

## **TERMS OF REFERENCE (TOR)**

in the public procurement procedure conducted on a regular basis with possibility of negotiations to improve the content of tenders, with a value lower than the EU thresholds, referred to in art. 3 of the Act of September 11, 2019 - Public Procurement Law (i.e. Journal of Laws of 2021, item 1129 with changes), hereinafter referred to as „PPL”, the object of which consists in:

### **„ Expert supervision of rebuilding and retrofitting the BSL-3 laboratory in Łukasiewicz - PORT”**

**Case no.: PO.271.39.2022**

APPROVED BY:

**July 2022**



Investment Project under the name: "Laboratory of Rapid Epidemiological Response - reconstruction of the BSL-3 laboratory" subsidised by the President of the Centre in the form of a specific purpose grant. Grant Agreement No. 1/L-PORT/CŁ/2021

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## 1. Name and address of the Contracting Party.

- 1.1. Łukasiewicz Research Network – PORT Polish Center for Technology Development, Stabłowicka Street 147, 54-066 Wrocław
- 1.2. phone +48 71 734 72 76
- 1.3. Address of the website on which the proceedings are conducted and on which all the documents related to the procedure will be available (in Polish and English languages): <https://platformazakupowa.pl/pn/port>
- 1.4. Address of electronic mail:  
[marzena.krzyminska@port.lukasiewicz.gov.pl](mailto:marzena.krzyminska@port.lukasiewicz.gov.pl)
- 1.5. Office hours: business days, from Monday to Friday, from 8 a.m. to 3 p.m., except public holidays.

## 2. Contract award procedure.

- 2.1. This procedure is conducted on a regular basis referred to in art. 275 clause 2 PPL and in accordance with the provisions of these Terms of Reference, hereinafter referred to "ToR".
- 2.2. The Contracting Party provides for the selection of the most advantageous tender with the possibility of conducting negotiations.
- 2.3. Pursuant to art. 310 clause 1 of the PPL Act, the Contracting Party provides for a possibility of cancellation of the contract in question, if public funds that the Contracting Party intended to allocate for the financing of the entirety or part of the contract have not been granted to the Contracting Party.
- 2.4. The Contracting Party does not provide for an electronic auction.
- 2.5. The Contracting Party does not provide for submitting a tender in the form of electronic catalogues or attaching electronic catalogues to the tender.
- 2.6. The Contracting Party does not admit submission of variant tenders.
- 2.7. The Contracting Party does not conduct the procedure for the purpose of concluding the framework agreement.
- 2.8. The Contracting Party does not reserve the possibility of competing for the contract to be awarded only to the Contractors referred to in art. 94 PZP.
- 2.9. The Contracting Party does not provide for the requirement to employ on the basis of the employment contract in accordance with art. 95 par. 1 PPL.



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### 3. Description of the object of the contract.

- 3.1. The object of the contract consists of the expert supervision of rebuilding and retrofitting of BSL-3 laboratory in the Łukasiewicz Research Network – PORT Polish Center for Technology Development.

The Contracting Party specified the stages of the order as below:

Stage I: The procurement for selecting the contractor for the design

Part 1: Preparation of the concept of laboratory and preparation of the procurement documentation.

Part 2: Selecting the Designer based on the appropriate procedure of PPL legislation

Stage II: Agreeing the final version of the design

Stage III: The procurement for the selection of the contractor of construction works

Part 1: Preparation of the documentation for the procurement of the construction works

Part 2: Selection of the contractor for the construction works based on appropriate procedure of PPL legislation

Stage IV: Supervision of execution of construction works and commissioning of the laboratory

Stage V: Certification of the laboratory in accordance with EN12128 and Genetically Modified Microorganisms (GMM) regulation for GMM III

Stage VI: Consultations after commissioning of the laboratory

**The Contracting Party reserves the right of option in the scope of:**

Stage III, Part 2 and Stages IV-VI. The Contracting Party has the right – depending on their needs – to use the right of option in whole, in part, or not use it at all. In case of the decision to use the right of option, the Contracting Party will submit a declaration of intent to use using the right of option. The declaration can be made in electronic form or written form.

- 3.2. The detailed scope of the object of the contract, including the requirements of the Contracting Party as regards the object of the contract is specified in appendix no. 2 to ToR – Description of the object of the contract, and in appendix no. 3 to ToR – template of the agreement.
- 3.3. Name and code according to Common Procurement Vocabulary (CPV): 71248000-8 Supervision of the design and documentation; 71247000-1 Supervision of construction works.
- 3.4. The Contracting Party provides for awarding contracts referred to in art. 214 par. 1 clause 7) of the PPL Act consisting of: ordering from the Expert 3 consultation visits within 3 years from the date of awarding the basic contract.
- 3.5. The Contracting Party does not provide for submitting partial tenders.
- 3.6. Justification of not splitting the order in parts: this procurement is not dividable. The Contracting Party is expecting to select one expert, with knowledge in planning, design evaluation, supervision of construction works and commissioning of biosafety level-3 laboratories (BSL-3).

### 3.7. Information on the objective evidence.



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The Contracting Party does not request submission of objective evidence.

#### **4. Contract completion date.**

The contract shall be concluded within 37 months from the date of signing the agreement, considering the provisions of the template of agreement, which constitutes Appendix no. 3 to ToR.

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

5.1. Contractors who are not subject to exclusion on the terms set out in clause 6 of ToR, and who meet the conditions for participation in the procedure specified by the Contracting Party may apply for the award of the contract.

5.2. Contractors who meet the following conditions may apply for the award of the contract:

**1) the ability to trade:**

The Contracting Party does not impose conditions in this scope.

**2) the right to conduct specific business or professional activity, as long as it results from separate provisions:**

The Contracting Party does not impose conditions in this scope.

**3) economic or financial situation:**

The Contracting Party does not impose conditions in this scope.

