



**Łukasiewicz**

PORT

Polski Ośrodek

Rozwoju

Technologii

## **TERMS OF REFERENCE**

### **(ToR)**

in a public procurement procedure conducted under the basic procedure with the possibility of negotiating in order to improve the content of tenders, with the contract value not exceeding the EU thresholds provided for in Article 3 of the Act of 11 September 2019 - Public Procurement Law (consolidated text Journal of Laws of 2021, item 1129 as amended), hereinafter referred to as the 'PPL', the subject of which is:

### **"Supply of materials for epitaxy for Łukasiewicz – PORT, divided into 10 lots"**

**Case no.: PO.271.8.2022**

APPROVED BY:

## **PREAMBLE**

Expenses related to the procurement procedure will be incurred from the project funds of the following funding sources:

- 1) Project entitled "Van-der-GaN: Two-dimensional Van der Waals crystals on nitride semiconductors - optimised Schottky gate for UV detection" funded by the Łukasiewicz Centre under Contract no. 5/Ł-PORT/CŁ/2021.
- 2) Project entitled "High-performance AlGaN/GaN-HEMT transistors fabricated with hybrid MBE-MOVPE technology" financed from funds of Łukasiewicz Centre under the Contract no. 2/Ł-PORT/CŁ/2021.
- 3) Funds from the Narodowe Centrum Nauki (National Science Centre) according to decisions: DEC-2020/37/N/ST5/02278, DEC-2018/29/B/ST3/02731, DEC-2019/33/B/ST5/02941.

**March 2022**



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

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E-mail: [biuro@port.lukasiewicz.gov.pl](mailto:biuro@port.lukasiewicz.gov.pl) | NIP: 894 314 05 23, REGON: 386585168

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

National Court Register,

KRS No.: ..... 0000850580



**Łukasiewicz**

PORT  
Polski Ośrodek  
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## **1. Name and address of the Contracting Authority**

- 1.1. Sieć Badawcza Łukasiewicz – PORT Polski Ośrodek Rozwoju Technologii (Łukasiewicz Research Network – PORT Polish Centre for Technology Development) ul. Stabłowicka 147, 54-066 Wrocław
- 1.2. tel. +48 71 734 72 96
- 1.3. The address of the website on which the procedure is conducted and on which all documents relating to the procedure will be available:  
<https://platformazakupowa.pl/pn/port>
- 1.4. Email address:  
[marzena.krzyminska@port.lukasiewicz.gov.pl](mailto:marzena.krzyminska@port.lukasiewicz.gov.pl)
- 1.5. Office hours: working days Monday to Friday, 07:00 to 15:00, excluding public holidays.

## **2. Procedure for awarding the contract.**

- 2.1. This procedure is conducted under the basic procedure provided for in Article 275(2) of the Public Procurement Law and in accordance with the provisions of these Terms of Reference, hereinafter referred to as the "ToR".
- 2.2. The Contracting Authority envisages selecting the most advantageous tender with the possibility of negotiations.
- 2.3. Pursuant to Article 310(1) of the PPL, the Contracting Authority provides for the possibility of cancellation of this procedure if the public funds which the Contracting Authority intended to allocate for the financing of all or part of the contract have not been awarded thereto:
- 2.4. The Contracting Authority does not envisage an electronic auction.
- 2.5. The Contracting Authority does not envisage tender submission in the form of electronic catalogues or enclosing electronic catalogues with the tender.
- 2.6. The Contracting Authority does not permit the submission of variant tenders.
- 2.7. The Contracting Authority is not conducting proceedings with a view to concluding a framework contract.
- 2.8. The Contracting Authority does not reserve the right for Economic Operators referred to in Article 94 of the PPL to compete for the award of the contract.

