

**CONTRACTING AUTHORITY:**

Ministry of National Defence  
Al. Niepodległości 218  
00-911 Warsaw  
Poland

**on behalf of and for whom acts:**

Polish Support and Administration Section Brunssum  
Rimbürgerweg 30  
6445 PA Brunssum  
The Netherlands

**TERMS OF REFERENCE  
(TOR)**

in a procedure for awarding a public contract with a value of less than the PLN equivalent of  
140 000 EUR, conducted under the non-negotiation basic procedure

**for transport services of children of Polish soldiers serving in Brunssum garrison  
to the United World College international school in Maastricht  
and transport of soldiers to the shooting range in Weert.**

The value of the contract does not exceed the EU thresholds referred to in Article 3 of the  
Public Procurement Law of September 11, 2019 (Journal of Laws 2021, item 1129, as  
amended), hereinafter referred to as the "PPL".

**CASE NUMBER: 17/ZP/22**

**APPROVED:**

**CWO Sławomir PRZYBYSZEWSKI**  
/ - /  
**27.07.2022 r.**

CASE NUMBER: 17/ZP/22

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**Chapter 1: Name and address of the contracting authority, telephone number, e-mail address and website of the procedure conducted.**

Polish Support and Administration Section Brunssum

Rimburgerweg 30

6445 PA Brunssum

The Netherlands

Telephone number: 0031 (0) 45 526 2867

E-mail address: [wag.pnpw.brunssum@ron.mil.pl](mailto:wag.pnpw.brunssum@ron.mil.pl)

Website address of the proceedings: [platformazakupowa.pl/pn/damon](http://platformazakupowa.pl/pn/damon)

**Chapter 2 Address of the website on which amendments and clarifications to the content of the ToR and other procurement documents directly related to the contract award procedure will be made available.**

Website: [platformazakupowa.pl/pn/damon](http://platformazakupowa.pl/pn/damon)

**Chapter 3 Protection of personal data.**

1. In accordance with Article 13(1) and (2) of 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 related to the processing of personal data and on the free flow of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Official Journal of the EU L 119 of 4 May 2016 p. 1) hereinafter referred to as "GDPR", the contracting authority informs the contractor that:
  - 1) the administrator of the personal data is the Minister of National Defence/Ministry of National Defence with their/its seat in Warsaw, at Al. Niepodległości 218, phone +48 22 628 00 31;
  - 2) the controller has appointed a Data Protection Officer who can be contacted by e-mail at: [iod@mon.gov.pl](mailto:iod@mon.gov.pl) or by post at the following address: Ministry of Defence, Al. Niepodległości 218, 00-911 Warsaw, marked "Data Protection Officer";
  - 3) personal data will be processed for the purpose of carrying out this public procurement procedure and concluding the contract, pursuant to Article 6(1)(b) and (c) of the GDPR;
  - 4) personal data may be transferred to entities processing personal data upon order of the administrator, as well as to persons or entities to whom documentation of the proceedings will be made available pursuant to Article 18 and Article 74 of PPL;
  - 5) personal data will not be transferred to a third country or international organisation;
  - 6) personal data obtained in connection with the proceedings will be stored for a period of 5 years from the date of completion of the contract award procedure, and if the duration of the contract exceeds 5 years, the storage period shall cover the entire contract duration;
  - 7) with regard to the personal data of persons participating in the proceedings in question, decisions will not be taken by automated means, pursuant to Article 22 of the GDPR;
  - 8) the data subject has the right to:
    - (a) access to personal data;
    - (b) request that they be corrected or supplemented, provided that the exercise of the right of correction or supplementation may not have the effect of changing the outcome of the public procurement procedure or changing the provisions of the

- public procurement contract to an extent contrary to PPL, or affect the integrity of the minutes and their annexes;
- (c) restrict processing, subject to the cases referred to in Article 18(2) of the GDPR, whereby the right to restrict processing shall not apply in relation to storage, in order to ensure the exercise of legal remedies or to protect the rights of another natural or legal person, or on important grounds of public interest of the European Union or of a Member State, and shall not restrict processing of personal data until the end of the procurement procedure;
  - d) the right to lodge a complaint with the President of the Office for Personal Data Protection (address: 00-193 Warsaw, ul. Stawki 2);
- 9) the data subject shall not be entitled to:
- (a) in relation to Article 17(3)(b), (d) or (e) of the GDPR, the right to erasure of personal data;
  - (b) the right to the portability of personal data as referred to in Article 20 of the GDPR;
  - (c) pursuant to Article 21 of the GDPR, the right to object to the processing of personal data, as the legal basis for the processing of personal data is Article 6(1)(c) of the GDPR;
- 10) the obligation for the contractor to provide personal data directly concerning them and personal data of persons participating in the proceedings is a requirement laid down in the provisions of PPL, related to participation in the procurement procedure; consequences of failure to provide certain data result from PPL.
2. When applying for the award of the contract, the contractor is obliged to comply with all formal and legal obligations related to participation in the procedure, including the obligations arising from the GDPR. In connection with the above, an contractor is obliged to submit in the contract award procedure a statement about fulfilling their information obligations provided for in Article 13 or Article 14 of GDPR, according to the contents included in Annex No. 1 to the ToR.
3. The subcontractor is obliged, when acquiring personal data for the purposes of this procurement procedure, to comply with the information obligations under the GDPR in relation to natural persons to whom the personal data relates and from whom the data is directly obtained.
4. The above provisions concern personal data of natural persons, directly obtained from them, and in particular personal data of:
- 1) a contractor who is a natural person;
  - 2) a contractor being a natural person running a sole proprietorship;
  - 3) a proxy of the contractor who is a natural person (e.g. personal data included in the power of attorney);
  - 4) a member of the managing body of the contractor, being a natural person.