**4) technical or professional ability:**

The Contractor meets the condition if they demonstrate that:

a) they have an Expert (at least 1 person) directed by the Contractor to perform the public contract, responsible in particular for the provision of services, having minimum 5 years of experience in at least 3 projects of building, rebuilding or retrofitting of BSL-3, ABSL-3, BSL-4 or ABSL-4 laboratories in the scope of at least one of the stages:

- 1) planning of the laboratories
- 2) designing or evaluation of designs of the laboratories
- 3) supervision of construction works in the laboratories.

The Contracting Party requires that the abovementioned services were delivered for different organisations or entities, while the total experience of the Expert must cover all the stages, i.e.: 1) planning of the laboratories, 2) designing or evaluation of designs of the laboratories, 3) supervision of construction works in the laboratories. The Contracting Party allows the situation, when within the compulsory 5-year-experience of the Expert, the services they provided overlap (the period of experience will be summed up).



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b) in the last 10 years prior to the tender submission, or during the period of business activity, whichever is shorter, they have duly executed at least 3 services including one or more stages:

- 1) preparation of planning guidelines for building, rebuilding or retrofitting of BSL-3, ABSL-3, BSL-4 or ABSL-4 laboratories,
- 2) designing or evaluation of construction designs in the scope of building, rebuilding or retrofitting of BSL-3, ABSL-3, BSL-4 or ABSL-4 laboratories,
- 3) supervision of construction works of BSL-3, ABSL-3, BSL-4 or ABSL-4 laboratories.

The Contracting Party requires that the total experience of the Contractor covered all three stages.

5.3. In the case of Contractors jointly applying for the contract and in case when the Contractor will rely on the resources of another entity, on the principles set out in article 118 of the PPL, the Contracting Party requests the condition of technical or professional ability to be wholly fulfilled by one of the Contractors jointly applying for the contract, or by an entity whose capacity in this respect is invoked by the Contractor. In this case, the Contractors jointly applying for the award of the contract shall attach to the tender a statement indicating which part of the service will be delivered by particular Contractors.

5.4. The Contracting Party may at any stage of the procedure consider that the Contractor does not have the required skills, if the Contractor has conflicting interests, in particular involvement of Contractor's technical or professional resources in other economic undertakings of the Contractor which may have a negative impact on the performance of the contract.

## 6. Grounds for exclusion from the procedure.

6.1. Contractors are excluded from tendering for the contract award if in relation to them any of the **circumstances specified in art. 108 par. 1 of the PPL Act apply, i.e.:**

- 1) being a natural person legally convicted of an offence:
  - a) participation in an organized criminal group or association aimed at committing a crime or a fiscal offence referred to in art. 258 of the Criminal Code,
  - b) human trafficking referred to in art. 189a of the Criminal Code,
  - c) referred to in art. 228-230a, art. 250a of the Criminal Code or in art. 46 or art. 48 of the Sport Act of June 25, 2010, (Journal of Laws of 2020 item 1133 and of 2021 item 2054) or in art. 54 par. 1-4 of the Act of 12 May 2011 on refunding of medicines, foodstuffs for particular nutritional uses and medical devices (Journal of Laws of 2021 item 523, 1292, 1559 and 2054).



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- d) financing of a terrorist offence referred to in art. 165a of the Criminal Code, or the offense of frustrating or obstructing the determination of the criminal origin of money or concealing its origin, referred to in art. 299 of the Criminal Code,
  - e) of a terrorist nature, referred to in art. 115 § 20 of the Criminal Code, or aimed at committing this offence,
  - f) entrusting the performance of work to a minor foreigner referred to in art. 9 par. 2 of the Act of 15 June 2012 on the results of entrusting work to foreigners residing illegally in the territory of the Republic of Poland (Journal of Laws, item 769 and of 2020, item 2023),
  - g) against the economic turnover referred to in art. 296-307 of the Criminal Code, the offence of fraud referred to in art. 286 of the Criminal Code, the offence against the credibility of the documents referred to in art. 270-277d of the Criminal Code, or a tax offence,
  - h) referred to in art. 9 par. 1 and 3 or art. 10 of the Act of 15 June 2012 on the results of entrusting work to foreigners residing illegally in the territory of the Republic of Poland
- or for a relevant prohibited act specified in the provisions of a foreign law;
- 2) if an incumbent member of its management or supervisory body, a partner in a general partnership or a partnership, or a general partner in a limited partnership or limited joint-stock partnership or a proxy has been legally convicted of an offence referred to above;
  - 3) for whom a final court judgment or a final administrative decision has been issued concerning arrears in the payment of taxes, fees or social or health insurance contributions, unless the Contractor prior to the deadline for submitting applications for admission to participate in the procedure or prior to the deadline for submission of tenders, paid due taxes, fees or social security or health insurance contributions including interest or fines, or has entered into a binding agreement to repay these charges;
  - 4) who has been legally prohibited from competing for public contracts;
  - 5) if the Contracting Party can conclude, on the basis of credible premises, that the Contractor has concluded an agreement with other Contractors aimed at distorting competition, in particular if, while belonging to the same capital group, within the meaning of the Act of February 16, 2007 on competition and consumer protection, they have submitted separate tenders, partial tenders or requests to be admitted to participate in the procedure, unless they can demonstrate that they have prepared these tenders or requests independently of each other;



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6) if, in the cases referred to in art. 85 par. 1, there has been a distortion of competition resulting from the prior involvement of a Contractor or entity belonging with the Contractor to the same capital group within the meaning of the Act of February 16, 2007 on competition and consumer protection, unless the resulting distortion of competition can be eliminated otherwise than by excluding the Contractor from participation in the contract award procedure;

or in art. 109 par. 1 clause 4 of the PPL Act, i.e.:

in relation to the Contractor, for whom liquidation has been opened, bankruptcy has been declared, the assets of whom are managed by a liquidator or a court, the Contractor has entered an arrangement with creditors, the Contractor's business activity is suspended or they are in another situation of this type resulting from a similar procedure provided for in the provisions of the place where this procedure is initiated.

