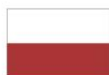




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Województwo  
Śląskie



Instytut Badań i Rozwoju Motoryzacji BOSMAL Sp. z o.o.

Sarni Stok 93, 43-300 Bielsko-Biała

Phone: (33) 8130588 / 547 Fax: (33) 8125038 E-mail: bosmal@bosmal.com.pl

**Contract Award Procedure Reference: BOS/114/NZ/24**

**HIGH POWER BRAKE DYNAMOMETER**

**CPV 38540000-2**

Machines and apparatus for testing and measuring

**SPECIFICATION**

**OF THE TERMS OF A CONTRACT**

with a value in excess of the relevant EU procurement threshold

A public contract award procedure under the Polish  
Public Procurement Law (Act of Parliament) of 11 September 2019.

(consolidated text published in Dz. U. [Journal of Laws] 2024.1320, of 30/08/2024)

Procurement procedure: open tender procedure

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### CONTRACTING ENTITY

**Instytut Badań i Rozwoju Motoryzacji BOSMAL Sp. z o.o.**, with its registered office in Bielsko-Biała (Sarni Stok 93, 43-300 Bielsko-Biała), registered as a company with the register of companies [Polish: *rejestr przedsiębiorców*] kept by the National Court Register, the District Court in Bielsko-Biała, 8th Commercial Division of the National Court Register, KRS [company number]: 0000221979, NIP [tax ID]: 5472013159, REGON [industry ID]: 072907563, having a share capital of PLN 5,150,000.00.

The procedure will be conducted by means of electronic methods of communication, namely the <https://platformazakupowa.pl/pn/bosmal> platform.

Contract award procedure ID: <https://platformazakupowa.pl/transakcja/1043135>

Please note that all the information concerning the procedure which can be found on the website for the procedure will also be made available in the INSTITUTE/ORDERS/PUBLIC TENDERS section of the Contracting Entity's website at [www.bosmal.com.pl](http://www.bosmal.com.pl).

The same website will be used by the contracting entity to publish all changes to and explanations of the content of this document, and all other documents directly related to the public contract award procedure.

The contract may be financed by **the European Funds for the Silesian Province 2021-2027 (European Regional Development Fund (ERDF): Priority: FESL.01.00 – European Funds for Smart Growth, Measure: FESL.01.02 – Research, growth and innovation in business Project: Innovative solutions and testing facilities for a modern automotive industry**

The Contracting Entity may annul the contract award procedure if the public funds that it intends to use as partial funding for the project under the contract are not awarded to the Contracting Entity under s.257 of the Act.

### SECTION 1. PROCUREMENT PROCEDURE

1. This public contract award procedure will be conducted in accordance with the Polish Public Procurement (Act of Parliament) of 24 October 2019 (consolidated text published in Dz. U. [Journal of Laws] 2024.1320, of 30/08/2024) ("the Act") and implementing provisions enacted under that Act, by following the procurement procedure described in s.132 of the Act, where tenders in response to a contract notice may be submitted by all interested Economic Operators and where the Contracting Entity will select the most advantageous tender without negotiations. In this contract award procedure, the Contracting Entity will apply the procurement procedure described in s.139(1) of the Act. The Contracting Entity will therefore not apply the procurement procedure described in s.139(2) of the Act.
2. The public contract awarded as a result of this procedure will be governed by Polish law, including (but not limited to) the Act and the Polish Civil Code (Act of Parliament) of 23 April 1964 (Dz.U. [Journal of Laws] of 2020, item 1740, as amended) ("the Civil Code").
3. This contract award procedure is an open tender procedure in accordance with the provisions of the Polish Public Procurement Law (Act of Parliament) of 11 September 2019 (consolidated text published in Dz. U. [Journal of Laws] 2024.1320, of 30/08/2024).
4. **The reference of the procedure described in this document is BOS/114/NZ/24**, and all Economic Operators are required to quote this reference number in all their communications with the Contracting Entity.
5. This contract award procedure will be conducted in Polish. All statements, notices and other documents issued within the framework of this contract award procedure, including the agreement on the award of the public contract, will be in Polish.