#### **Chapter 4 Award procedure.**

1. The contract award procedure shall be conducted under the basic procedure pursuant to Article 275(1) of PPL and executive acts issued on its basis.
2. To the extent not regulated in the ToR, provisions of PPL and executive acts issued on its basis shall apply.

#### **Chapter 5 Information on whether the contracting authority provides for the selection of the most advantageous tender with the possibility of negotiations.**

The contracting authority provides for selection of the most advantageous offer without holding negotiations - pursuant to Article 275(1) of PPL.

## **Chapter 6 Description of the subject matter of the contract.**

The subject of the contract is the provision of transport services for children by bus with a driver during the school year 2022/23 and two trips with Polish soldiers to the shooting range.

The children will be transported on the following route: collecting point at HQ JFC Brunssum, Netherlands - United World College Maastricht (UWC Maastricht), Netherlands - collecting point at HQ JFC Brunssum, Netherlands, supervised by an adult designated by the client. The transport of soldiers will take place between Brunssum, the Netherlands, and the firing range at Weert, Netherlands.

### **Carriage of children**

On school days, as specified by the client, the bus will make journeys according to the following schedule:

1. Morning drive:
  - a) departure from the children assembly point in Brunssum (car park inside JFC HQ Brunssum: Rimbürgerweg 30, 6445 PA Brunssum or another location in Brunssum indicated by the ordering party) at 7.15 a.m.; the departure time may change if the additional stop in the town of Hoensbroek is cancelled, of which the ordering party will notify the contractor at least two days in advance;
  - b) the bus stop in Hoensbroek (car park at the sports ground Frederikstraat 50, 6433 GL Hoensbroek or other place in Hoensbroek indicated by the contracting authority) at 7.25 a.m., bus departure at 7.30 a.m. the bus stop in Hoensbroek may not be necessary; in this case, the client will inform the contractor at least two days in advance or indicate another stop, the location of which will not lengthen the route of the bus;
  - c) arrival at the UWC Maastricht School (Discusworp 65, 6225 XP Maastricht): no later than 10 minutes before the start of the school day;
  - d) departure with supervisor of children from Maastricht to Brunssum at 8.20 a.m., to the place referred to in point (a).
2. Afternoon drive:
  - a) departure from Brunssum, from the place described in point 1(a), with a supervisor for the children, at 14.20;
  - b) arrival at UWC Maastricht School no later than 15.00, at the place specified in point 1(c), to collect the children;
  - c) departure from Maastricht to Brunssum, at the point indicated in point 1(a), with a stop at the place indicated in point 1(b), at 15.30;
  - d) at least 8 days per school year (days to be determined by the client) pick-up and drop-off of children from Maastricht to Brunssum will take place at 12.20 due to the earlier end of lessons.
3. Noon drive (only on Fridays during school days or on other days determined by the contracting authority):
  - a) departure from Brunssum, from the place described in point 1(a), together with the person supervising the children, at 11.10 a.m.;
  - b) arrival at UWC Maastricht no later than 12.00 noon, at the place specified under point 1(c), to collect the children;
  - c) departure from Maastricht to Brunssum, at the place referred to in point 1(a), with a stop at the place referred to in point 1(b), at 12.20.

## **Transport of soldiers**

In order to carry out shooting training, on one day in the fourth quarter of 2021 and another day in the second quarter of 2022, determined exactly by the ordering party in consultation with the administrator of the shooting range, given to the contractor within 30 days in advance, the bus will make the journey with soldiers according to the following scheme:

- d) departure from the meeting point: the car park at the JFC HQ Brunssum, Rimbungerweg 30, 6445 PA Brunssum or another place indicated by the ordering party in Brunssum at 08.30 a.m.;
- e) arrival at the shooting range in Weert, address: Kuikensvendijk 5, 6002 SR Weert no later than 9.30 a.m.;
- f) departure from the shooting range after the class at 14.00;
- g) arrival at JFC HQ Brunssum, at the place specified in point (a), at 15.00.

## **Additional requirements**

1. The contractor must be in possession of valid third party liability insurance and personal accident insurance in accordance with Dutch law (and the Directive of the European Parliament and of the Council on insurance against civil liability in respect of the use of motor vehicles and the enforcement of the obligation to insure against such liability) in respect of their business activities relating to the subject matter of the contract. In case of signing the contract, at the request of the contracting authority, the contractor will have to present for inspection a copy of concluded insurance within 7 days of receiving the contracting authority.
2. The contractor must be in possession of necessary qualifications, insurance, and licenses for transport services, authorizing them to transport passengers which are subjects to presentation at the Polish Support and Administration Section Brunssum within 2 days from the date of conclusion of the contract. In particular the license for transport services, authorizing them to transport passengers within the Netherlands. The contractor shall provide a true certified copy of the document.
3. The contracting authority requires that a bus meets the conditions listed below:
  - technically sound with up-to-date technical inspection;
  - has at least 50 seats, equipped with safety belts;
  - meets the emission standards applicable in the Netherlands on the route JFC Brunssum - UWC Maastricht.
  - has adequate signage indicating that children are being transported
  - the door control system shall eliminate the possibility of accidental opening of the doors while the vehicle is in motion; the doors shall incorporate an occupant restraint system;
  - air-conditioned;
  - equipped with fire-fighting and first-aid equipment in conspicuous and readily accessible places in a number appropriate to the number of persons carried;
  - has emergency exits that should not be difficult to access;
  - maintained in impeccable sanitary and hygienic conditions;
  - suitable for transporting children from 5 to 18 years of age, as well as adults;
  - in the event of breakdown of the bus, the service provider is responsible for arranging replacement transport, which must meet the same requirements as above.