## **3. Description of the subject-matter of the contract.**

- 3.1. The subject-matter of the contract is the supply of materials for epitaxy for Sieć Badawcza ŁUKASIEWICZ – PORT Polski Ośrodek Rozwoju Technologii (ŁUKASIEWICZ Research Network – PORT Polish



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Centre for Technology Development). The contract shall be executed in ten lots, namely:

- Lot 1: Sapphire wafer
- Lot 2: Sapphire/GaN wafer
- Lot 3: Sapphire/AlN wafer
- Lot 4: GaN wafer
- Lot 5: AlN wafer
- Lot 6 - SiC wafer
- Lot 7 - Compounds for MOCVD
- Lot 8 - Aluminium
- Lot 9 - Gallium
- Lot 10 - hBN, Graphene

- 3.3. A detailed description of the subject-matter of the contract, along with the Contracting Authority's requirements regarding the subject-matter of the contract, have been specified in Appendix 2.1 - 2.10 to the ToR - Quotation Form and in Appendix 3 to the ToR - Model Contract.
- 3.4. Name and code according to the Common Procurement Vocabulary (CPV):  
38000000-5 - Laboratory, optical and precision equipments (excl. glasses).
- 3.5. The Contracting Authority does not envisage awarding contracts referred to in Article 214(1)(8) of the PPL.
- 3.6. The Contracting Authority permits the submission of tenders for lots.
- 3.7. The contract consists of ten lots, described in detail in Appendix 2.1 - 2.10 to the ToR - Quotation Form.
- 3.8. Each lot of the contract shall be considered separately.
- 3.9. The Economic Operator may submit a tender for any lot it chooses. The Contracting Authority does not limit the number of lots for which one Economic Operator may submit a tender.
- 3.10. **Information on evidence relating to the subject-matter of the contract.**

The Contracting Authority does not require the evidence relating to the subject-matter of the contract to be submitted.

#### 4. Contract completion date.

The contract completion deadline for lots 1 - 10 is maximum 60 working days, counted from the date of concluding the Contract (the number of days shall be defined by the Economic Operator in the tender).



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

5.1. Eligible to compete for the contract shall be Economic Operators which are not subject to exclusion pursuant to section 6 of the ToR, and which meet the conditions for participation in the procedure defined by the Contracting Authority.

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

**1) Trading capacity:**

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

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

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

**3) economic or financial standing:**

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

**4) technical or professional capacity:**

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

## **6. Grounds for exclusion from the procedure.**

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

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

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

## **7. Statements and documents to be provided by Economic Operators to prove the absence of grounds for exclusion (qualitative evidence).**

7.1. The Economic Operator shall attach to its tender a statement, referred to in Article 125(1) of the PPL, of absence of grounds for exclusion - according to **Appendix 4 to the ToR**.

7.2. The information contained in the statement referred to in section 7.1. constitutes proof of the absence of grounds for exclusion, temporarily



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replacing the qualitative evidence required by the Contracting Authority.

7.3. The Contracting Authority shall call upon the Economic Operator whose tender has been awarded the highest score to submit, within a time limit which shall not be shorter than 5 days from the date of the call, the qualitative evidence if it was required to be submitted in the contract notice or the contract documents, valid as at the date of submission of the qualitative evidence.

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

- 1) statement of the Economic Operator, within the scope of Article 108(1)(5) of the PPL Act, on not being a member of the same capital group within the meaning of the Act of 16 February 2007 on competition and consumer protection (Journal of Laws of 2021, item 275 the consolidated text) with another Economic Operator which has submitted a separate tender, a tender for lots or a request to participate in the procedure, or a statement of belonging to the same capital group together with documents or information confirming preparation of a tender, a tender for lots or a request to participate in the procedure independently of another Economic Operator belonging to the same capital group - a model statement is attached as Appendix 4 to the ToR.

7.5. The Economic Operator shall not be required to submit the qualitative evidence which the Contracting Authority holds, provided that the Economic Operator indicates this evidence and confirms that it is correct and up-to-date.

7.6. In the scope not regulated by the PPL or these ToR, the statements and documents submitted by the Economic Operator in the procedure shall be subject in particular to the provisions of the Regulation of the Minister of Labour and Technology Development of 23 December 2020 on the qualitative evidence and other documents or statements which may be demanded by the Contracting Authority from the Economic Operator and the Regulation of the Prime Minister of 30 December 2020 on the method of preparing and submitting information and technical requirements for electronic documents and means of electronic communication in a public procurement procedure or competition.

## **8. Relying on the resources of other entities.**

Not applicable.



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## 9. Information for Economic Operators jointly competing for the contract (consortia).

