisions concerning exclusion, selection or award?</p>	<p>[ ]Yes [ ] No</p>

**D: OTHER EXCLUSION GROUNDS THAT MAY BE FORESEEN IN THE NATIONAL LEGISLATION OF THE CONTRACTING AUTHORITY'S OR CONTRACTING ENTITY'S MEMBER STATE**

<b>Purely national exclusion grounds</b>	<b>Answer:</b>
<p>Do the <b>purely national grounds of exclusion</b>, which are specified in the relevant notice or in the procurement documents, apply?</p> <p>If the documentation required in the relevant notice or in the procurement documents is available electronically, please indicate:</p>	<p>[ ]Yes [ ] No</p> <p>(web address, issuing authority or body, precise reference of the documentation):</p> <p>[.....][.....][.....]<sup>31</sup></p>
<p><b>In case any of the purely national exclusion grounds apply</b>, has the contractor taken self-cleaning measures?</p> <p><b>If it has</b>, please describe the measures taken:</p>	<p>[ ]Yes [ ] No</p> <p>[.....]</p>

**Part IV: Selection criteria**

Concerning the selection criteria (Section  $\alpha$  or Sections A to D of this part), the contractor declares that:

$\alpha$ : GLOBAL INDICATION FOR ALL SELECTION CRITERIA

<sup>31</sup> Please repeat as many times as needed.  
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<p><b>The contractor should only fill in this field in case the contracting authority or contracting entity has indicated in the relevant notice or in the procurement documents referred to in the notice that the contractor can limit itself to filling in Section α of Part IV without having to fill in any other Section of Part IV:</b></p>	
<b>Meeting all required selection criteria</b>	<b>Answer</b>
It satisfies the required selection criteria:	<input type="checkbox"/> Yes <input type="checkbox"/> No

A: SUITABILITY

<p><b>The contractor should only provide information where the selection criteria concerned have been required by the contracting authority or contracting entity in the relevant notice or in the procurement documents referred to in the notice.</b></p>	
<b>Suitability</b>	<b>Answer</b>
<p>1) <b>It is enrolled in the relevant professional or trade registers</b> kept in the Member State of its establishment<sup>32</sup>:</p> <p>If the relevant documentation is available electronically, please indicate:</p>	<p>[ ..... ]</p> <p>(web address, issuing authority or body, precise reference of the documentation):</p> <p>[ ..... ][ ..... ][ ..... ]</p>
<p>2) <b>For service contracts:</b></p> <p>Is a particular <b>authorisation or membership</b> of a particular organisation needed in order to be able to perform the service in question in the country of establishment of the contractor?</p> <p>If the relevant documentation is available electronically, please indicate:</p>	<p><input type="checkbox"/>Yes <input type="checkbox"/>No</p> <p>If yes, please specify which and indicate whether the economic operator has it: [...]</p> <p><input type="checkbox"/>Yes <input type="checkbox"/> No</p> <p>(web address, issuing authority or body, precise reference of the documentation):</p> <p>[ ..... ][ ..... ][ ..... ]</p>

B: ECONOMIC AND FINANCIAL STANDING

<p><b>The contractor should only provide information where the selection criteria concerned have been required by the contracting authority or contracting entity in the relevant notice or in the procurement documents referred to in the notice.</b></p>	
<b>Economic and financial standing</b>	<b>Answer:</b>
<p>1a) Its ('general') <b>yearly turnover</b> for the number of financial years required in the relevant notice or the procurement documents is as follows:</p> <p><b>And/or,</b></p>	<p>year:[.....]turnover:[.....][...]currency</p> <p>year:[.....]turnover:[.....][...]currency</p> <p>year:[.....]turnover:[.....][...]currency</p>

<sup>32</sup> As described in Annex XI of Directive 2014/24/UE; contractors from certain Member States may have to comply with other requirements set out in that Annex