4. The contracting authority requires that a bus driver meets the conditions listed below:

- the driver must have a category D driving license and at least 2 years' experience of driving a bus;
- the driver must have an employment contract;
- the driver must be able to communicate in English.

The description of the subject matter of the contract is also contained in Annex No. 3 to the ToR draft provisions of the contract.

**Main subject of the contract:** 60172000 – 4

**Chapter 7 Description of parts of the contract.**

1. The contracting authority does not allow partial bids.
2. Reasons for not dividing the contract into lots (Article 91(2) of PPL).

The subject of the contract is one task, i.e. the provision of transport services for children by bus with a driver in the school year 2022/2023 and two trips with Polish soldiers to the shooting range. The division of the contract by entrusting the execution of individual tasks (journeys) to different entities would result in an excessive increase in the costs of performing the contract, as the execution of similar activities, at the same time, would involve different contractors and additional people.

The lack of division into lots does not restrict competition and ensures equal access for small and medium-sized enterprises.

**Chapter 8 Information on variant tenders.**

The contracting authority does not allow for the possibility of submitting a variant offer.

**Chapter 9 Term of the contract.**

The Contractor shall be obliged to complete the subject matter of the contract within the period **from the date of conclusion of the contract to 13.07.2023.**

**Chapter 10 Draft provisions of the public procurement contract to be introduced into the content of the contract.**

The draft provisions of the public procurement contract to be introduced into the content of the contract are set out in Annex No. 3 to the ToR.

**Chapter 11 Information on the means of electronic communication, by which the contracting authority will communicate with contractors, as well as information on the technical and organisational requirements for drafting, sending and receiving electronic correspondence.**

1. **Communication** between the contracting authority and contractors shall take place **exclusively by means of electronic communication via a purchasing platform**, hereinafter referred to as "the purchasing platform".
2. The term "**procurement platform**" shall be understood as a computer application/programme designed for the implementation of the process related to the conduct of this public procurement procedure in electronic form:
  - 1) the contracting authority uses the Open Nexus sp. z o.o. purchasing platform
  - 2) website address of the purchasing platform: <https://platformazakupowa.pl/pn/damon>
3. In order to reduce the time required for answering questions, it is preferable that communication between the contracting authority and contractors, including any



- declarations, requests, notices and information, are transmitted via the purchasing platform and the "Send a message to the contracting authority" form on the website of a given procedure. The date of submission (receipt) of statements, requests, notices and information shall be the date of their transmission via the purchasing platform by clicking the "Send message to the contracting authority" button, after which a message will appear that the message has been sent to the contracting authority.
4. The contracting authority shall provide contractors with information via the purchasing platform. Information concerning answers to questions, changes to the ToR, changes to the announcement, changes to the deadline for submission and opening of tenders shall be published by the contracting authority on the purchasing platform in the "Announcements" section. Correspondence which, according to the applicable regulations, is addressed to a specific contractor shall be transferred via the purchasing platform to a specific contractor.
  5. The contractor, as a professional entity, is obliged to check messages and communications directly on platformzakupowa.pl sent by the Ordering Party, as the notification system may fail or the notification may end up in the SPAM folder.
  6. The contracting authority, in accordance with the Regulation of the Prime Minister of December 30, 2020 on the manner 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, item 2452), specifies the necessary hardware and application requirements enabling work on the purchasing platform, i.e.:
    - 1) permanent access to the Internet with a guaranteed bandwidth of at least 512 kbps;
    - 2) PC or MAC computer with the following configuration: min. 2 GB Ram, Intel IV 2 GHZ processor or better, one of the following operating systems - MS Windows 7, Mac Os x 10 4, Linux or later versions;
    - 3) any web browser installed, in case of Internet Explorer at least version 10 0;
    - 4) JavaScript enabled;
    - 5) Adobe Acrobat Reader or other software supporting the .pdf file format installed;
    - 6) encryption on platformzakupowa.pl takes place using TLS 1.3 protocol;
    - 7) the time indication of data reception 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.
  7. The contractor, when entering into this public procurement procedure:
    - 1) accepts the terms of use of [platformzakupowa.pl](#) as set out in the Regulations placed on the website under the tab "Regulations" and acknowledges them as binding: <https://platformzakupowa.pl/strona/1-regulamin>;
    - 2) has read and followed the Instructions for Submission of Tenders: <https://platformzakupowa.pl/strona/45-instrukcje>.
  8. The contracting authority shall not be responsible for submitting an offer in a manner inconsistent with the Instructions for Using [platformzakupowa.pl](#), in particular for a situation where the ordering party becomes aware of the content of the offer before the deadline for submission of offers (e.g. submission of an offer in the "Send a message to the ordering party" tab). Such an offer will be deemed by the contracting authority a commercial offer and will not be taken into consideration in the proceedings in question because the obligation imposed by Article 221 of the PPL was not met.
  9. The contracting authority informs that the instructions for use of the purchasing platform, in particular regarding logging in, submitting requests for clarification of the content of the notice, submitting tenders and other activities undertaken in this procedure using the

purchasing platform are available in the "Instructions for Contractors" tab on the website at <https://platformazakupowa.pl/strona/45-instrukcje>.