- 9.1. Economic Operators may jointly compete for the contract. In such a case Economic Operators shall appoint a proxy to represent them in the proceedings or to represent them and conclude the public procurement contract. The power of attorney shall be attached to the tender.
- 9.2. In the case of Economic Operators competing jointly for the contract, the statements referred to in section 7.1 of the ToR shall be submitted by each of them. These statements shall confirm the absence of grounds for exclusion.

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

- 10.1 Communication in the procurement procedure and in a competition, including submission of tenders, requests to participate in the procedure or competition, exchange of information and transfer of documents or statements between the Contracting Authority and the Economic Operator, subject to the exceptions provided for in the PPL, shall be carried out via electronic communication means. Electronic communication means shall mean electronic communication means as defined in the Act of 18 July 2002 on the provision of services by electronic means (Journal of Laws of 2019, item 123 and 730).
- 10.2 The tender, statements referred to in Article 125(1) of the PPL, the qualitative evidence, powers of attorney, the commitment of the entity sharing the resources shall be prepared in an electronic form, in generally available data formats, in particular in .txt, .rtf, .pdf, .doc, .docx, .odt formats. **The tender, as well as the statement referred to in section 7.1 of the ToR shall be submitted, under pain of invalidity, in an electronic form or in an electronic format bearing a trusted signature or a personal electronic signature.**
- 10.3 Qualified signatures used by Economic Operators to sign any files must comply with the "Regulation (EU) no. 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market (eIDAS) - from 1 July 2016".
- 10.4 If the XAdES external signature format is used, the Contracting Authority requires the inclusion of the appropriate number of files, i.e. signed data files and signature files in XAdES format.
- 10.5 Communication between the Economic Operator and the Contracting Authority as well as transfer of information, statements, requests, notices and documents shall take place via electronic communication means. Communication between the Contracting Authority and Economic Operators, including all statements, requests, notices and



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information shall be transmitted electronically via the Platform and the 'Send a message' form available at <https://platformazakupowa.pl/pn/port> or by e-mail to the Contracting Authority address indicated in section 10.6 of the ToR.

10.6 Persons authorised by the Contracting Authority to contact Economic Operator: for tender documentation: Ms Marzena Krzymińska: [marzena.krzyminska@port.lukasiewicz.gov.pl](mailto:marzena.krzyminska@port.lukasiewicz.gov.pl).

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

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

- 1) permanent access to the Internet with a guaranteed bandwidth of not less than 512 kb/s;
- 2) PC or MAC computer with the following configuration: min. 2 GB Ram, processor Intel IV 2 GHZ or its newer version, one of the operating systems - MS Windows 7, Mac Os x 10 4, Linux, or their newer versions,
- 3) any web browser installed, in the case of Internet Explorer at least version 10.0,
- 4) JavaScript enabled,
- 5) Adobe Acrobat Reader or other software supporting .pdf file format installed.
- 6) Encryption at <https://platformazakupowa.pl> is using TLS 1.3 protocol.
- 7) Indication of data reception time by the purchasing platform is the date and the exact time (hh:mm:ss) generated according to the local time of the server synchronised with the clock of the Central Office of Measures.
- 8) The maximum size of one file sent via dedicated forms for: submission, modification, withdrawal of a tender is 150MB, while for communication the file size is maximum 500 MB.

10.9 By entering into this public procurement procedure, the Economic Operator:

- 1) accepts the terms and conditions of using [platformazakupowa.pl](https://platformazakupowa.pl) as defined in the regulations placed on the website under the [link](#) in the 'Regulations' tab and acknowledges them as binding;
- 2) has read and follows the Instructions for Submission of Tenders/Applications available at the [link](#).

10.10 **The Contracting Authority shall not be liable for submission of a tender in a manner contrary to the instructions for use of <https://platformazakupowa.pl>**, in particular for a situation where the Contracting Authority reads the content of the tender before the



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time limit for submission of tenders (e.g. submission of a tender in the 'Send a message to the Contracting Authority' tab). Such a tender shall be considered by the Contracting Authority as a commercial offer and shall not be taken into account in the proceedings, because an obligation imposed in Article 221 of the Public Procurement Law has not been met.