<p>1b) Its <b>average</b> yearly <b>turnover for the number of years required in the relevant notice or the procurement documents is as follows</b><sup>33</sup> ( ) :</p> <p>If the relevant documentation is available electronically, please indicate:</p>	<p>(number of years, average turnover): [.....],[.....][.....]currency</p> <p>(web address, issuing authority or body, precise reference of the documentation): [.....][.....][.....]</p>
<p>2a) Its yearly ('specific') <b>turnover in the business area covered by the contract</b> and specified in the relevant notice or the procurement documents for the number of financial years required is as follows:</p> <p><b>And/or,</b></p> <p>2b) Its <b>average</b> yearly <b>turnover in the area and for the number of years required in the relevant notice or the procurement documents is as follows</b><sup>34</sup> :</p> <p>If the relevant documentation is available electronically, please indicate:</p>	<p>year:[.....]turnover:[.....][...].currency year:[.....]turnover:[.....][...].currency year:[.....]turnover:[.....][...].currency</p> <p>(number of years, average turnover): [.....],[.....][.....]currency</p> <p>(web address, issuing authority or body, precise reference of the documentation): [.....][.....][.....]</p>
<p>3) In case the information concerning turnover (general or specific) is not available for the entire period required, please state the date on which the contractor was set up or started trading:</p>	<p>[.....]</p>
<p>4) Concerning the <b>financial ratios</b><sup>35</sup> specified in the relevant notice or the procurement documents, the contractor declares that the actual value(s) for the required ratio(s) is/are as follows:</p> <p>If the relevant documentation is available electronically, please indicate:</p>	<p>(identification of the required ratio- ratio between x and y<sup>36</sup> -and the value): [.....][.....]<sup>37</sup></p> <p>(web address, issuing authority or body, precise reference of the documentation): [.....][.....][.....]</p>
<p>5) The insured amount in its <b>professional risk indemnity insurance</b> is the following:</p> <p>If this information is available electronically, please indicate:</p>	<p>[.....],[.....][...].currency</p> <p>(web address, issuing authority or body, precise reference of the documentation): [.....][.....][.....]</p>
<p>6) Concerning the <b>other economic or financial requirements, if any, that may</b></p>	<p>[.....]</p>

<sup>33</sup> Only if permitted in the relevant notice or the procurement documents.

<sup>34</sup> Only if permitted in the relevant notice or the procurement documents.

<sup>35</sup> E. g. the ratio between assets and liabilities.

<sup>36</sup> E. g. the ratio between assets and liabilities.

<sup>37</sup> Please repeat as many times as needed.

<p>have been specified in the relevant notice or the procurement documents, the contractor declares that:</p> <p>If the relevant documentation that <b>may</b> have been specified in the relevant notice or the procurement documents, is available electronically, please indicate:</p>	<p>(web address, issuing authority or body, precise reference of the documentation): [ .....][ ..... ][ .....]</p>
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C: TECHNICAL AND PROFESSIONAL ABILITY

**The contractor should only provide information where the selection criteria concerned have been required by the contracting authority or contracting entity in the relevant notice or in the procurement documents referred to in the notice.**

<b>Technical and professional ability</b>	<b>Answer:</b>								
<p>1a) For <b>public works contracts</b> only: During the reference period<sup>38</sup>, the contractor <b>has performed the following construction works of the specified type:</b> If the relevant documentation concerning satisfactory execution and outcome for the most important works is available electronically, please indicate:</p>	<p>Number of years (this period is specified in the relevant notice or the procurement documents):[.....] Construction Works:[.....]</p> <p>(web address, issuing authority or body, precise reference of the documentation): [ .....][ ..... ][ .....]</p>								
<p>1b) For <b>public supply and public service contracts</b> only: During the reference period<sup>39</sup>, the contractor has delivered <b>the following principal deliveries of the type specified or provided the following main services of the type specified:</b> When drawing up the list, please indicate the amounts, dates and recipients, whether public or private<sup>40</sup>:</p>	<p>Number of years (this period is specified in the relevant notice or the procurement documents): [.....]</p> <table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <thead> <tr> <th style="width: 30%;">Description</th> <th style="width: 15%;">Amount</th> <th style="width: 15%;">Dates</th> <th style="width: 30%;">Recipient</th> </tr> </thead> <tbody> <tr> <td style="height: 20px;"> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Description	Amount	Dates	Recipient				
Description	Amount	Dates	Recipient						
<p>2) It can call upon the following <b>technicians or technical bodies</b><sup>41</sup>, especially those responsible for quality control: In the case of public works contracts, the economic operator will be able to call on the following technicians or technical bodies to carry out the work:</p>	<p>[.....]</p> <p>[.....]</p>								
<p>3) It uses the following <b>technical facilities and measures for ensuring quality and its</b></p>	<p>[.....]</p>								

<sup>38</sup> Contracting authorities may **require** up to five years and **allow** experience dating from **more** than five years.

<sup>39</sup> Contracting authorities may **require** up to three years and **allow** experience dating from **more** than three years.

<sup>40</sup> In other words, **all** recipients should be listed and the list should include both public clients and private clients for the supplies or services concerned.