**Chapter 12 Information on the way of communication between the contracting authority and contractors with contractors by means other than electronic communication in the event of one of the situations referred to in Article 65(1), Article 66 and Article 69.**

Not applicable (there are no situations referred to in Article 65(1), Article 66 and Article 69 of the PPL Act).

**Chapter 13 Indication of persons authorised to communicate with contractors.**

1. The Contracting authority designates the following contact persons for contractors:  
Sławomir PRZYBYSZEWSKI  
E-mail address: [wag.pnpw.brunssum@ron.mil.pl](mailto:wag.pnpw.brunssum@ron.mil.pl)
2. The persons indicated in pt. 1, are authorised by the contracting authority to communicate with contractors on technical matters (e.g. when the website of the conducted proceedings, e-mail, etc. does not work).
3. The contracting authority does not envisage any other contact with contractors than the one indicated in this chapter of the ToR. This means that the contracting authority will not respond to other forms of contact, in particular telephone and/or personal contact at its registered office.

**Chapter 14 Period for which the offer is valid.**

1. The contractor shall be bound by the tender until **3 September 2022**. The tender validity period shall start with the expiry of the deadline for submission of tenders.
2. In the event that the selection of the most advantageous tender does not take place before the expiry of the tender validity period indicated in point. 1, the contracting authority shall, before the expiry of the tender validity period, request the consent of contractors to extend this period by a period indicated by it, which shall not be longer than 30 days.
3. Extension of the tender validity period referred to in point 2, requires a contractor to submit a written statement of consent to extend the tender binding period.

**Chapter 15 Description of bid preparation.**

1. The contractor shall submit his offer via the purchasing platform: [platformazakupowa.pl/pn/damon](https://platformazakupowa.pl/pn/damon), mentioned in Chapter 11 of ToR.
2. **The tender and the statement referred to in Article 125(1) of PPL shall be submitted, under pain of invalidity, in an electronic form (bearing a qualified electronic signature) or in an electronic form bearing a trusted signature or a personal signature, pursuant to Article 63(2) of PPL.**

**NOTE:**

Detailed information on how to obtain a qualified electronic signature service and on the conditions of its use can be found on the websites of qualified trust service providers listed at: <http://www.nccert.pl/kontakt.htm>. Detailed information on how to obtain a Trusted Profile service can be found at: <https://www.gov.pl/web/gov/zaloz-profil-zaufany>. Detailed information on how to obtain a personal signature can be found at: <https://www.gov.pl/web/e-dowod/podpis-osobisty>.

3. Qualified signatures used by contractors to sign any files must comply with 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.

4. A tender as well as documents and statements submitted by a contractor should be in Polish. The contracting authority accepts the possibility to submit a tender, statements and other documents in English.
5. The contractor shall bear all costs related to the preparation and submission of the tender.
6. **A contractor is entitled to submit only one tender.** Should the contractor submit more than one tender, the tenders shall be rejected pursuant to Article 226(1)(3) in connection with Article 218(1) of PPL.
7. The contents of the tender shall comply with the requirements set out by the contracting authority in the contract documents pursuant to Article 218(2) of PPL.
8. The offer shall be submitted on the offer form according to annex No. 1 to ToR. The size and layout of the form attached to ToR may be changed by the contractor, but the content of the offer must correspond to the content of ToR.
9. The offer must contain all required attachments according to Chapter 20(1) of ToR.
10. A tender and declarations must be signed by a person/people authorised to represent and make declarations of will on behalf of the contractor. The contractor shall prove to the contracting authority the authority to submit a tender, e.g. in the case of a civil law partnership, it may be the articles of association of the partnership, and if the articles of association do not provide the authority of a given partner or partners, a tender shall be valid if signed by all partners or a partner authorised by a separate resolution of the partners as an annex to the articles of association, or an attorney.
11. If a tender is signed by a proxy, a power of attorney to represent the contractor in the present procurement procedure or to represent the contractor in the procedure and to conclude a public procurement contract must be attached to the tender. The power of attorney must be submitted in an electronic form (with a qualified electronic signature) or in the electronic form with a trusted signature or personal signature, pursuant to Article 63(2) of PPL. Powers of attorney required and not filed or defective powers of attorney shall be supplemented under the terms of Article 128(1) of PPL.
12. Pursuant to Article 219(2) of PPL, the contractor may, before the deadline for submission withdraw a tender before the deadline for submission of tenders. The procedure for withdrawal of a tender is to be found at the instructions on the website at: <https://platformazakupowa.pl/strona/45-instrukcje>.
13. The maximum size of one file sent through the dedicated forms for submission, modification, withdrawal of an offer is 150 MB, while in the case of communication, the file size is a maximum of 500 MB.
14. The manner in which electronic documents, statements or electronic copies of documents or statements are drawn up must comply with the requirements set out in 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 and means of electronic communication in the public procurement procedure or competition (Journal of Laws, item 2452).
15. A tender, statements referred to in Article 125(1) of PPL, subjective evidence, including statement referred to in Article 117(4) of PPL (statements of contractors applying jointly for the award of the contract which show the scope of the contract to be performed by each of the contractor in accordance with Annex No. 7 to ToR), and statement of an entity providing resources, referred to in Article 11 (3) of PPL, the said means of evidence, the power of attorney shall be prepared in electronic form, in data formats

defined in provisions issued pursuant to Article 18 of the Act of 17 February 2005 on informatisation of the activity of entities performing public tasks (Journal of Laws of 2020, item 346 as amended), hereinafter referred to as the "Act on Informatisation", subject to the formats referred to in Article 66(1) of PPL, taking into consideration the type of transmitted data.