The documents concerning this contract award procedure are provided by the Contracting Entity as translations into English for convenience. In the event of any doubt or disagreement, the Polish text of this document will

always take precedence over any translation. Each Economic Operator shall be solely liable for its use of or reliance on any such translation.

**This translation of the Polish text is provided for convenience only, and the Polish text of this document (Polish: SWZ, Specyfikacja Warunków Zamówienia) will be binding in the case of any doubt.**

6. All matters not covered by this Specification of the Terms of a Contract (Polish: SWZ, Specyfikacja Warunków Zamówienia) ("Specification") will be governed by the Act and any implementing provisions enacted thereunder.

## **SECTION 2. OBJECT OF THE CONTRACT**

1. The object of the public contract is a high power brake dynamometer.
2. The scope of the supply is:
  - 2.1. a dynamometer.
    - 2.1.1. Principle of operation: a dynamometer controlled by a water outlet valve.
    - 2.1.2. Rated power: > 2,000 kW
    - 2.1.3. Rated torque: > 14,000 Nm
    - 2.1.4. Single direction of rotation and single flange (with possibility to change the direction of rotation by replacing the flange and coupling the unit under test to the other end of the dyno shaft.
    - 2.1.5. Load cell and encoder to measure the torque and speed values.
    - 2.1.6. A power unit to control dynamometer valves using an external automation system available at BOSMAL.
    - 2.1.7. Cable and interfaces between the dynamometer and the control room, with a length of > 20 m.
    - 2.1.8. A dynamometer water inlet control valve to enable low idle and high idle engine/motor operation.
  - 2.2. Dynamometer auxiliaries:
    - 2.2.1. A regulator for supply water pressure preconditioning to meet dynamometer requirements (if a necessary). The on-site water supply pressure varies between 3.5 bar and 4.5 bar.
    - 2.2.2. A certified torque calibrations set.
    - 2.2.3. Other unlisted accessories necessary to operate the dynamometer (e.g. sensors, valves, filters, etc.).
    - 2.2.4. Technical documentation, incl. electrical, mechanical and hydraulic interfaces.
    - 2.2.5. On-site commissioning (BOSMAL, Bielsko-Biała, Poland), excl. automation system integration.
  - 2.3. A cover (guard) of a shaft coupling the dynamometer to the unit under test.
  - 2.4. Two coupling shafts appropriately selected to meet the specification of the dynamometer and two different units under test. Detailed descriptions of two units under test are given below in order to select shafts of appropriate type.

Unit under test 1:

    - 2.4.1. Combustion engine of piston type
    - 2.4.2. Thermodynamic cycle: 4 stroke Diesel
    - 2.4.3. Turbocharged, direct injection
    - 2.4.4. Bore x stroke: 145 x 152 mm
    - 2.4.5. Number of cylinders: 12
    - 2.4.6. Engine layout: V
    - 2.4.7. Bank angle: 90°
    - 2.4.8. Minimum engine speed: 600 rpm
    - 2.4.9. Maximum engine speed: 2,500 rpm
    - 2.4.10. Maximum power: 1,080 kW @ 2,100 rpm
    - 2.4.11. Maximum torque: 5,600 Nm @ 1,200 rpm
    - 2.4.12. Single mass flywheel, no clutch

Unit under test 2:

- 2.4.13. Combustion engine of piston type
- 2.4.14. Thermodynamic cycle: 4 stroke Diesel
- 2.4.15. Turbocharged, direct injection
- 2.4.16. Bore x stroke: 145 x 152 mm
- 2.4.17. Number of cylinders: 16
- 2.4.18. Engine layout: V
- 2.4.19. Bank angle: 90°
- 2.4.20. Minimum engine speed: 600 rpm
- 2.4.21. Maximum engine speed: 2,500 rpm
- 2.4.22. Maximum power: 1,440 kW @ 2,100 rpm
- 2.4.23. Maximum torque: 7,400 Nm @ 1,200 rpm
- 2.4.24. Single mass flywheel, no clutch