6.2. The Contractor shall be excluded in accordance with art. 111 of the PPL Act.

6.3. Contractor is excluded from the public procurement in cases described in article 7, par. 1 of the Act of 13 April 2022 on special solutions for counteracting support for aggression against Ukraine and for the protection of national security (Journal of Laws of 2022, item 835). Article 7, par. 3 of the abovementioned legislation applies to the Contractor excluded on these grounds.

**7. Declarations and documents to be provided by the Contractors to confirm eligibility to participate in the procedure and to confirm no grounds for exclusion (subjective evidence).**

7.1. The Contractor shall be obliged to attach to the tender the statement referred to in article 125 par. 1 of PPL Act of no grounds for exclusion from the procedure and compliance with the conditions of participation in the procedure – according to Appendix 4 to ToR,

7.2. The information contained in the statement referred to in clause 7.1. is a preliminary confirmation (a proof) that the Contractor is not subject to exclusion and meets the conditions for participation in the procedure.

7.3. The Contracting Party requests the Contractor whose tender received the highest scores to submit, within the prescribed period, not less than 5 calendar days from the date of the request, subjective evidence, if submission thereof has been requested in the procurement notice or procurement documents, valid as at the date of submission of the subjective evidence.

7.4. Subjective evidence required from the Contractor shall include:

- 1) an excerpt or information from the National Court Register or from the Central Register and Information on Economic Activity, within the scope of art. 109 par. 1 clause 4 of the PPL, drawn up not earlier than 3 months before its submission, if separate provisions require an entry in the register or records;



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- 2) **the Contractor's declaration in the scope of art. 108 par. 1 clause 5 of the Public Procurement Law**, on not being the member of the same capital group within the meaning of the Act of February 16, 2007 on competition and consumer protection (Journal of Laws of 2021, item 275, consolidated text) with another Contractor who submitted a separate tender, partial tender or application to be able to participate in the procedure, or a declaration of belonging to the same capital group, including documents or information confirming the preparation of the tender, partial tender or application to be able to participate in the procedure, regardless of another Contractor being the member of the same capital group - the template of the declaration is attached as Appendix no. 6 to ToR.
- 3) **the list of services** performed in the last 10 years, or during the period of business activity, if it is shorter than 10 years, along with the specification of their object, dates of performance and entities for which the services were performed, and attaching the evidence specifying whether these services have been performed properly, whereas the evidence in question include references or other documents drawn up by the entity for which the services were performed, and if the Contractor is unable to obtain these documents for reasons beyond its control - the Contractor's declaration - Appendix no. 7 to ToR.
- 4) **the list of persons** referred to by the Contractor to perform the public contract, in particular responsible for the provision of service, along with the information on their experience necessary to perform the public contract, as well as the scope of activities performed by them, and the information on the basis for disposing of these persons - the template is Appendix 8 to ToR.
- 7.5. If the Contractor has their registered office or place of residence outside the territory of the Republic of Poland, instead of the document referred to in clause 7.4 sub-clause 1), they must submit a document or documents issued in the country where the Contractor has their registered office or place of residence, confirming accordingly that the entity is not under the liquidation process nor bankruptcy has been declared. The document should have been issued within 3 months prior to submission.
- 7.6. If in the country where the Contractor has their registered office or place of residence, the documents referred to in clause 7.4 sub-clause 1) are not issued, they shall be replaced in whole or in part with a document containing, respectively, the Contractor's statement, indicating the person or persons authorized to represent the Contractor, submitted before a notary public or a judicial, administrative or professional or local government body appropriate for Contractor's registered office or place of residence.
- 7.7. The Contracting Party does not call for the submission of subjective evidence, if it can obtain it using free and generally available databases, in particular public registers within the meaning of the Act of February



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17, 2005 on the computerization of the activities of entities performing public tasks, provided that the Contractor makes available data enabling access to these subjective evidence in the declaration, referred to in art. 125 sec. 1 of the PPL Act.

- 7.8. The Contractor is not obliged to submit the subjective evidence that the Contracting Party possesses, if the Contractor indicates this evidence and confirms its correctness and validity.
- 7.9. To the extent not regulated by the PPL Act or these ToR, the provisions of the Regulation of the Minister of Labour and Technology of December 23, 2020 on subjective evidence and other documents or statements that may be requested by the Contracting Party from the Contractor, and of the Regulation of the Prime Minister of December 30, 2020 on the method of preparing and providing information and technical requirements for electronic documents and electronic means of communication in a public procurement procedure or a competition shall apply to declarations and documents submitted by the Contractor in the procedure.

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

- 8.1. In order to confirm compliance with the conditions for participation, where appropriate and in relation to a specific contract, or part thereof, the Contractor may rely on the technical or professional capabilities of entities providing the resources, regardless of the legal nature of their legal relations.
- 8.2. With regard to the conditions relating to professional qualifications or experience, Contractors may rely on the capabilities of entities providing resources if those entities provide the services for which these capabilities are required.
- 8.3. The Contractor who relies on the capabilities of entities providing resources, **submits, together with the tender**, the commitment of the entity providing the resources to provide it with the necessary resources for the implementation of a given contract or another subjective evidence confirming that the Contractor will have the necessary resources while performing the contract.
- 8.4. The commitment of the entity providing the resources, referred to in clause 8.3. of ToR confirms that the relationship between the Contractor and the entities providing the resources guarantees a real access to these resources and describes in particular:
  - 8.4.1. the scope of resources provided by the entity to the Contractor,
  - 8.4.2. the means and time of making resources available to the Contractor by the entity and the means and time of using those resources by the Contractor during performance of the contract,
  - 8.4.3. whether and in which scope the entity providing the resources, on whose capabilities the Contractor relies in the connection to conditions of



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taking part in the procedure related to experience, will deliver the services to which indicated capabilities relate.