16. The file formats used by contractors should be in accordance with the Announcement of the Prime Minister of November 9, 2017 on the announcement of the consolidated text of the Regulation of the Council of Ministers on the National Interoperability Framework, minimum requirements for public registers and exchange of information in electronic form and minimum requirements for ICT systems (Journal of Laws of 2017, item 2247). **The contracting authority recommends using the following formats: .pdf .doc .xls .jpg (.jpeg) with particular emphasis on .pdf. For the purposes of possible data compression, the contracting authority recommends using one of the following formats: .zip, .7Z.**
17. The Ordering Party underlines importance to limit the size of files signed with the trusted profile, which is max. 10MB, and the limitation of the size of files signed in the eDoApp application used to create a personal signature, which is max. 5MB.
18. Due to the low risk of file integrity violation and easier signature verification, the contracting authority recommends, if possible, to convert the files comprising the offer into .pdf format and to affix a PAdES qualified signature.
19. Files in formats other than .pdf are recommended to be signed with an external XAdES signature.  
In case an external XAdES signature format is used, the ordering party requires to attach a sufficient number of files, i.e. signed data files and signature files in XAdES format. The contractor should remember to submit the signature file together with the signed document.
20. When signing files with a qualified electronic signature, it is recommended to use the SHA2 hash algorithm instead of SHA1.
21. The contracting authority recommends the use of a qualified time-stamped signature.
22. The contracting authority recommends that no changes are made to files after they have been signed with a qualified signature. This may result in a breach of file integrity which will be equivalent to rejection of the offer in the procedure.
23. According to the definition of an electronic document contained in Article 3(2) of the Act on Informatization, affixing a qualified electronic signature to a file containing compressed data is equivalent to signing the original document, with the exception of copies certified by another contractor competing jointly with it for the award of the contract, by an entity on whose capabilities or situation the contractor relies, or by a subcontractor.
24. When compressing data (packing documents) e.g. into a .zip file, it is recommended to sign each of the compressed files beforehand.
25. The contracting authority recommends that in the case of signing the file by several persons, the same type of signatures should be used. Signing with different types of signatures, e.g. personal and qualified, may lead to problems in file verification.
26. The contracting authority recommends that the contractor test the correct use of the chosen method of signing the tender files well in advance.
27. It is recommended that communication with contractors only takes place on the platform via the "Send a message to the contracting authority" form, not via email address.

28. The tender must be prepared with due care and with an appropriate time gap until the closing date for receipt of tenders. It is recommended to submit the tender 24 hours before the deadline for submission of tenders.

#### **INFORMATION CONSTITUTING COMPANY'S SECRET.**

29. The contracting authority hereby informs that pursuant to Article 74(1)(2) of PPL, tenders submitted in the procurement procedure are open and available upon request, from the moment of their opening. Pursuant to provisions of Article 18(3), information constituting company's secret within the meaning of the provisions of the Act of April 16, 1993 on counteracting unfair competition (Journal of Laws of 2020, item 1913) shall not be disclosed if the contractor, along with submitting such information, reserved that it may not be disclosed and proved, by enclosing relevant explanations, that the reserved information constitutes a company secret.

30. The contractor may not reserve the information referred to in Article 222(5) of PPL Act.

31. Information which constitutes business secrets shall be submitted in a separate file. On the purchasing platform, in the form for submitting an offer, there is a space designated for attaching the part of the offer which constitutes business secrecy. If the above document is incorrectly marked, it may be treated as a non-confidential document, not marked as business secret.

#### **Chapter 16 Method and date of submission and opening of tenders.**

1. The contractor shall submit a tender, together with all annexes, on the purchasing platform at [platformazakupowa.pl/pn/damon](https://platformazakupowa.pl/pn/damon) on the site related to the relevant procedure **by 5 August 2022 until 12:00 noon. Tenders will be opened on 5 August 2022 at 12:30 p.m.**
2. The offer must be accompanied by all documents required in ToR.
3. After completing the bid submission form and attaching all required attachments, click the "Proceed to Summary" button.
4. A tender must be submitted in electronic form (with a qualified electronic signature) or in electronic form with a trusted signature or a personal signature. In the process of submitting a tender via the purchasing platform, the contractor should sign directly on the document sent via the purchasing platform. Signing on the purchasing platform at the summary stage is optional, but it allows to verify the validity of the signature before submitting a tender.
5. The date on which an offer is submitted shall be deemed to be the date on which it is submitted in the system (purchasing platform), in the second step of submitting the offer by clicking on the "Submit Offer" button and a message is displayed that the offer has been encrypted and submitted.
6. Detailed instructions for contractors on how to submit, amend and withdraw a tender can be found on the website at: **<https://platformazakupowa.pl/strona/45-instrukcje>**.
7. The contracting authority may change the date for submission and opening of tenders at any time before their expiry. The contracting authority shall inform contractors of the change by publishing information on the website of the procedure.
8. The contracting authority shall, before the opening of tenders at the latest, make available on the website of the procedure conducted information on the amount which it intends to allocate for financing the contract.
9. Bids shall be opened immediately after the deadline for submission of bids, not later than the day following the day on which the deadline for submission of bids expired.

10. Tenders shall be opened using the ICT system, via the purchasing platform at the registered office of the contracting authority **by decrypting the tenders submitted on the purchasing platform.**
11. In the event of a malfunction of the telecommunications and information system which makes it impossible to open tenders by the deadline set by the awarding authority, tenders shall be opened immediately after the malfunction is remedied.
12. Immediately after the opening of tenders, the contracting authority shall make available on the website of the proceedings <https://platformazakupowa.pl/pn/damon> information referred to in Article 222(5) of PPL.
13. Information referred to in pt. 12 will be published on the website of the conducted proceedings <https://platformazakupowa.pl/pn/damon> in the "Announcements" section.
14. Under the Public Procurement Law, the contracting authority is not required to hold a tender opening session in public with the participation of contractors or to broadcast the opening session with the participation of contractors or broadcast the opening session via electronic online video tools, but only has the right to do so.