**3. Quality requirements**

**3.1 Installation and acceptance of the object of the contract**

- 3.1.1 An organisational meeting will be held within **8 weeks** after an agreement on the award of the contract is signed to define a project timeline schedule. The meeting venue will be the offices of the BOSMAL Institute.
- 3.1.2 Within **8 weeks** after an agreement on the award of the contract is signed, the Economic Operator shall specify all the installation requirements to ensure that the equipment is fully functional.
- 3.1.3 A week prior to dispatch, the Economic Operator shall inform the Institute of the Economic Operator's readiness to make the supply contracted for.
- 3.1.4 The following functional tests of the dynamometer shall be carried out as acceptance tests of the object of the contract:
  - a. A test to verify the stability of the set rotational speed and torque values at a number of engine operating points (determined by different levels of the engine speed and torque);
  - b. A test to verify the tested engine's idle operation: the minimum torque of an engine connected to the dynamometer for the full range of the engine's rotational speed;
  - c. A test to verify the operating stability of the dynamometer with a fluctuating pressure value of the water supplied to the dynamometer (the pressure fluctuating range will be between 3 bar and 5 bar).
- 3.1.5 The utilities available on the premises of the BOSMAL Institute have the following parameters:
  - a. power supply: 400 V ±5%, 230 V ±5%.
  - b. compressed air: 8 bar.
  - c. dynamometer cooling water – supply pressure: 3 bar – 5 bar, temperature: 5°C – 30°C.

**Table 1. Scope of responsibility**

<b>No.</b>	<b>Task</b>	<b>BOSMAL</b>	<b>Economic Operator</b>
1	Equipment system connection designs	X (approval)	X
2	Delivery		X (DDP)
3	Unloading	X	
4	Storage	X	
5	Unpacking	X (support)	X
6	Placing the equipment in a particular location	X	X (technical support + inspection)

7	Assembling and integrating all the parts of the equipment		X
8	Utilities (water, power supply, compressed air)	X	
9	Integrating the equipment with an automation system	X	
10	Start-up	X	X
11	Testing	X	X
12	Final acceptance	X	X
13	Training		X

3.2 The Economic Operator shall provide basic training within the time for completing the supply under the contract. The provision and cost of the training as part of the contract shall be included in the price offered by the Economic Operator.

- a. The training venue shall be the premises of the Contracting Entity.
- b. The training shall be provided as at least a **one-day training day** and cover the following:
  - 1) Actions to be completed before using the dynamometer;
  - 2) Important operating aspects of the dynamometer to be monitored while the dynamometer is in operation.
  - 3) Actions to be completed before pre-planned downtime of the dynamometer.
  - 4) Maintenance of the dynamometer.

After the training, the Economic Operator shall issue training completion certificates and provide training materials in hard copy format and/or in electronic form. The training materials may partially be written in a language other than Polish, but the most essential information concerning safety and maintenance must be in Polish.

#### 4. The Contracting Entity will permit a site visit.

Each Economic Operator interested in visiting the project location to verify the specified requirements and technical parameters necessary to ensure that what is offered by them meets the Contracting Entity's requirements will be able to visit the premises where the equipment is to be installed. The premises of the Contracting Entity will be open for such visits **from 8 AM to 1 PM between 20 January 2025 and 24 January 2025**. No person representing any Economic Operator during such a visit will be able to ask questions concerned the object of the contract and/or the contract award procedure, as the Contracting Entity's representative during such visits will not be authorised to answer any such questions. If, however, the Contracting Entity's representative provides any such information, the Economic Operator shall notify the Contracting Entity of that and it shall be deemed that the Contracting Entity will not be bound in the contract award procedure by the information so provided. After its site visit, the Economic Operator will be able to ask questions and/or request explanations according to the provisions of this Specification (electronic exchange of information).