<sup>41</sup> For technicians or technical bodies not belonging directly to the economic operator's undertaking but on whose capacities the economic operator relies as set out under Part II, Section C, separate ESPD forms must be filled in.

<p><b>study and research facilities</b> are as follows:</p>	
<p>4) It will be able to apply the following <b>supply chain management and tracking systems</b> when performing the contract:</p>	<p>[.....]</p>
<p>5) <b>For complex products or services to be supplied or, exceptionally, for products or services which are required for a special purpose:</b> The contractor will allow <b>checks</b><sup>42</sup> to be conducted on the <b>production capacities or the technical capacity</b> of the contractor and, where necessary, on <b>the means of study and research</b> which are available to it and on the <b>quality control measures</b>?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>6) The following <b>educational and professional qualifications</b> are held by: a) The service provider or the contractor itself, <b>or</b> (depending on the requirements set out in the relevant notice or the procurement documents) b) Its managerial staff:</p>	<p>(a) [.....]  (b) [.....]</p>
<p>7) It will be able to apply the following <b>environmental management measures</b> when performing the contract:</p>	<p>[.....]</p>
<p>8) <b>The contractor's average annual manpower</b> and the number of managerial staff for the last three years were as follows:</p>	<p>Year, average annual manpower: [.....],[.....], [.....],[.....], [.....],[.....], Year, number of managerial staff: [.....],[.....], [.....],[.....], [.....],[.....]</p>
<p>9) The following <b>tools, plant or technical equipment</b> will be available to it for performing the contract:</p>	<p>[.....]</p>
<p>10) The contractor <b>intends possibly to subcontract</b><sup>43</sup> the <b>following proportion (i.e. percentage)</b> of the contract:</p>	<p>[.....]</p>
<p>11) For <b>public supply contracts:</b> The contractor will supply the required samples, descriptions or photographs of the</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

<sup>42</sup> The check is to be performed by the contracting authority or, in case the latter consents to this, on its behalf by a competent official body of the country in which the supplier or service provider is established;

<sup>43</sup> Please note that if the contractor **has decided** to subcontract a part of the contract **and** relies on the subcontractor's capacities to perform that part, then please fill in a separate ESPD for such subcontractors, see Part II, Section C above.

<p>products to be supplied, which do not need to be accompanied by certifications of authenticity; Where applicable, the contractor furthermore declares that it will provide the required certificates of authenticity. If the relevant documentation is available electronically, please indicate:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>(web address, issuing authority or body, precise reference of the documentation): [ ..... ] [ ..... ] [ ..... ]</p>
<p>12) For <b>public supply contracts</b>:</p> <p>Can the contractor provide the required <b>certificates</b> drawn up by official <b>quality control institutes</b> or agencies of recognised competence attesting the conformity of products clearly identified by references to the technical specifications or standards, which are set out in the relevant notice or the procurement documents? <b>If not</b>, please explain why and state which other means of proof can be provided: If the relevant documentation is available electronically, please indicate:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>[ ..... ] (web address, issuing authority or body, precise reference of the documentation): [ ..... ] [ ..... ] [ ..... ]</p>

D: QUALITY ASSURANCE SCHEMES AND ENVIRONMENTAL MANAGEMENT STANDARDS

<p><b>The contractor should only provide information where quality assurance schemes and/or environmental management standards have been required by the contracting authority or contracting entity in the relevant notice or in the procurement documents referred to in the notice.</b></p>	
<p><b>Quality Assurance Schemes and Environmental Management Standards</b></p>	<p><b>Answer:</b></p>
<p>Will the contractor be able to produce <b>certificates</b> drawn up by independent bodies attesting that the contractor complies with the required <b>quality assurance standards</b>, including accessibility for disabled persons? <b>If not</b>, please explain why and specify which other means of proof concerning the quality assurance scheme can be provided: If the relevant documentation is available electronically, please indicate:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>[ ..... ] [ ..... ]</p> <p>(web address, issuing authority or body, precise reference of the documentation): [ ..... ] [ ..... ] [ ..... ]</p>
<p>Will the contractor be able to produce <b>certificates</b> drawn up by independent bodies attesting that the contractor complies with the required <b>environmental management systems or standards</b>? <b>If not</b>, please explain why and specify which other means of proof concerning the</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>[ ..... ] [ ..... ]</p>

<p><b>environmental management systems or standards</b> can be provided: If the relevant documentation is available electronically, please indicate:</p>	<p>(web address, issuing authority or body, precise reference of the documentation): [.....][.....][.....]</p>
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**Part V: Reduction of the number of qualified candidates**