#### **Chapter 17 Information on conditions for participation in the proceedings.**

1. Contractors who are not subject to exclusion pursuant to the rules defined in Chapter 18 of ToR, and who meet the conditions for participation in the proceedings defined by the contracting authority, may apply for the award of the contract.
2. The contracting authority shall not specify any particular conditions for participation in the procedure concerned.

#### **Chapter 18 Grounds for excluding the contractor from the procedure.**

1. Contractors shall be excluded from the procurement procedure in relation to which any of the circumstances indicated above occur:
  - 1) in Article 108(1) of PPL;
  - 2) in Article 7(1) of the Act on certain measures countering support of aggression on Ukraine and facilitating national security interest (Journal of Laws 2022, item 835).
2. If contractors apply jointly for awarding the contract - the contracting authority shall examine whether there are grounds for exclusion of any of those contractors.
3. In the case of a subcontractor who is not an entity making the potential available to the contractor for the fulfilment of the condition - the contracting authority will not examine whether there are no grounds for exclusion with regard to that subcontractor, which have been provided for the contractor.
4. Contractor's statement of not being excluded from the procedure - sample statement of not being excluded constitutes Annex No. 2 to ToR. In the case of joint bidding by contractors (also applies to partners in a civil partnership), the statement on not being excluded shall be submitted by each of the contractors.
5. Pursuant to Article 110 of PPL, a contractor may be excluded by the contracting authority at any stage of the procurement procedure.
6. A contractor shall be excluded pursuant to Article 111 of PPL.

#### **Chapter 19 Information on the evidence in question.**

The contracting authority does not require the submission of such an evidence in this procedure.

**Chapter 20 List of declarations and documents to be submitted by contractors to confirm the fulfilment of conditions for participation in proceedings and to prove that there are no grounds for exclusion.**

**1. Documents and statements to be submitted with the tender:**

- 1) offer form - Annex No. 1 to ToR;
- 2) statement concerning the grounds for exclusion from the procedure - Annex No. 2 to ToR;
- 3) a power of attorney for a person / persons signing a tender if one is signed by a representative.

If a tender is submitted by contractors applying jointly for awarding the contract - a power of attorney to represent all the contractors applying jointly for awarding the contract or another document confirming the authorization to represent the contractor - the power of attorney may be prepared according to the specimen constituting Annex No. 4 to ToR. A proxy may be appointed to represent the contractors in the proceedings or to represent them in the proceedings and to conclude the agreement.

2. The contracting authority shall call upon the contractor whose tender was awarded the highest mark to submit updated subjective evidence, within the prescribed time limit, which is not shorter than 5 days from the date of the call – not applicable.
3. In order to confirm that a contractor meets the conditions for participation in the procedure, the Contracting authority shall demand the following subjective evidence – not applicable.
4. In order to confirm that there are no grounds for excluding the contractor from participation in a public procurement procedure, the contracting authority demands the following subjective evidence – not applicable.

**Chapter 21 Requirements concerning employment based on an employment relationship, in the circumstances referred to in Article 95 of PPL.**

1. Requirements connected with the execution of the order relating to the employment by the contractor or a subcontractor on the basis of an employment relation of persons performing the activities indicated by the ordering party in the scope of execution of the order, if the execution of those activities involves the performance of work in a manner defined in Article 22(1) of the Labour Code of June 26, 1974 (Journal of Laws of 2019, items 1040, 1043 and 1495): **driving a bus according to the schedule specified by the ordering party in the description of the subject matter of the order.**
2. In the course of performing the service, at each request of the Contracting authority, within the period determined in that request, the contractor shall submit to the contracting authority the following evidence in order to confirm the requirement to employ under an employment contract by the contractor or its subcontractor persons performing the activities referred to in item 1 during the performance of the contract, i.e:
  - 1) a statement of the contractor on the employment under a labour contract of the person performing the activities requested by the employer; the statement should include, in particular: an exact specification of the entity submitting the statement, the date of submission of the statement, indication that the activities covered by the request are performed by a person employed under an employment contract, with indication of the number of such persons, first and last names of the persons, type of employment contract and a signature of the person authorised to submit the statement on behalf of the contractor;and

- 2) a copy, certified to be a true copy by the contractor, of the employment contract(s) of the persons performing, during the performance of the service, the activities to which contractor's declaration refers (together with a document regulating the scope of duties, if any).
3. The aforementioned documents should be anonymised in a way that ensures the protection of employees' personal data, in accordance with the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 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. The first and last name of the employee shall not be anonymised. Information such as date of contract, type of employment contract should be identifiable.
4. The employment of a person performing the activities specified by the contracting authority may concern both newly employed persons and persons previously employed by the contractor, and directed to perform the activities necessary for the execution of the contract indicated by the contracting authority.
5. During performance of the service, the contracting authority shall be entitled to exercise control activities with respect to the contractor, as regards contractor's or subcontractor's compliance with the requirement to employ, on the basis of an employment contract, persons performing activities necessary for performance of the contract indicated by the contracting authority. The contracting authority shall be entitled in particular to:
  - 1) request declarations and documents as proof of fulfilment of the above requirements and their assessment,
  - 2) request clarification in case of doubts concerning the confirmation of the fulfilment of the above mentioned requirements,
  - 3) carry out on-site checks.
6. Contractor's failure to submit, within the time limit determined by the contracting authority, evidence required by the contracting authority in order to confirm contractor's fulfilment of the requirement to employ on the basis of an employment contract shall be treated as contractor's failure to fulfil the requirement to employ on the basis of an employment contract people performing activities indicated by the contracting authority.
7. Due to contractor's failure to comply with the requirement to employ persons performing the activities indicated by the contracting authority provides for sanctions specified in detail in the draft provisions of the contract, constituting Annex No. 4 to the ToR.
8. In the event of justified doubts about contractor's or subcontractor's compliance with labour law, it may request an inspection by the State Labour Inspectorate.
9. Detailed provisions on the manner of documenting employment and controlling contractor's or subcontractor's fulfilment of obligations are contained in Annex No. 4 to the ToR draft contractual provisions.