- 10.11 The Contracting Authority informs that the instructions for use of [platformazakupowa.pl](https://platformazakupowa.pl) regarding in particular logging in, submitting requests for clarification of the content of the ToR, submitting tenders and other activities undertaken in this procedure using [platformazakupowa.pl](https://platformazakupowa.pl) can be found in the 'Instructions for Economic Operators' tab on the website at: <https://platformazakupowa.pl/strona/45-instrukcje>.
- 10.12 In correspondence addressed via e-mail to the Contracting Authority, Economic Operators should use the case number of the procedure. All notices, statements, requests and information submitted by e-mail shall require immediate confirmation of their receipt at the request of each party. If the receipt of correspondence sent by e-mail is not confirmed, the report confirming the sending of the e-mail shall be deemed to be the confirmation of delivery.
- 10.13 The Economic Operator may request the Contracting Authority for clarification of the content of the ToR.
- 10.14 The Contracting Authority shall be obliged to provide explanations immediately, however no later than 2 days before the time limit for submission of tenders, provided that the request for clarification of the content of the ToR was received by the Contracting Authority no later than 4 days before the time limit for submission of tenders.
- 10.15 If the Contracting Authority fails to provide explanations within the time limit referred to in section 10.14, the Contracting Authority shall extend the time limit for submission of tenders by the time necessary for all interested Economic Operators to become familiar with the explanations necessary for proper preparation and submission of tenders. If a request for clarification of the content of the ToR was not received within the time limit referred to in section 10.14, the Contracting Authority shall not be obliged to provide explanations to the ToR or to extend the time limit for submission of tenders.
- 10.16 Extension of the time limit for submission of tenders referred to in section 10.15 shall not affect the time limit for submitting requests for clarification of the content of the ToR.
- 10.17 The Contracting Authority shall make the text of the queries along with the explanations available on the platform of the conducted procedure under the link <https://platformazakupowa.pl/pn/port>, without revealing the source of the query.
- 10.18 The Contracting Authority does not intend to convene a meeting of Economic Operators.

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



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- 11.1 The Economic Operator may submit only one tender for each freely selected lot of the procedure. If an Economic Operator submits more than one tender for a lot of the procedure of its choice, all tenders submitted thereby for that part shall be rejected.
- 11.2 The procedure shall be conducted in Polish and in English. The Contracting Authority agrees to the submission of the tender and other documents in Polish or English. Documents written in a foreign language (other than English) shall be submitted together with their translation into Polish.
- 11.3 The content of the tender must correspond to the subject-matter of the contract.
- 11.4 A tender must be signed by persons authorised to represent the Economic Operator (Economic Operators competing jointly for the award of the contract).
- 11.5 The authorisation of the persons signing a tender to sign it must be evident from the appropriate register. This means that if such authorisation does not directly come from the appropriate register stating the legal status of the Economic Operator, the tender must be accompanied with a power of attorney.
- 11.6 The tender and other statements and documents for which the Contracting Authority has prepared the templates in the form of model forms included in the appendices to the ToR should be drawn up in accordance with these templates in terms of the content and description of columns and lines.
- 11.7 If the tender contains information that constitutes a business secret within the meaning of the Act of 16 April 1993 on combating unfair competition (Journal of Laws of 2019, item 1010 and 1649), the Economic Operator shall, along with the submission of such information, stipulate that it may not be made available and shall demonstrate that the reserved information constitutes a business secret.
- 11.8 All costs related to the preparation and submission of the tender shall be borne by the Economic Operator.

**11.9 The tender shall contain:**

- 1) A completed and signed Tender Form - the model form is attached as Appendix 1 to the ToR.
- 2) Completed and signed Quotation Form (for the lot the Economic Operator is submitting a tender for) - the model form is attached as Appendix 2.1-2.10 to the ToR.
- 3) Completed and signed statement referred to in section 7.1. of the ToR - a model statement is attached as Appendix 4 to the ToR.
- 4) In order to confirm that the person acting on behalf of the Economic Operator is authorised to represent it, the Contracting Authority requires from the Economic Operator a copy or information from the



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National Court Register, Central Register and Information on Business Activity or other relevant register.