- 8.5. The Contracting Party will assess whether the technical or professional resources made available to the Contractor by the entities providing those resources allow the Contractor to demonstrate that they meet the conditions for participation in the procurement procedure described in clause 5.2.4 of ToR. The Contracting Party will also examine in the same way as for the Contractor, whether there are any grounds for exclusion of subcontracted entities (clause 6.1 of ToR).
- 8.6. If the technical or professional capabilities of the entity providing resources do not indicate that the Contractor can meet the conditions for participation in the procedure or if there are grounds for exclusion in relation to this entity, the Contracting Party shall request that the Contractor replace this entity with another entity or entities within the time limit specified by the Contracting Party or demonstrate that they can independently meet the conditions for participation in the procedure.
- 8.7. The Contractor may not, after the deadline for submission of tenders, rely on the capabilities of entities providing resources, if at the stage of submitting tenders it did not rely in a given scope on the capabilities or situation of entities providing resources.

## **9. Information for Contractors jointly competing for the contract award (consortia).**

- 9.1. Contractors may jointly apply for a public procurement contract. In such event, Contractors appoint an attorney to represent them in the public procurement procedure or to represent and sign a public procurement contract. The power of attorney should be attached to the tender.
- 9.2. In the case of Contractors jointly competing for the award of the contract, the statements referred to in clause 7.1. of ToR, are submitted by each of the Contractors. These declarations confirm the lack of grounds for exclusion and the fulfilment of the conditions for participation in the scope in which each of the Contractors demonstrates compliance with the conditions for participation in the procedure.
- 9.3. Contractors jointly competing for the award of the contract shall attach a statement to the tender showing which services will be performed by individual Contractors, referred to in article 117 par. 4 of PPL Act.

## **10. Method of communication and explanations of the content of ToR**

- 10.1. Communication in the contract award procedure, including the submission of tenders, requests to participate in the procedure, exchange of information and the transmission of documents or statements between the Contracting Party and the Contractor, taking into account the exceptions specified in the PPL Act, shall be carried out using means of electronic communication as defined in the Act of July 18, 2002 on the



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provision of electronic services (Journal of Laws of 2019, items 123 and 730).

- 10.2. The tender, the statements referred to in art. 125 par. 1 of the Public Procurement Law Act, subjective evidence, powers of attorney, the commitment of the entity providing resources shall be prepared in electronic form, in generally available data formats, such as .txt, .rtf, .pdf, .doc, .docx, .odt. **The tender, as well as the statement referred to in clause 7.1. ToR are submitted, under pain of nullity, in the electronic form (i.e. with qualified electronic signature) or in the electronic format with trusted electronic signature or certified personal electronic signature.**
- 10.3. Since 1 July 2016, qualified electronic signatures used to sign all files must meet requirements of "Regulation (EU) No. 910/2014 of the European Parliament and of the Council of July 23, 2014 on electronic identification and trust services for electronic transactions in the internal market (eIDAS)".
- 10.4. In the case of using the external XAdES signature format, the Contracting Party requires the attachment of an appropriate number of files, i.e. signed data files and signature files in the XAdES format.
- 10.5. The Contractor's communication with the Contracting Party as well as the transmission of information, statements, applications, notifications and documents will be carried out by means of electronic communication. Communication between the Contracting Party and Contractors, including all statements, applications, notifications and information, are provided in the electronic form via the Platform and the "Send a message" form, available (in Polish and English languages) at <https://platformazakupowa.pl/pn/port> or the Contracting Party's e-mail indicated in clause 10.6 ToR.
- 10.6. Persons authorised by the Contracting Party to contact Contractors as regards tender documentation: Ms Marzena Krzyminska: [marzena.krzyminska@port.lukasiewicz.gov.pl](mailto:marzena.krzyminska@port.lukasiewicz.gov.pl).
- 10.7. The Contractor, as a professional entity, is obliged to check announcements and messages sent by the Contractor directly on platformazakupowa.pl, because the notification system may break down or the message may go to the SPAM folder.
- 10.8. The Contracting Party, in accordance with the Regulation of the Prime Minister of December 31, 2020 on the method of preparing and submitting information and technical requirements for electronic documents and electronic means of communication in the public procurement procedure or the competition (Journal of Laws of 2020, item 2452), specifies the necessary requirements related to hardware and applications to enable work on platformazakupowa.pl, i.e.:
- 1) regular access to the Internet with guaranteed capacity of at least 512 kb/s,



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- 2) PC or MAC with the following configuration: memory min. 2 GB Ram, Intel IV 2 GHZ processor or faster, one of the following operating systems - MS Windows 7, Mac Os x 10 4, Linux, or higher,
- 3) any web browser, in the case of Internet Explorer at least version 10.0,
- 4) JavaScript enabled,
- 5) Adobe Acrobat Reader or any other program that supports the .pdf file format installed,
- 6) Encryption on platformazakupowa.pl is performed using the TLS 1.3 protocol.
- 7) The indication of the time of data receipt by the purchasing platform is the date and the exact time (hh:mm:ss) generated according to 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 the tender is 150 MB, while for communication the maximum file size is 500 MB.

10.9. By joining this public procurement procedure, the Contractor:

- 1) accepts the terms of use of [platformazakupowa.pl](https://platformazakupowa.pl) set out in the Regulations on the website under the link in the "Regulations" tab and considers it binding,
- 2) has read and applies the Tender Submission Instruction available at <https://drive.google.com/file/d/1Kd1DttbBeiNWt4g4sIS4t76lZVKPbkyD/view> (English version: [https://drive.google.com/file/d/18h2aaAIqI9ZC5g\\_BvPdqxokWNgMG6hr3/view](https://drive.google.com/file/d/18h2aaAIqI9ZC5g_BvPdqxokWNgMG6hr3/view))

10.10. **The Contracting Party is not responsible for a tender submitted in a manner, which is incompatible with the platformazakupowa.pl Instructions**, in particular for the situation when the Contracting Party becomes familiar with the content of the tender before submission deadline for tenders (e.g. submitting the tender in the "Send a message to the Contracting party" tab).