**Chapter 22 Employment requirements for persons referred to in Article 96(2)(2) of PPL.**

Not applicable.

**Chapter 23 Description of price calculation.**

1. The contractor shall specify the bid price in EURO in the offer form, the template of which constitutes Annex No. 1 to ToR.
2. The price of the offer must include all costs connected with the execution of the subject matter of the order in accordance with the description of the subject matter of the order and the draft provisions of the agreement specified in Annex No. 3 to ToR.



3. The contracting authority does not envisage the possibility of changing the price for the performance of the subject matter of the contract indicated in the bidding form, subject to provisions of Article 223(2) of PPL and the draft provisions of the contract constituting Annex No. 3 to ToR.
4. The price of the offer must be given digitally and in words in EURO with the accuracy to two decimal places (rounding rule - below 5 the decimal places should be omitted, above and equal to 5 it should be rounded up).
5. If a tender was submitted, the selection of which would lead to the creation of a tax obligation for the contracting authority pursuant to the Act of March 11, 2004 on tax on goods and services (Journal of Laws of 2020, item 106, as amended), for the purpose of applying the price criterion, the contracting authority will add to the price presented in the tender the amount of the VAT from goods and services tax which it would be obliged to settle. In such a case, the contractor is obliged to:
  - 1) inform the contracting authority that the selection of its tender will result in the contracting authority becoming liable to tax;
  - 2) indicate the name (type) of the good or service whose supply or provision will give rise to a tax liability;
  - 3) indicate the value of the goods or services for which the contracting authority is liable to pay tax, exclusive of tax value;
  - 4) indicate the rate of value added tax which, to contractor's knowledge, will apply
6. Contractors shall bear all the costs related to preparing and submitting a tender. The Contracting authority does not provide for reimbursement of costs of participation in the procedure.
7. All settlements concerning the execution of the contract shall be made in EURO. The contracting authority does not allow settlements in other currencies.

**Chapter 24 Description of the criteria for evaluation of tenders, together with their respective weights, and tender evaluation method.**

1. The tender evaluation criterion adopted in this procedure and its importance:
  - price criterion - 60% weight
  - environmental criterion - emission standard of the vehicle intended for the execution of the contract - 30% weight
  - social criterion - employment of a disabled person under an employment contract – 10 weight.
2. The way points are awarded in the criterion:

**Criterion 1 - PRICE (C):**

$$C = (C_{\min} / C_{\text{of.}}) \times 100 \times 60\%$$

where:

**C<sub>min</sub>** – is the lowest price among the bids to be evaluated;

**C<sub>of.</sub>** – is the price proposed in the remaining bids;

**C** – is the number of points obtained for the price by the given offer.

**Criterion 2 - ENVIRONMENTAL CRITERION - emission standard to be met by the vehicle to be used to carry out the contract (N):**

The criterion will be evaluated as follows:

Euro IV – 10 points (%)

Euro V – 20 points (%)

Euro VI – 30 points (%)

The contracting authority will award points in this one on the basis of the statement made by the contractor in the offer form.

**Criterion 3 - SOCIAL CRITERION - employment under an employment contract of a disabled person (Z):**

The criterion will be evaluated as follows:

Employment of a disabled person to carry out the contract – 10 points. (%)

Failure to employ a disabled person to carry out the contract – 0 points (%)

The contracting authority will award points in this one on the basis of the statement made by the contractor in the Bid Form regarding the employment of a disabled person to carry out the contract.

The vehicle meant for the provision of the services, mentioned in the criterion, is a vehicle specified in chapter 6 of the ToR.

3. The offer that obtains the highest number of points based on the established criteria will be considered the most advantageous. The remaining offers will be ranked according to the decreasing number of points.
4. The contractor with the highest number of points will be invited to perform the contract.
5. The evaluation of the offers with regard to the criteria presented above will be made on a hundred-point scale according to the formula:

$$S = C+N+ Z$$

where:

**S** – is the sum of points obtained;

**C** – is the points for price;

**N** – is the score for the environmental criterion;

**Z** – are the points for the social criterion.

6. The points awarded to the tenderers in the individual criteria will be calculated to two decimal places. The highest number of points shall determine the most advantageous offer.
7. The contracting authority shall award the contract to the contractor whose tender complies with all the requirements laid down in the Act and in ToR and is assessed as the most advantageous on the basis of the selection criteria indicated, subject to provisions of Article 255(3) of PPL.

**Chapter 25 Information on reserving the right to apply for the award of the contract to contractors only, referred to in Article 94 of PPL.**

**Not applicable.**

The contracting authority shall **not reserve the right to apply for** awarding the contract solely to the contractors referred to in Article 94 of PPL.