*The Economic Operator shall not be obliged to submit the documents referred to in sentence 2 if the Contracting Authority can obtain them using free and publicly available databases, provided that the Economic Operator has indicated the data enabling access to such documents.*

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

## **12. Price calculation method**

- 12.1 The Economic Operator shall indicate in the Tender Form the net price, the VAT rate and the gross tender price calculated on the basis of the Quotation Form attached as Appendix 2.1-2.10 to the ToR.
- 12.2 The tender price for a given lot is the gross price indicated in the Tender Form for a given lot in the scope defined in Appendix 2.1 - 2.10 to ToR respectively.
- 12.3 The tender price for each lot of the contract should include all costs necessary to execute the contract, resulting from the content of this ToR and appendices thereto. The price given in the Tender Form and in the Quotation Form must include all costs to be borne by the Economic Operator in respect of performance of the subject matter of the contract in due manner and in compliance with applicable regulations, in the scope of a given lot of the contract.
- 12.4 The tender price for the selected lot(s) indicated in the Tender Form, as well as the prices indicated in the Quotation Form for the selected lot(s), should be given in PLN, EUR or USD. Should the Economic Operator fail to specify the accounting currency in its tender, the tender shall be subject to rejection on the basis of Article 226(1)(5) of the PPL. The net value and the gross tender price must be given in figures, to two decimal places, observing the mathematical rule of rounding numbers (they should be rounded so that digits from 1 to 4 are rounded down, while digits from 5 to 9 are rounded up).
- 12.5 Should the selection of the submitted tender result in a tax liability on the Contracting Authority in accordance with the Act of 11 March 2004 on tax on goods and services (Journal of Laws of 2018, item 2174, as amended), for the purpose of applying the price criterion, the Contracting Authority shall add to the price presented in that tender the amount of tax on goods and services which it would be obliged to settle. In the tender, the Economic Operator is obliged to:
  - 1) inform the Contracting Authority that the selection of its tender will result in the tax liability for the Contracting Authority;



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- 2) indicate the name (type) of the goods or services whose delivery or provision shall result in the tax liability;
  - 3) indicate the value of the goods or services subject to the Contracting Authority's tax liability, without the amount of the tax;
  - 4) indicate the VAT rate which, to the Economic Operator's knowledge, will apply.
- 12.6 The Contracting Authority does not envisage granting an advance payment for the execution of the public contract (concerns lots 1 - 10).

### **13. Requirements concerning tendering security.**

The Contracting Authority does not require any tendering security.

### **14. Tender validity period.**

- 14.1 The Economic Operator shall be bound by its tender for 30 days, i.e. by 13.04.2022. The period, during which the Economic Operator must maintain its tender, shall commence with the expiry of the time limit for submission of tenders.
- 14.2 If the most advantageous tender is not selected before the expiry of tender validity period defined in section 14.1 of the ToR, the Contracting Authority, before the expiry of the tender validity period, shall ask the Economic Operators once to agree to extend that period by a period specified by the Contracting Authority, not longer than 30 days. The extension of the tender validity period requires the Economic Operator to submit a written statement of consent to extend the tender validity period.

### **15. Manner and date of the submission and of the opening of tenders.**

- 15.1. The tender together with the required documents should be placed on the Platform at the following address: <https://platformazakupowa.pl/pn/port> on the website of the procedure until 15.03.2022 by 11:00 a.m.
- 15.2. After completing the tender submission form and uploading all required attachments, click the 'proceed to summary' button.
- 15.3. The date on which the tender is submitted shall be the date on which it is transmitted to the system (platform) in the second step of the tender submission by clicking the 'Submit tender' button, after a message is displayed that the tender has been encrypted and submitted.
- 15.4. Detailed instructions for Economic Operators on how to submit, amend and withdraw a tender can be found on the website at: <https://platformazakupowa.pl/strona/45-instrukcje>



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15.5. Tenders shall be opened on 15.03.2022 at 11:30 a.m.

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

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

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

The information shall be published on the website of the procedure at [platformazakupowa.pl](https://platformazakupowa.pl) in the 'Communications' section.