Such tender will be considered a commercial offer by the Contracting Party and will not be taken into account in the present procurement procedure because the obligation imposed by Art. 221 of the Public Procurement Law will not have been met.

10.11. The Contracting Party confirms that instructions for platformazakupowa.pl, in particular concerning logging in, submitting requests for clarification of the ToR content, submission of tenders and other activities undertaken in this procedure using platformazakupowa.pl, can be found in the "Instructions for Contractors" tab on the website at: <https://platformazakupowa.pl/strona/45-instrukcje> (available in Polish and English languages).

10.12. In correspondence by e-mail to the Contracting Party, Contractors should use the case number of the public procurement procedure in question. Any notifications, statements, requests and the information provided by e-mail require, at the request of each party, immediate confirmation of their receipt. If receipt of e-mail correspondence is not



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confirmed, the report confirming the sending of the e-mail is considered a confirmation of delivery.

- 10.13. The Contractor may request the Contracting Party to clarify the content of ToR.
- 10.14. The Contracting Party is obliged to provide explanations immediately and no later than 2 calendar days before the deadline for submitting tenders, provided that the request for clarification of the ToR content was received no later than 4 calendar days before the deadline for tender submission.
- 10.15. If the Contracting Party does not provide explanations within the time limit referred to in clause 10.14, it must extend the deadline for submitting tenders by the time necessary for all interested Contractors to familiarise themselves with the explanations necessary for the proper preparation and submission of tenders. In the event that the request for clarification of the content of ToR has not been received within the time limit referred to in clause 10.14, the Contracting Party is not obliged to provide explanations to ToR or to extend the deadline for submission of tenders.
- 10.16. Extension of the deadline for submitting tenders referred to in clause 10.15, does not affect the deadline for submitting an application for clarification of the content of ToR.
- 10.17. The Contracting Party will provide the content of inquiries with explanation on the Platform of the public procurement procedure under the link <https://platformazakupowa.pl/pn/port>, without disclosing the source of the inquiry.
- 10.18. The Contracting Party does not provide for convening a meeting of Contractors.

## **11. Description of the method of preparing tenders and formal requirements related to submitted declarations and documents**

- 11.1. The Contractor may submit only one tender. If the Contractor submits more than one tender, all its tenders will be rejected.
- 11.2. The procedure is conducted in Polish and in English. The Contracting Party agrees to submit the tender and other documents in Polish or in English. Documents drawn up in a foreign language (apart from English) are to be submitted together with their translation into Polish.
- 11.3. The content of the tender must correspond to the content of ToR.
- 11.4. The tender must be signed by persons authorized to represent the Contractor (or Contractors jointly competing for the contract award).
- 11.5. Persons authorised to sign the tender must be documented in the relevant business registration documents. If authorisation does not result directly from the legal status within the Contractor's registered business, then a power of attorney must be attached.



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- 11.6. Templates specified by the Contracting Party for the tender and other statements and documents are included as the appendices to ToR. The tender and attachments shall be prepared in accordance with these templates as to the content and description of columns and rows.
- 11.7. If the tender contains information constituting a trade secret within the meaning of the Act of April 16, 1993 on Combating Unfair Competition (Journal of Laws of 2019, items 1010 and 1649), the Contractor should, together with the provision of such information, make a reservation that it shall not be disclosed, and demonstrate that the proprietary information is a trade secret.
- 11.8. The Contractor shall bear all costs related to the preparation and submission of the tender.
- 11.9. The tender should include:
- 1) A completed and signed Tender Form – template attached as Appendix no. 1 to ToR;
  - 2) Completed and signed declaration referred to in clause 7.1. of the ToR – template of declaration attached as Appendix 4 (and Appendix 5 to ToR, if applicable);
  - 3) Commitment referred to in clause 8.3 of ToR (if applicable);
  - 4) The appropriate power of attorney/s - if the authorisation to sign the tender does not result directly from the relevant register (if applicable);
  - 5) In the case of Contractors jointly competing for the award of the contract, a document appointing a Proxy to represent them in the contract award procedure or to represent them in the procedure and conclude a contract on this public procurement (if applicable);
  - 6) The declaration of the Contractors putting in the joined tender, referred to in clause 9.3 of ToR (if applicable).

## **12. The method of calculating the price of the tender**

- 12.1. The Contractor is obliged to provide the net price in the Tender Form for the complete object of the contract, the VAT rate and the gross price of the tender. In the event of an accounting error, the Contracting Party will consider the net price to be correct and, based on the net price, will make an appropriate correction of the gross price of the tender.

In the tender form, the Contractor is obliged to provide prices for the stages of the optional contract. If the Contractor does not provide prices for the stages of the optional contract, the Contractor's tender will be subject to rejection pursuant to Article 226(1)(5) of the PPL.

- 12.2. The price of the tender should include all costs necessary to complete the contract, which result from the content of these ToR and attachments thereto. The price quoted in the tender must include all costs to be borne



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by the Contractor for the proper performance of the object of the contract, in accordance with applicable regulations.

12.3. The price indicated in the tender must be given digitally, with accuracy to two decimal places, while maintaining the mathematical rule of rounding numbers (they should be rounded in such a way that numbers from 1 to 4 should be rounded down, while numbers from 5 to 9 should be rounded up).