**The contractor should only provide information where the contracting authority or contracting entity has specified the objective and non-discriminatory criteria or rules to be applied in order to limit the number of candidates that will be invited to tender or to conduct dialogue. This information, which can be accompanied by requirements concerning the (types of) certificates or forms or documentary evidence, if any, to be produced, is set out in the relevant notice or in the procurement documents referred to in the notice.**

**For restricted procedures, competitive procedures with negotiation, competitive dialogue procedures and innovation partnerships only:**

**The contractor declares that:**

<b>Reduction the number of candidates</b>	<b>Answer:</b>
<p>It <b>meets</b> the objective and non-discriminatory criteria or rules to be applied in order to limit the number of candidates in the following way: In case certain certificates or other forms of documentary evidence are required, please indicate for each whether the economic operator has the required documents: if some of these certificates of forms of documentary evidence are available electronically<sup>44</sup>, please indicate for which:</p>	<p>[.....]</p> <p>[...] <input type="checkbox"/> Yes <input type="checkbox"/> No<sup>45</sup></p> <p>(web address, issuing authority or body, precise reference of the documentation): [.....][.....][.....][.....]<sup>46</sup></p>

**Part VI: Concluding statements**

*The undersigned formally declare that the information stated under Parts II-V above is accurate and correct and that it has been set out in full awareness of the consequences of serious misrepresentation.*

*The undersigned formally declare to be able , upon request and without delay, to provide the certificates and other forms of documentary evidence referred to, except where:*

*a) the contracting authority or contracting entity has the possibility of obtaining the supporting documentation concerned directly by accessing a national database in any Member State that is available free of charge<sup>47</sup> or*

*b) as of 18 October 2018 at the latest<sup>48</sup> the contracting authority or contracting entity already possesses the documentation concerned.*

*The undersigned formally consent to [identify the contracting authority or contracting entity as set out in part I, Section A] gaining access to documents supporting the information which has been provided in [identify the Part/Section /Point(s) concerned] of this European Single Procurement Document for the purposes of [identify the procurement procedure: (summary description, reference of publication in the Official Journal of the European Union, reference number)].*

Date, place and , signature (s): .....

<sup>44</sup> Please indicate clearly , which item the answer relates to.

<sup>45</sup> Please repeat as many times as needed.

<sup>46</sup> Please repeat as many times as needed.

<sup>47</sup> On condition that the contractor has provided the necessary information (web address, issuing authority or body, precise reference of the documentation) allowing the contracting authority or contracting entity to do so. Where required, this must be accompanied by the relevant consent to such access.

<sup>48</sup> Depending on the national implementation of the second subparagraph of Article 59 (5) of Directive 2014/24/UE.



### Appendix No. 3 to the Terms of Reference

**Contractor:**

**Date:** .....

.....

.....

#### BID FORM

for: Łukasiewicz Research Network – Institute of Microelectronics and Photonics

	Subject of the Order	Delivery of electric prober
1.	Name and address of the Contractor	..... .....
2.	Taxpayer's Identification Number NIP REGON number: or the relevant foreign identification numbers	..... ..... .....
3.	Telephone: e-mail:	..... .....
4.	Total net price of the bid  VAT rate  VAT amount  Total gross price of the bid	<b>Enter:</b> ..... PLN/EUR/USD/GBP*  say:.....  <b>Enter:</b> .....%  <b>Enter:</b> ..... PLN/EUR/USD/GBP*  <b>Enter:</b> ..... PLN/EUR/USD/GBP*  Say: .....
5.	Time of performing the Contract: Maximum until June 15, 2022	<b>Enter:</b> .....
6.	Guarantee period: <b>at least 12 months.</b>	<b>Enter:</b> ..... ( <i>months</i> )
7.	Statement	I hereby represent that the selection of our bid <b>will/will not*</b> result in imposing taxation obligation on the Contracting Authority.  The following (name or type of the goods or services) will lead to the emergence of a tax obligation:

		<b>Value without tax:</b> ..... <b>Name of goods:</b> .....
8.	Type of contractor	I declare that I am: <ul style="list-style-type: none"> <li><input type="checkbox"/> Microentrepreneur</li> <li><input type="checkbox"/> Small enterprise</li> <li><input type="checkbox"/> Medium enterprise</li> <li><input type="checkbox"/> A sole proprietorship</li> <li><input type="checkbox"/> A natural person who does not conduct business activity</li> <li><input type="checkbox"/> Other types: <b>specify</b> .....</li> </ul> <p>within the meaning of the Act of March 6, 2018 Entrepreneurs Law.</p> <p>(Note! Mark the "X" in the appropriate box)</p>
9.	Statement	I hereby represent that I have read the Terms of Reference (together with the Appendices constituting an integral part thereof) and that I accept its content without reservations.
10.	I hereby represent that I have fulfilled the information obligations foreseen in Art. 13 or Art. 14 of the GDPR towards natural persons whose personal data I obtained directly or indirectly in order to apply for awarding a public Contract in the present procedure.	<b>Confirm:</b> ..... <i>In the event if the Contractor does not transfer the personal data other than their own or if the information obligation is excluded pursuant to Art. 13, item 4 or Art. 14, item 5 of the GDPR, the Contractor shall not submit this statement (delete the content of the statement e.g. by crossing out).</i>
11.	Persons authorised to represent the Contractor	<b>Enter:</b> .....
12.	Parts of the Contract that will be entrusted to subcontractors	<b>Specify the parts of the Contract:</b> ..... <b>Enter names of companies:</b> .....
13.	Documents attached to the bid	1. 2. 3.

\* Delete as appropriate

**STATEMENT OF THE CONTRACTOR CONFIRMING THE VALIDITY OF INFORMATION PROVIDED IN  
THE STATEMENT SPECIFIED IN ART. 125 1 OF THE PPL ACT.**

By placing a bid in the procedure for awarding a public Contract conducted in the open tender mode by Łukasiewicz Research Network – Institute of Microelectronics and Photonics for

**the delivery of: .....**

I/we\*, the undersigned hereby represent that:

The information provided in the statement placed pursuant to Art. 125, item 1 of the Act of September 11 2019 – Public Procurement Law, with respect to the grounds for exclusion specified by the Contracting Authority, stipulated in:

- a) Art. 108, item 1 (3) of the Act,
- b) Art. 108 item 1 (4) of the Act on the decision forbidding to apply for public contracts as a preventive measure,
- c) Art. 108 item 1 (5) of the PPL Act on entering into an agreement with other Contractors with the aim to disturb competition,
- d) Art. 108, item 1 (6) of the Act,
- e) Art. 109, item 1 (4) of the Act,

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

***NOTE: THIS STATEMENT SHALL BE MADE SEPARATELY BY EACH OF THE CONTRACTORS WHO JOINTLY APPLY FOR THE CONTRACT. IF THE CONTRACTOR RELIES ON THE RESOURCES OF A THIRD PARTY ENTITY, THE STATEMENT SHALL ALSO BE MADE BY THE ENTITY THAT PROVIDES RESOURCES.***

Contractor:

Date: .....

.....  
.....

**STATEMENTS OF THE CONTRACTOR PURSUANT TO ART. 108 ITEM 1 (5) OF THE PPL ACT ON BELONGING/NOT BELONGING TO THE SAME CAPITAL GROUP**

In response to the call to provide subjective evidence pursuant to Art. 126, item 1 of the PPL Act, I/we hereby represent, pursuant to the provisions of Art. 108, item 1 (5) of the PPL Act, in the procedure for awarding a public Contract conducted in the open tender mode by Łukasiewicz Research Network – Institute of Microelectronics and Photonics for:

**the delivery of: .....**

I/we\*, the undersigned, having read the information from the opening of bids, hereby represent that:

- I/we do not belong** to the same capital group as defined in the Act of February 16 2007 on the Protection of Competition and Consumers (Journal of Laws of 2020, items 1076 and 1086) as another Contractor, who placed a separate bid, partial bid, or a motion to participate in the procedure\*,
- that I/we belong to the same capital group** as another Contractor who placed a separate bid or a partial bid or a statement on being a member of the same capital group, along with the documents or information that confirm that the bid or partial bid has been prepared independently from another Contractor belonging to the same capital group\*.

1).....

2).....

(\* ) Delete as appropriate

Pursuant to art. 4 item 14 of the Act of February 16 2007 on Competition and Consumer Protection, a capital group shall mean all undertakings, which act under the direct or indirect supervision of one undertaking, including the undertaking; I hereby represent that any and all information provided in this Statement are up-to-date and accurate and that they I/we are fully aware of the consequences of providing the Contracting Authority with misleading information. Together with the Statement, the Contractor may present evidence that the relations to another Contractor do not interfere with competition in the procedure for awarding a public Contract.

**Note!**

The information about belonging to a capital group specified in Art. 108, item 1 (6) of the PPL Act shall be provided separately by each of the Contractors who jointly apply for the Contract.

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

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

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

**a)** .....

(*please specify the provided resources*)

**b)** .....

(*please specify the provided resources*)

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

.....