#### 5. Time limit for completing the supply under the contract

The object of the contract shall be delivered, started up and accepted, and training for personnel shall be provided, within **not more than 26 weeks, which is a strict requirement**. The Economic Operator may, however, complete the supply earlier. In such a case, all the other terms of the agreement on the award of the contract and the requirements set out therein shall remain unchanged. In such a case, no amendment will be needed to the agreement on the award of the contract.

**6. Additional information****6.1. Force Majeure**

Neither Party shall be liable for failure to comply with their obligations under the agreement on the award of the contract, if such failure is the result of circumstances beyond their control and which could not have been foreseen when the agreement was entered into and which could not have been avoided. Force majeure events include, for example, [natural] disasters, fires, explosions, strikes or wars. If a force majeure occurs, the Parties shall act in accordance with international rules and the principles of mutual goodwill.

If a force majeure event continues longer than **30 days**, either Party may withdraw [Polish: *odstąpienie*] from the agreement on the award of the contract, with no liability for any costs.

**6.2. Subcontractors**

The Economic Operator may use one or more subcontractors to complete any part of the supply. It is not the Contracting Entity's requirement that the essential parts of the contract be completed directly by the Economic Operator. It is, however, the Contracting Entity's requirement that if the Economic Operator intends to subcontract any part of the contract, the Economic Operator must specify in its tender which part or parts of the contract will be subcontracted and provide the name(s) of the subcontractor(s) (if such names are known to the Economic Operator at that time). The use of a subcontractor or subcontractors to complete any part of the contract shall not release the Economic Operator from its responsibility for proper performance of the contract as agreed.

**7. Description of the object of the contract according to the Common Procurement Vocabulary (CPV):**

Name: **High power dynamometer**, CPV code: **38540000-2**

**8. Additional information:**

No master or framework agreement will be concluded in this contract award procedure.

Variant tenders are not permitted.

Quality guarantee requirements: a minimum of 12 months as of the date of start-up (the date of signing the acceptance certificate).

**9. Requirements for the Economic Operator**

- a. The Economic Operator shall be responsible for the quality of the object of the contract and for its conformity with the specified technical and quality requirements for the object of the contract.
- b. The Economic Operator shall exercise due care in its performance of the agreement on the award of the contract.
- c. All arrangements and decisions concerning the contract shall be made between the Contracting Entity and the Economic Operator's authorised representative.
- d. The Economic Operator shall specify the phone and fax numbers for communication during the performance of the contract and shall comply with all other arrangements to ensure that the contract is carried out efficiently and completed within the time for completion.
- e. The Contracting Entity will not be liable for any loss or damage caused by the Economic Operator during the performance of the contract.
- f. The place of performance under the contract shall be the **Contracting Entity's registered office**.
- g. The Economic Operator is not required to provide evidence to confirm that what is offered by the Economic Operator meets the requirements set out by the Contracting Entity [Polish: *przedmiotowe środki dowodowe*].

**SECTION 3. ELIGIBILITY TO TENDER AND GROUNDS FOR EXCLUSION FROM THE CONTRACT AWARD PROCEDURE****ELIGIBILITY TO TENDER**

1. Tenders in this contract award procedure may be submitted by any Economic Operator which is not excluded and which meet the **eligibility-to-tender criteria** described by the Contracting Entity in this Specification.
2. Tenders will be accepted only from Economic Operators that meet the following eligibility criteria:

**2.1. capacity to engage in commercial transactions:**

*No requirements apply in this respect.*

**2.2. licence or authorisation to conduct a particular business activity or practise a particular occupation, if such a licence or authorisation is required by law:**

*No requirements apply in this respect.*

**2.3. economic and/or financial standing:**

*No requirements apply in this respect.*

**2.4. technical and/or professional ability (the contractor's experience):**

The *experience* requirement will be satisfied if:

within the 3 (three) years immediately preceding **the closing date for tenders** or, if the Economic Operator has been in business for a shorter time, within that time, the Economic Operator supplied two hydraulic dynamometers with a power rating of over 1 MW intended for laboratory testing of engines and, if requested by the Contracting Entity, provided evidence of the conformity of such supplies with the relevant contracts. Such evidence must be reference (recommendation) letters and/or other documents issued by the customer(s).