12.4. If a tender has been submitted, the selection of which would lead to the creation of a tax obligation for the Contracting Party in accordance with the Act of March 11, 2004 on tax on goods and services (Journal of Laws of 2018, item 2174, as amended), the Contracting Party shall, for the purpose of applying the price criterion, add to the price presented in this tender the amount of tax on goods and services it would be required to settle. In the tender, the Contractor is obliged to:

- 1) inform the Contracting Party that the selection of its tender will lead to the occurrence of tax obligation for the Contracting Party;
- 2) indicate the name (type) of goods or services, the delivery or provision of which will lead to the occurrence of tax obligation;
- 3) indicate the value of goods or services subject to tax liability of the Contracting Party, without the tax amount;
- 4) specify the VAT rate that, according to the Contractor's knowledge, will be applicable.

12.5. The Contracting Party provides for an advance payment for the performance of the public contract in the amount of 20%. Detailed information on the advance payment can be found in the template agreement.

### **13. Requirements related to the bid bond (tender guarantee).**

The Contracting Party does not provide for payment of the bid bond.

### **14. Time limit for the Contractor to maintain its tender.**

14.1. The Contractor will be bound by the tender for a period of 30 calendar days, i.e. until 09.09.2022. The period during which the Contractor must maintain its tender shall commence upon the expiry of the deadline for submitting tenders.

14.2. If the selection of the best tender does not take place before the end of the period referred to in clause 14.1 of ToR, the Contracting Party, before the expiry of the tender validity period, may ask the Contractors on a one-off basis for their consent to extend this deadline by a period determined by the Contractor, but not exceeding 30 calendar days. Extension of the tender validity period requires the Contractor to submit a written declaration of consent to extend the tender validity period.



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## 15. The manner and date for submission and opening of tenders.

- 15.1. The tender along with all required documents should be placed on the Platform at: <https://platformazakupowa.pl/pn/port> on the sub-site of the proceedings until 11.08.2022, by 11.00 a.m.
- 15.2. After completing the tender submission form and uploading all required attachments, the applicant should click "go to summary".
- 15.3. The date of submitting the tender is the date of its submission in the system (platform) in the second step of the tender submission by clicking the "Submit tender" button and the display of the message that the tender has been encrypted and submitted.
- 15.4. Detailed instructions for Contractors regarding the submission, amendment and withdrawal of the tender can be found on the website at: <https://platformazakupowa.pl/strona/45-instrukcje> (in Polish and English languages).
- 15.5. Opening of the tenders will take place on 11.08.2022 at 11:30 a.m.
- 15.6. Before the opening of the tenders at the latest, the information on the amount that is intended to finance the contract will be made available on the Platform.
- 15.7. Immediately after opening of tenders, the following information shall be placed on the website of the procedure:
  - 1) names or first names and surnames as well as registered office or places of business activity or places of residence of Contractors whose tenders have been opened;
  - 2) prices included in the tenders.

The information will be placed on the website of the procedure on [platformazakupowa.pl](https://platformazakupowa.pl) in the section „Announcements”.

## 16. Description of the tender evaluation criteria, including the weighting of criteria and method of evaluation of the tenders.

- 16.1. The Contracting Party will evaluate and compare only those tenders, which will not be rejected by the Contracting Party.
- 16.2. The criterion of choosing the best tender is:

Criterion no. 1: **price – weight of criterion 50.00 %**

Criterion no. 2: **professional experience of the Expert – weight of criterion 50.00 %**
- 16.3. The rules for evaluating tenders in respect of individual criteria:
  - 16.3.1. Criterion no. 1: price.

The number of points awarded to this criterion will be calculated according to the following formula:



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$$\text{Number of points} = \frac{\text{the lowest gross price}^*}{\text{gross price of evaluated tender}} \times 100 \text{ points} \times \text{criterion weight}$$

**\* from among all submitted tenders that are not subject to rejection**

The gross price of the tender (including VAT) shall be used for evaluation.

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

In criterion no. 1, the maximum of 50.00 points can be obtained.

16.3.2. Criterion no. 2: Professional experience of the Expert.

To obtain points in criterion no. 2 "professional experience of the Expert", the Contractor may indicate person, who will demonstrate greater professional experience in the scope of number of delivered services than required to take part in the procedure. The number of points given for the "professional experience of the Expert" will be given as follows:

No.	Description of experience of the Expert (optional parameters)	Maximum number of points that the tender can obtain for criterion no. 2
1	Experience of the Expert in at least 4 projects of building, re-building or retrofitting of the BSL-3, ABSL-3, BSL-4 or ABSL-4 laboratories <b>in the scope of planning of the laboratories.</b>  <u>Note:</u> The parameter will be assessed on the basis of the Contractor's statement in the Tender Form. In the event that the content of the Contractor's Tender Form does not indicate that this parameter is met, the tender will receive 0.00 points for this parameter. For demonstrating the above-mentioned experience for the Expert, the tender will receive 10.00 points.	YES – 10.00 points NO – 0.00 points
2	Experience of the Expert in at least 4 projects of building, re-building or retrofitting of the BSL-3, ABSL-3, BSL-4 or ABSL-4 laboratories <b>in the scope of</b>	YES – 10.00 points NO – 0.00 points



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	<p><b>designing or evaluation of the designs of the laboratories.</b></p> <p><u>Note:</u> The parameter will be assessed on the basis of the Contractor's statement in the Tender Form. In the event that the content of the Contractor's Tender Form does not indicate that this parameter is met, the tender will receive 0.00 points for this parameter. For demonstrating the above-mentioned experience for the Expert, the tender will receive 10.00 points.</p>	
3	<p>Experience of the Expert in at least 4 projects of building, re-building or retrofitting of the BSL-3, ABSL-3, BSL-4 or ABSL-4 laboratories <b>in the scope of supervision of the construction works in the laboratories.</b></p> <p><u>Note:</u> The parameter will be assessed on the basis of the Contractor's statement in the Tender Form. In the event that the content of the Contractor's Tender Form does not indicate that this parameter is met, the tender will receive 0.00 points for this parameter. For demonstrating the abovementioned experience for the Expert, the tender will receive 10.00 points.</p>	<p>YES – 10.00 points NO – 0.00 points</p>
4	<p>Experience of the Expert in the field of functional commissioning of BSL-3, ABSL-3, BSL-4 or ABSL-4 laboratories (conducting tests as part of validating premises and apparatus or validation of processes and procedures).</p> <p><u>Note:</u> The parameter will be assessed on the basis of the Contractor's statement in the Tender Form. In the event that the content of the Contractor's Tender Form does not indicate that this parameter is met, the tender will receive 0.00 points for this parameter. For demonstrating the above-mentioned experience for the Expert, the tender will receive 10.00 points.</p>	<p>YES – 10.00 points NO – 0.00 points</p>
5	<p>Participation of the Expert in the certification of BSL-3, ABSL-3, BSL-4 or ABSL-4 laboratories to selected international standards.</p>	<p>YES – 10.00 points NO – 0.00 points</p>