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

.....

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

.....

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

**Draft provisions of the agreement**

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

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

- 1. .... - .....
- 2. .... - .....

hereinafter referred to as the "Contracting Authority".

and

.....  
.....

..... \_\_\_\_\_, ..... \_\_\_\_\_

represented by:

..... - .....

hereinafter referred to as the "Contractor".

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

**§1 Subject of the Contract**

- 1. The Subject of the Contract is the **delivery, installation, start-up and testing of a brand new electric prober together with guarantee and technical support services, documentation and trainings, hereinafter referred to as the “Subject of the Contract”**, to Łukasiewicz Research Network – Institute of Microelectronics and Photonics Branch Office, ul. Okulickiego 5E in Piaseczno, pursuant to the Terms of Reference (hereinafter: “**Terms of Reference**”) No. .... of the .....” constituting Appendix No. 1 hereto, and the “Bid Form of the ..... constituting Appendix No. 2 hereto (hereinafter jointly referred to as the: “Subject of the Contract”).

## **§ 2 Value of the Contract**

1. The total value of the Subject of the Contract specified in §1 amounts to: PLN/EUR/USD/GBP ..... gross (say: .....) including VAT tax at the rate of ..%, i.e. PLN/EUR/USD/GBP ..... (say: .....). The net Value of the Contract amounts to: ..... PLN/EUR/USD/GBP ..... (say: .....)
2. The value of the Subject of the Contract includes:
  - a) the price of the subject of the Contract specified in Section III of the Terms of Reference,
  - b) installation price,
  - c) start-up price,
  - d) testing of the equipment,
  - e) transport, unloading, and mounting,
  - f) terms of delivery: CIP according to INCOTERMS 2020,
  - g) guarantee period,
  - h) post-guarantee period and technical support,
  - i) training for employees,
  - j) software licenses,
  - k) other services, if they are necessary to realise the subject of the Contract.

## **§ 3 Terms of payment**

1. The payment shall be made to the bank account of the contractor in the following way:
  - a) 50% of the gross value of the Contract as advance payment. The advance payment shall be made within 30 days, pursuant to a VAT invoice and upon presentation the original document of advance payment security for the amount of the advance payment by the Contractor.
  - b) 50% of the gross value of the Contract after after installation and start-up of the subject of the Contract, performing acceptance tests and conducting training at the laboratory of the Contracting Authority in Piaseczno. The amount shall be paid by bank transfer pursuant to the original, correctly issued invoice delivered to the Contracting Authority within 3 days from signing the acceptance protocol by both Parties. The Contracting Authority shall pay the price to the Contractor within 30 days from the date of receipt of a correctly issued VAT invoice, i.e. an invoice issued in compliance with the applicable regulations.
2. All financial transactions shall be paid by the Contracting Authority by bank transfer either pursuant to the original, correctly issued invoice delivered to the Contracting Authority or based on structured electronic invoices sent to the Contracting Authority through the website pursuant to Art. 4 of the Act of November 9 2018 on electronic invoicing in public procurement, concessions for construction works or services and public-private partnership (Journal of Laws of 2018, item 2191).
3. The date of payment shall be deemed as the date of charging the bank account of the Contracting Authority.

4. If the statutory VAT rates change during the period of the Agreement, the Value of the Contract may be adjusted by the difference resulting from the change in VAT amount. Such adjustment requires the approval of a written motion of the Contractor, including factual and legal grounds, by the Contracting Authority.
5. The assignment of receivables under this Agreement to third parties requires the consent of the Contracting Authority.
6. The advance payment shall be allocated towards the remuneration of the Contractor.
7. Advance payment security may be made only in form of bank guarantee that has to be delivered in written form to the seat of the Contracting Authority.
8. The Contracting Authority shall return the document of advance payment security after the remaining part of the remuneration has been paid to the Contractor.
9. The Contractor shall ensure that the security of the advance payment is valid and enforceable until the completion of the Contract.
10. If the terms and conditions of the advance payment security provided by the Contractor specify the date of expiry, and the Contractor fails to provide a prolongation of the security 3 business days before that date, then the Contracting Authority shall have the right to realise the security and use the means obtained in this way to establish advance payment security. The Contracting Authority shall store the security established in this way on an interest-bearing bank account and shall return it within 14 business days after the final settlement of the advance payment together with interest specified in the agreement of the bank account where it was stored, less the costs of account maintenance and bank commission for the transfer of funds to the bank account of the Contractor.
11. In the event of termination of the Agreement, the Contracting Authority shall use the security by withdrawing the amount of the advance payment from the security amount.
12. The price specified hereinabove includes the total cost of realisation of the Contract, including all costs related to the realisation, including the complete realisation of the Subject of the Contract, considering all the conditions of the Description of the Subject of the Contract and the bid, including the costs necessary to perform the Contract, including all public levies (fees, customs fees and taxes, including VAT).
13. The bank account of the Contractor is included in the register of information about VAT payers.