**Chapter 26 Requirements concerning a deposit and performance bond.**

The contracting authority **does not require** a deposit or performance bond.

**Chapter 27 Information on anticipated contracts referred to in Article 214 (1) (7) and (8) of PPL, if the contracting authority envisages awarding such contracts.**

The contracting authority **does not foresee the** possibility to award sole-source contracts referred to in Article 214 (1) (7) and (8) of the PPL Act.

**Chapter 28 Information on undertaking by the contractor a site inspection or examination by the contractor of documents necessary for the performance of the contract referred to in Article 131 (2) of PPL, if the contracting authority provides for the possibility or requires submission of a tender after such site inspection or examination.**

The contracting authority **does not provide for an on-site visit** by the contractor.

**Chapter 29 Information on foreign currencies in which settlements between the contracting authority and the contractor may be carried out, if the contracting authority provides for settlements in foreign currencies.**

All settlements between the contractor and the contracting authority shall be carried out exclusively in EURO.

**Chapter 30 Information concerning the reimbursement of costs of participation in the procedure, if the contracting authority provides for their reimbursement.**

The Contracting authority **does not provide for reimbursement** of costs of participation in these proceedings subject to Article 261 of PPL.

**Chapter 31 Information on the obligation of the contractor to perform key tasks personally, if the contracting authority makes such a reservation pursuant to Articles 60 and 121 of PPL.**

1. Information on the obligation of individual contractors competing jointly to perform the contract personally:

The contracting authority **shall not reserve the** obligation for individual contractors competing jointly for the award of the contract to perform personally the key tasks relating to works or service contracts.

2. Information on reserving the obligation for the contractor to perform key tasks personally:

The contracting authority shall **not reserve the** obligation for the contractor to perform personally the key tasks relating to works or service contracts.

**Chapter 32 Maximum number of contractors with which the contracting authority will conclude a framework agreement, if the contracting authority envisages concluding a framework agreement.**

The contracting authority **does not envisage** concluding a framework agreement.

**Chapter 33 Information on the intended choice of the most advantageous tender by electronic auction, together with the information referred to in Article 230 of PPL, if the contracting authority anticipates an electronic auction.**

The contracting authority **does not provide for** selection of the most advantageous tender by electronic auction.

**Chapter 34 Requirement or possibility of submitting offers in the form of electronic catalogues or enclosing electronic catalogues to the offer in the situation specified in Article 93 of PPL.**

The contracting authority **does not allow the tenders to be submitted in the form of electronic catalogues, nor an electronic catalogue to be attached to the tender.**

### **Chapter 35 Information about formalities which should be completed after bid selection in order to conclude the public procurement contract.**

1. The contracting authority shall enter into a public procurement contract, taking into account Article 577 of PPL, within a period no shorter than 5 days from the date of sending the notice on selection of the most advantageous tender, if the notice was sent by means of electronic communication, or 10 days if it was sent in another way.
2. The contracting authority may conclude a public procurement contract before the deadline referred to in item 1, if only one tender is submitted in the tender procedure.
3. The contractor whose tender was selected as the most advantageous one will be informed by the contracting authority about the place and date of signing the contract.
4. The contractor referred to in item no. 3, shall be obliged to enter into a procurement agreement on the terms and conditions specified in the draft contractual provisions, which constitute Annex No. 4 to ToR. The agreement shall be supplemented by provisions resulting from the tender submitted.
5. Persons representing the contractor at signing the contract should have with them documents confirming their authorisation to sign the contract, if such authorisation this does not result from the documents attached to the tender.
6. If a tender submitted by contractors jointly tendering for the contract is selected, the contracting authority may demand that, prior to conclusion of the contract, a contract governing the cooperation of those contractors be submitted. Such an agreement shall define the parties to the agreement, the purpose of their action, the manner of cooperation, the scope of work to be performed by each of them, joint and several liability for performance of the contract, indication of the consortium duration (including the period of performance of the subject of the contract, guarantee and warranty), exclusion of termination of the consortium agreement by any of its members until performance of the contract.
7. In the event that a contractor, whose tender was selected as the most advantageous, evades entering into a public procurement contract or fails to provide the required performance bond, the contracting authority may re-examine and evaluate the tenders of the remaining contractors in the procedure and select the most advantageous tender or cancel the procedure.

### **Chapter 36 Legal remedies.**

1. Legal remedies shall be available to the contractor or any other entity which has or has had an interest in obtaining the award and has suffered or may suffer a loss as a result of violation of provisions of PPL by the Contracting authority.
2. The appeal is allowed in case:
  - 1) an action taken by the contracting authority, which does not comply with the provisions of the Public Procurement Law in an award procedure, including a draft contract provision;
  - 2) a failure to act in the procurement procedure which the contracting authority was obliged to do under the Public Procurement Law.
3. An appeal shall be lodged with the President of the National Appeal Chamber in a written form or in an electronic form provided with a trusted signature.
4. The parties and participants to the appeal proceedings shall have the right to lodge a complaint with the court against the decision of the National Appeal Chamber and the decision of the President of the National Appeal Chamber referred to in Article 519(1) of

PPL. The complaint shall be lodged with the District Court in Warsaw through the Chairman of the National Appeal Chamber.

5. Detailed information on legal remedies is set out in Chapter IX Legal Remedies of the Public Procurement Law.

**List of annexes:**

- Annex 1 –** Offer form.
- Annex 2 –** Statement concerning grounds for exclusion from the procedure.
- Annex 3 –** Draft contractual provisions.
- Annex 4 –** Power of attorney - in case of contractors jointly submitting a tender offer for public procurement.