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	<p><u>Note:</u></p> <p>The parameter will be assessed on the basis of the Contractor's statement in the Tender Form.</p> <p>In the event that the content of the Contractor's Tender Form does not indicate that this parameter is met, the tender will receive 0.00 points for this parameter.</p> <p>For demonstrating the above-mentioned experience for the Expert, the tender will receive 10.00 points.</p>	
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In Criterion 2, the maximum of 50.00 points can be obtained.

- 16.4. The tenders will be assessed by the Contracting Party on a scale from 0.00 to 100.00 points.
- 16.5. The most advantageous tender will be the one that obtains the highest number of points in the above-mentioned Criteria (Criterion No. 1 + Criterion No. 2) and will meet all the requirements of the PPL and ToR.
- 16.6. If the best tender cannot be selected due to the fact that two or more tenders present the same balance of price and different tender evaluation criteria, the Contracting Party selects from among those tenders the tender that received the highest score in the criterion with the highest weight (it applies to situations with more than one criterion).
- 16.7. If the tenders received the same grade in the criterion with the highest weight, the Contracting Party selects the tender with the lowest price.
- 16.8. If the tender cannot be selected in the manner referred to in clause 16.6 of ToR, the Contracting Party requests the Contractors who submitted these tenders to submit additional tenders containing the new price within the time limit specified by the Contracting Party.
- 16.9. When submitting additional tenders, the Contractors cannot offer higher prices than those offered in the tenders previously submitted by them.

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

- 17.1. The Contracting Party exercises the right provided for in Article 288(1) of the PPL in the matter of limiting the number of Contractors it will invite to negotiate tenders.
- 17.2. In the event of a decision to conduct negotiations, acting according to Article 288(1) of the PPL, the Contracting Party shall limit, by applying the criteria for the evaluation of tenders (i.e. the price), the number of contractors invited to negotiate to three whose tenders meet these criteria to the highest extent.
- 17.3. In the event of a decision to conduct negotiations in the first step, the Contracting Party shall at the same time inform all Contractors who have submitted tenders about the Contractors:



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- 1) whose tenders were not rejected, as well as the points given to the tenders in each tender evaluation criterion and total points,
  - 2) whose tenders were rejected,
  - 3) who did not qualify to the negotiations, as well as the points given their tenders in each tender evaluation criterion and total points, in case referred to in article 288 par. 1 PPL
- giving factual and legal justification.
- 17.4. The tender of the Contractor who is not invited to the negotiations is treated as rejected.
- 17.5. If the number of Contractors, who in response to the procurement notice submitted tenders not subject to rejection, is less than 3, the Contracting Party in the case referred to in Article 275 point 2) of the PPL shall continue the procedure.
- 17.6. In the invitation to negotiations, the Contracting Authority shall indicate the place, date and manner of conducting negotiations and the criteria for the evaluation of tenders under which negotiations will be conducted in order to improve the content of tenders.
- 17.7. The negotiations are confidential. Neither party may, without the consent of the other party, disclose technical and commercial information related to the negotiations. Consent is given in relation to specific information and before its disclosure.
- 17.8. After completing negotiations with all of the Contractors, the Contracting Party informs about this fact the participants of the negotiations and invites them to submit additional tenders.
- 17.9. The invitation to submit additional tender will contain at least:
- 1) name and address of the Contracting Party, their telephone number, e-mail address and the website of the conducted procurement;
  - 2) the manner and deadline of submitting additional tenders, and information on language or languages in which they should be prepared, as well as the date of opening these tenders.
- 17.10. The Contractor can submit the additional tender, which contains new proposals regarding the content of the tender to be assessed as part of the tender evaluation criteria indicated by the Contracting Party in the invitation to negotiations.
- 17.11. The additional tender may not be less favourable in any of the tender evaluation criteria indicated in the invitation to negotiations than a tender submitted in response to a procurement notice.
- 17.12. The originally submitted tender shall cease to bind the Contractor in the scope, in which they will submit the additional tender, containing more favourable proposals under each tender evaluation criterion indicated in the invitation for negotiations.



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17.13. An additional tender which is less favourable in any of the tender evaluation criteria indicated in the invitation to negotiations than a tender submitted in response to the procurement notice shall be rejected.

**18. Information on formalities that should be completed after selecting the tender in order to conclude a public procurement contract.**

18.1. The contract will be concluded in accordance with the dates specified in art. 308 par. 2 and 3 of the PPL.

18.2. Before signing the contract, the Contractor whose tender has been found the most advantageous is obliged to provide the Contracting Party with:

- 1) if the tender of Contractors jointly competing for the contract is selected, a contract regulating the cooperation of these Contractors in the form of the original or a copy certified to be true to the original by the Contractor,
- 2) a signed non-disclosure agreement, constituting Appendix No. 11 to ToR.

18.3. Failure to provide the above documents before signing the contract will be tantamount to the fact that signing of the contract has become impossible for reasons attributable to the Contractor.

**19. Requirements for securing the proper performance of the contract.**

The Contracting Party does not require a performance bond.