#### ***§ 4 Terms and conditions of delivery, date of delivery***

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

Delivery address:

Łukasiewicz Research Network – Institute of Microelectronics and Photonics

ul. Okulickiego 5E

05-500 Piaseczno, Poland



2. Together with the Subject of the Contract, the Contractor shall deliver a CE certificate of compliance in Polish or English language version.
3. The Subject of the Contract shall be realised within ..... months (*date from the bid*) not later than June 15, 2022.
4. The Contractor shall provide the Contracting Authority with the technical installation conditions for the equipment.
5. The Contracting Authority is obliged to:
  - a) cooperate with the Contractor in order to ensure smooth and reliable realisation of the Subject of the Contract;
  - b) perform commissioning of the Subject of the Contract that has been realised with all due diligence by the Contractor;
  - c) pay the due amount of fee to the Contractor, at the dates and on the terms and conditions specified herein.
6. The Contractor shall realise the Subject of the Contract with all due diligence and in compliance with the requirements and rules specified herein.
7. The Contractor shall ensure that the persons who participate in the realisation of the Subject of the Contract have the relevant qualifications and that the number of these persons is sufficient to perform the scope of deliveries specified herein.
8. The Contractor shall be responsible for the actions and omissions of subcontractors and other persons who will participate in the realisation of the Subject of the Contract as for its own.
9. In return for the remuneration, the Contractor shall perform all actions necessary to start and launch the Subject of the Contract in compliance with all the terms and conditions provided herein.
10. The Contractor shall provide a guarantee document for all the elements constituting the Subject of the Contract.

#### ***§ 5 Commissioning of the Subject of the Contract***

1. One-stage acceptance test - in Ordering Party's laboratory in Piaseczno.
2. During the acceptance test will be checking the achieved temperature of the table and the achieved vacuum in the measurement chamber 4 hours after switching on. Then checking the range of motion and positioning uncertainty of the prober table.
3. The acceptance of the Subject of the Contract shall be confirmed by signing a written acceptance protocol by representatives of the Contracting Authority and the Contractor.

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

1. In the event of delay in the realisation of the Subject of the Contract, the Contracting Authority may charge the Contractor with a contractual penalty in the amount of 0.1% of the value of the Subject of the Contract for each business day of delay (the Parties agree that business days are: Monday to Friday), up to 10% of its total value. The contractual penalty shall become payable after the ineffective expiry of the additional period of 14 business days set for the Contractor.

2. In the event of untimely repair or replacement of the equipment, the Contracting Authority may charge a contractual penalty in the amount of 0.1% of the value of the Subject of the Contract for each day of delay, up to 10% of the total value.
3. In the event of termination of the Agreement by the Contractor due to reasons on its part, the Contracting Authority may charge the Contractor with a contractual penalty in the amount of 10% of the value of the Subject of the Contract.
4. In the event of delay in the realisation of the Subject of the Contract exceeding 14 days, the Contracting Authority may terminate the Agreement. The Contracting Authority may exercise the right to terminate the Agreement within 7 days from the date of delay.
5. The Contracting Authority may deduct the amount of the imposed contractual penalty from the fee of the Contractor.
6. The total amount of contractual penalties must not exceed 10% of the gross remuneration amount specified in § 2 item 1.

#### ***§ 7 Guarantee and warranty***

1. The Contractor shall issue guarantee documents and submit the documentation together with the device.
2. The Contractor guarantees the proper functioning and technical quality of the delivered Subject of the Contract for a period of: ... (guarantee period from the bid) from the date of signing the acceptance protocol without reservations.
3. Under the guarantee, the Contractor shall cover the costs of repair or replacement of the defective goods and the costs of transport.
4. During the guarantee period, the Contractor is obliged to perform the repairs or replace the product not later than within 6 weeks from the date of written notification about the defects.
5. The guarantee shall be prolonged by the duration of repair of the Subject of the Contract.
6. The replaced or repaired elements shall be subject to guarantee by the Contractor or Manufacturer.
7. Service intervention at the tool installation site provided within a maximum of 5 days from reporting the failure.
8. After the expiry of the guarantee period, the Contractor guarantees for at least 7 years technical support response within 21 working days after notification about the defects.
9. During the guarantee period, the costs of all repairs and services (including travel costs to the Contracting Authority) shall be borne by the Contractor.