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

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

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

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

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

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

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

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

lowest gross price\*

Number of points = ----- x 100 points x weight of the criterion

gross price of the evaluated tender

\*of all the submitted tenders not subject to rejection

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

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

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



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

No. of lot	Offered delivery time in working days	Number of points to be awarded to the Economic Operator
1 - 10	1 - 30 days	20 points
	31 - 45 days	5 points
	46 - 60 days	0 points

- The delivery time must be given in full days and may not be longer than: 60 working days (for lots 1-10), counting from the date of award of the contract (conclusion of the Contract). The working days used for the purpose of this ToR shall be understood as days from Monday to Friday excluding public holidays.
- Should an Economic Operator offer a delivery time longer for a given lot than the one indicated in the above item, the Economic Operator's tender shall be subject to rejection pursuant to Article 226(1)(5) of the PPL.
- If the content of the Economic Operator's tender does not indicate the delivery time offered by the Economic Operator, the Economic Operator's tender shall be subject to rejection pursuant to Article 226(1)(5) of the PPL.
- Information regarding criterion 2 should be given by the Economic Operator at the place indicated in the Tender Form for a given lot.
- A maximum of 20.00 points can be obtained for criterion 2.

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

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

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



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- the criterion of the highest weighting (this refers to the situation when more than one criterion had been defined).
- 16.8. If tenders have received the same score for the criterion of highest weighting, the Contracting Authority shall choose the tender with the lowest price.
- 16.9. If it is not possible to select a tender in the manner referred to in section 16.6 of the ToR, the Contracting Authority shall invite the Economic Operators who have submitted those tenders to submit additional tenders containing a new price within the time limit set by the Contracting Authority.
- 16.10. When submitting additional tenders Economic Operators may not submit tenders with higher prices than those submitted in their previously submitted tenders.

## **17. Conducting the procedure together with negotiations.**

- 17.1. The Contracting Authority shall exercise its right pursuant to Article 288(1) of the PPL to limit the number of Economic Operators it invites to negotiate tenders.
- 17.2. Should the decision be taken to conduct negotiations, the Contracting Authority, acting pursuant to Article 288(1) of the Public Procurement Law, shall limit the number of Economic Operators invited to negotiations to three, whose tenders satisfy to the highest extent those criteria.
- 17.3. The Contracting Authority may conduct negotiations for all lots or any selected lots. In the case of a decision to conduct negotiations in the first step, the Contracting Authority shall simultaneously inform all Economic Operators who have submitted tenders of the Economic Operators:
- 1) whose tenders have not been rejected, and the score awarded to tenders in each tender evaluation criterion and the total score,
  - 2) whose tenders have been rejected.
  - 3) who were not qualified for negotiations and the scores awarded to their tenders in each tender evaluation criterion and the total score, in the case referred to in Article 288(1) of the PPL
- providing factual and legal grounds.
- 17.4. The tender of an Economic Operator not invited to negotiations shall be deemed rejected.
- 17.5. If the number of Economic Operators who in response to the contract notice have submitted tenders not subject to rejection is lower than 3, the Contracting Authority in the case referred to in Article 275(2) of PPL shall continue the procedure.



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- 17.6. In the invitation to negotiate, the Contracting Authority shall indicate the place, time and manner in which the negotiations will be carried out, as well as the criteria for evaluating the tenders, with a view to improving the content of the tenders
- 17.7. The negotiations shall be confidential. Without the other party's consent, neither party may disclose any technical nor business information connected with the negotiations. Consent shall be given in relation to specific information and prior to its disclosure.
- 17.8. When negotiations with all Economic Operators have been completed, the Contracting Authority shall inform the participants in the negotiations and invite them to submit additional tenders.
- 17.9. The invitation to submit additional tenders shall include at least:
- 1) the name and address of the Contracting Authority, telephone number, e-mail address and website of the procedure;
  - 2) the manner and time limit for submitting additional tenders and the language or languages in which they must be drawn up, as well as the time limit for opening such tenders.
- 17.10. The Economic Operator may submit an additional tender which contains new proposals for the content of the tender to be evaluated within the tender evaluation criteria indicated by the Contracting Authority in the invitation to negotiate.
- 17.11. The additional tender may not be less favourable in any of the tender evaluation criteria indicated in the invitation to negotiate than the tender submitted in response to the contract notice.
- 17.12. The tender shall cease to bind the Economic Operator to the extent that it submits an additional tender containing more favourable proposals under each of the tender evaluation criteria indicated in the invitation to negotiate.
- 17.13. The additional tender which is less favourable in any of the tender evaluation criteria indicated in the invitation to negotiate than the tender submitted in response to the contract notice shall be rejected.