**20. Information on the content of the contract concluded and the possibility of amending it.**

20.1. The selected Contractor is obliged to conclude a public procurement contract on the terms and conditions specified in the Template of the Agreement, constituting Appendix No. 3 to ToR.

20.2. The scope of the Contractors' performance resulting from the contract is the same as its obligation included in the tender.

20.3. The Contracting Party provides for the possibility of changing the concluded contract in relation to the content of the selected tender in the scope regulated in art. 454-455 of the Public Procurement Law and indicated in the Template of the Agreement, constituting Appendix No. 3 to ToR.

**21. Subcontracting.**



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- 21.1. The Contractor may entrust performance of part of the contract to a subcontractor (subcontractors).
- 21.2. The Contracting Party reserves the obligation for the Contractor to personally perform key parts of the contract, concerning:
- 1) preparation of the documentation (as described in Section II, description of Stage I, Description of the Subject of Procurement) for the procurement to select the Designer;
  - 2) evaluation of tenders submitted in the procurement for selection of the Designer;
  - 3) evaluation of design documentation proposed by Designer and agreeing the final version of the design;
  - 4) taking part in the acceptance of completed works of all the stages and in the final acceptance of construction works;
  - 5) verification of tests qualifying the laboratory to work in BSL-3 standard;
  - 6) preparation of the laboratory for certification.
- 21.3. The Contracting Party requires that in the event of subcontracting a part of the contract, the Contractor should indicate in the tender the parts of the contract, the performance of which it intends to entrust to subcontractors, and (if known at this stage) the names of these subcontractors.

## **22. On-site inspection.**

The Contracting Party does not envisage on-site inspection during the procurement procedure.

## **23. Information on foreign currencies in which settlements between the Contracting Party and the Contractor can be made**

Settlements between Contracting Party and Contractor will be carried out in Polish zlotys (PLN). The Contracting Party also admits the possibility of settlements with the Contractor in Euro or CHF. If the Contractor submits a tender in a foreign currency, i.e. in EUR or CHF, the Contracting Party will convert EUR / CHF in order to compare the tenders in accordance with the average foreign exchange rate of the National Bank of Poland on the day of initiating the public procurement procedure.

## **24. Information on legal protection measures available to the Contractor.**

- 24.1. Legal protection measures are available to the Contractor, participant in the competition or other entity if he or she has or had an interest in obtaining the contract and has suffered or may suffer damage as a result of the Contracting Party's breach of the provisions of the PPL Act.



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24.2. Legal protection measures against the notice initiating the contract award procedure and procurement documents are also available to organisations entered on the list referred to in art. 469 item 15 of the PPL and the Spokesman for Small and Medium Enterprises.

24.3. The appeal can be lodged against:

- 1) an activity of the Contracting Party inconsistent with the provisions of the Act, undertaken in the contract award procedure, including the draft provision of the contract;
- 2) abandonment of activities in the contract award procedure to which the Contracting Party was obliged under the Act.

24.4. The appeal shall be submitted to the Chairman of the National Appeals Chamber. The appellant shall provide the Contracting Party with a copy of the appeal before the deadline for lodging the appeal in such a way that it can become familiar with its content before the deadline.

24.5. The appeal against the content of the announcement or the content of ToR shall be submitted within 5 calendar days from the date of placing the announcement in the Public Procurement Bulletin or the content of ToR on the website.

24.6. The appeal shall be submitted within:

- 1) 5 calendar days from the date of providing the information on the Contracting Party's action constituting the basis for its submission, if the information was provided by means of electronic communication,
- 2) 10 calendar days from the date of providing the information on the Contracting Party's action constituting the basis for its submission, if the information was provided in a manner other than the one specified in section 1).

24.7. The appeal in cases other than those specified in clauses 23.5 and 23.6 shall be submitted within 5 calendar days from the date of becoming aware or, exercising due care, from the date it was possible to become aware of the circumstances constituting the basis for the appeal.

24.8. The parties and participants of the appeal procedure can appeal against the decision of the Chamber and the decision of the President of the Chamber referred to in art. 519 par. 1 of the PPL, and file a complaint to the court.

24.9. In the proceedings pending as a result of the complaint lodged, the provisions of the Act of November 17, 1964 – the Code of Civil Procedure on the appeal shall apply accordingly, unless the provisions of this chapter provide otherwise.

24.10. The complaint shall be lodged with the District Court in Warsaw – the public procurement court, hereinafter referred to as the "public procurement court".

24.11. The complaint shall be lodged through the President of the Chamber, within 14 calendar days from the date of delivery of the decision of the Chamber or the decision of the President of the Chamber referred to in



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art. 519 par. 1 of the PPL Act, sending at the same time its copy to the opponent of the complaint. Filing a complaint in the post office of the designated operator within the meaning of the Act of November 23, 2012 – the Postal Law – is tantamount to lodging it.

24.12. The President of the Chamber submits the complaint together with the files of the appeal procedure to the public procurement court within 7 calendar days from the date of its receipt.

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

Detailed information is included in appendix no. 10 to ToR.

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

Appendix no. 1 – Tender Form

Appendix no. 2 – Description of the subject of the procurement

Appendix no. 3 – Template of the agreement

Appendix no. 4 – Declaration of the Contractor based on Article 125, par. 1 PPL Act on meeting the criteria of taking part in the procedure and no grounds for exclusion

Appendix no. 5 – Declaration of third party making the resources available to the Contractor on the basis of article 125 par. 1 of PPL Act

Appendix no. 6 – Contractor's declaration on affiliation to a group of companies

Appendix no. 7 – Template of the list of services

Appendix no. 8 – Template of the list of persons

Appendix no. 9 - Declaration of the contractors submitting the joined tender (Article 117 par. 4 of the PPL Act)

Appendix no. 10 – GDPR information clause

Appendix no. 11 – Template of the non-disclosure agreement



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