#### ***§ 8 Force majeure***

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

#### ***§ 9 Modifications of the Agreement***

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

#### ***§ 10 Settlement of disputes***

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

### **§ 11 Licence**

1. The Contractor grants the Contracting Authority in return for the fee a non-exclusive licence, unlimited in terms of time and territory, subject to all provisions of the Bid Form, to use all elements of the documentation and software constituting works as defined in the Act on Copyright and Related Rights, delivered as part of the Contract, with the right to grant sub-licences within the scope of activities of the Contracting Authority and in the following fields of exploitation:
  - 1) using the provided documentation to operate the equipment;
  - 2) entering and recording the documentation in computer memory or on other electronic carriers, both stationary and mobile;
  - 3) reproducing the documentation on any carriers for the purposes of operating the equipment;
  - 4) replacing the carriers on which the documentation is recorded and transferring the documentation to the memory of computers and computer network servers.
2. The above licence shall also apply to any changes and updates introduced to the documentation by the Contractor during the period of guarantee.
3. Whenever software is referred to in the Agreement, it is deemed that the Contractor grants a non-exclusive licence, unlimited in terms of time and territory, for this software or application in return for the remuneration, in all fields of exploitation specified in Art. 74, item 4 of the Act on Copyright and Related Rights.
4. Together with the intellectual property rights, the Contracting Authority shall be granted a permission to exercise the dependent rights to the software in question together with the right to permit the exercise of dependent rights by third parties.

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

### **§ 12. Personal data**

1. The Contracting Authority shall fulfil, on behalf of the Contractor, the information obligation concerning personal data processing towards its designated contact persons for the realisation of the Agreement, within 14 days from the conclusion hereof.
2. The Contractor shall fulfil, on behalf of the Contracting Authority, the information obligation concerning personal data processing towards its designated contact persons for the realisation of the Agreement, within 14 days from the conclusion hereof.
3. The information obligation results from the provisions of Art. 14 of the Regulation of the European Parliament and the Council (EU) 2016/679 of the 27.04.2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation).

4. **The Contractor shall fulfil the information obligation concerning the Information Clause specified below towards the persons designated by third parties for the purposes of contact or the realisation of the Agreement concluded with Łukasiewicz Research Network – Institute of Microelectronics and Photonics.**

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

- 1) the controller of your personal data is Łukasiewicz Research Network – Institute of Microelectronics and Photonics in Warsaw, 32/46 Lotników, Avenue 02-668 Warsaw;
- 2) in cases related to your personal data, please contact the Data Protection Inspector, e-mail address: [iod@imif.lukasiewicz.gov.pl](mailto:iod@imif.lukasiewicz.gov.pl)
- 3) Your personal data will be processed only for the purposes of the realisation of this Agreement, pursuant to Art. 6, item 1 (f) of the General Data Processing Regulation of April 27, 2016;
- 4) the data controller shall process the following personal data: first name and surname, e-mail, telephone number;
- 5) Your personal data will be stored until the expiry of the mutual claims between the parties to the Agreement;
- 6) Your personal data will not be transferred to third-party recipients;
- 7) you have the right to demand the data controller to enable you to access your personal data, the right to rectify, erase or limit processing, and the right to raise objections against the processing of your data;
- 8) you have the right to file a complaint to the supervisory authority, i.e. the President of the Personal Data Protection Office, if you consider that your data are processed in violation of the personal data protection regulations.

### ***§ 13 Final provisions***

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

***The Contractor***

***The Contracting Authority***

**Appendix No. 8 – List of deliveries performed**

**Contractor:**

**Date:.....**

.....

.....

*(Full name/Company name, address)*

**LIST OF DELIVERIES PERFORMED**

By placing a bid in the procedure conducted as an open tender procedure, for the **delivery of electric prober** we hereby represent that during the period of three years preceding the date of placing bids (for a shorter period of business activity – during this period) we performed the following deliveries:

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

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

.....

Signature of persons authorised  
to represent the Contractor

**Contractors who jointly apply for a contract:**

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

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

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

in the procedure for awarding a public Contract for

.....

we declare that:

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

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

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

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

NOTE!

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

**STATEMENT REGARDING THE INFORMATION PROVIDED**

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

\* Delete as appropriate

.....  
place, date

.....  
signature of the Contractor