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

- 18.1. The Contract shall be concluded in accordance with the deadlines laid down in Article 308 (2) and (3) of the PPL.
- 18.2. Before signing the Contract, the Economic Operator whose tender has been selected as the most advantageous shall submit to the Contracting Authority, if the tender of Economic Operators jointly competing for the contract is selected, the contract governing cooperation of these Economic Operators in the form of an original or a copy certified as a true copy by the Economic Operator. Failure to



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

**19. Requirements concerning security on due performance of the Contract.**

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

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

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

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

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

**21. Subcontracting.**

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

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

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

**22. On-site visit.**

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

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



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

## **24. Instructions on the legal remedies available to the Economic Operators.**

- 24.1. The Economic Operator, participant in the competition or other entity shall be entitled to legal remedies if it has or has had an interest in being awarded the contract and has suffered or may suffer damage as a result of breach of the provisions of the PPL by the Contracting Authority.
- 24.2. Legal remedies against the contract notice initiating the procurement procedure and against the contract documents shall also be available to organisations on the list referred to in Article 469(1)5 of the PPL and to the Ombudsman for Small and Medium Enterprises.
- 24.3. An appeal can be filed against:
  - 1) Contracting Authority's action, non-compliant with the provisions of the Act, taken in the course of the procurement procedure, including the proposed provisions of the public Contract;
  - 2) failure to act in the procurement procedure, to which the Contracting Authority was obliged under the PPL.
- 24.4. The appeal shall be lodged with the President of the Chamber. The appellant shall submit a copy of the appeal to the Contracting Authority before the expiry of the final date for the lodging of an appeal in such a way that the Contracting Authority can acquaint itself with the content of the appeal before that deadline expires.
- 24.5. The appeal against the content of the contract notice or the content of the ToR must be lodged within 5 days of the date of placing the notice in the Public Procurement Bulletin or the content of the ToR on the website.
- 24.6. The appeal shall be lodged within:
  - 1) 5 days from the date of transmitting the information about the Contracting Authority's activities providing the grounds for its lodging, if the information was transmitted by means of electronic communication,
  - 2) 10 days from the date of transmission of information on the Contracting Authority's activities providing the grounds for its lodging, if the information was transmitted in a manner other than that specified in point 1).



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- 24.7. In cases other than those referred to in sections 24.5 and 24.6 the appeal shall be lodged within 5 days from the day of becoming aware, or, acting with due diligence, one could have become aware of the circumstances providing grounds for its lodging.
- 24.8. The parties and participants of the appeal proceedings shall have the right to lodge a complaint with the court against the ruling of the Chamber and the decision of the President of the Chamber referred to in Article 519(1) of the PPL.
- 24.9. Appropriate provisions of the Code of Civil Procedure of 17 November 1964 concerning appeals shall apply accordingly to procedures pending as a result of a lodged petition, unless the provisions of this Chapter provide otherwise.
- 24.10. The complaint shall be filed with the Regional Court in Warsaw - Court of Public Procurement, hereinafter referred to as the Court of Public Procurement.
- 24.11. The complaint shall be lodged through the President of the Chamber, within 14 days of the day of delivery of the Chamber's ruling or the President's decision referred to in Article 519(1) of the PPL, sending at the same time its copy to the complaint's opponent. Lodging a complaint at a post office of a designated operator within the meaning of the Act of 23 November 2012 - Postal Law is equivalent to filing a complaint.
- 24.12. The President of the Chamber shall deliver the complaint together with the files of the appeal procedure to the competent public procurement court within not more than 7 days from the date of its receipt.

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

Detailed information is provided in Appendix 6 to the ToR.

## **26. List of appendices.**

Appendix 1 – Tender form

Appendix 2.1 - 2.10 Quotation Form

Appendix 3 - Model Contract

Appendix 4 - Economic Operator's statement pursuant to Article 125(1) of the PPL

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

Appendix 6 – GDPR Information Clause



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