It is the Contracting Entity's requirement that the Economic Operator's tender be accompanied by the European single procurement document (ESPD) as initial confirmation that the Economic Operator meets the eligibility-to-tender criteria and that there are no grounds for excluding the Economic Operator from public procurement procedures. Where two or more Economic Operators are tendering for the contract jointly, each of the Economic Operators must submit its own European single procurement document (ESPD). If the Economic Operator relies on another entity's resources for the performance of the contract under s.118 of the Act, that entity must use the ESPD to make its statement of no grounds for exclusion and to the extent to which the entity meets the eligibility-to-tender criteria. The European single procurement document (ESPD) form is set out in Commission Implementing Regulation (EU) 2016/7 of 5 January 2016 (OJ EU L 3/16), which is added as **Appendix 2A to this Specification**.

**The Economic Operator(s) and/or the entity providing its resources must submit, together with the tender, a preliminary statement to the effect that it meets the eligibility-to-tender criteria. This statement must be made electronically, using the ESPD form (Part IV, section (a), see Appendix 3A\_of to this Specification).**

**Instructions about how to complete the form are available on the website of the Polish Public Procurement Office [Urząd Zamówień Publicznych]:**

<https://www.gov.pl/web/uzp/jednolity-europejski-dokument-zamowienia>

The instructions are also given in Appendix 2C to this Specification.

**JOINT TENDERS MADE BY TWO OR MORE CONTRACTORS**

3. Where two or more Economic Operators are tendering for the contract jointly, the Contracting Entity agrees that it will be sufficient if the *technical and/or professional ability* requirement is satisfied by all of the Economic Operators jointly. Where two or more Economic Operators are tendering for the contract jointly, each of the Economic Operators shall submit the following together with its tender:
- 3.1. a statement initially confirming that the Contracts meets the eligibility-to-tender criteria and that there are no grounds for exclusion (**ESPD, Appendix 2A\_of to this Specification**);
  - 3.2. a statement indicating which part or parts of the contract will be completed by the Economic Operator and that there are no grounds for exclusion (**Appendix 3\_of to this Specification**);
  - 3.3. a power of attorney, in electronic form, appointing an agent to represent the Economic Operator in this contract award procedure OR to represent the Economic Operator in this contract award procedure and to enter into the agreement on the award of the contract in electronic form;
  - 3.4. a statement indicating that the Economic Operator is not subject to exclusion under Article 5k of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ EU L 229 of 31/7/2014, page 1) (**Appendix 3\_of this Specification**). This statement must also include a statement indicating that the Economic Operator is not subject to exclusion under s.7(1) of the Polish Act on special measures to prevent support for Russia's aggression against Ukraine and to protect Poland's national security (Dz.U. [Journal of Laws] of 2022, item 835).

**CONTRACTORS USING THE RESOURCES OF OTHER ENTITIES IN SATISFACTION  
OF THE ELIGIBILITY-TO-TENDER CRITERIA**

4. Where an Economic Operator relies on the resources of another entity as evidence of meeting the *technical and/or professional ability* requirement to be eligible to tender for the contract (s.118 of the Act), the Contracting Entity agrees that it will be sufficient if this requirement is satisfied jointly by the Economic Operator and that entity. In such a case, the Economic Operator's tender must be accompanied by the following supporting documentation (hard copies or electronic copies) signed by that entity:
- a. a power of attorney or other document showing the name(s) of the person(s) authorised to make statements for and on behalf of that entity;
  - b. an initial statement (using the ESPD, **Appendix 2A\_of to this Specification**) to the effect that there are no grounds for exclusion in respect of the entity and that the entity meets the eligibility criteria with regard to the provision of resources to the Economic Operator (s.125(5) of the Act);
  - c. a completed **Appendix 4\_of to this Specification** whereby the entity providing resources confirms that its relationship with the Economic Operator is such that the Economic Operator will actually have access to the entity's resources (s.118(3) and s.118(4) of the Act);
  - d. a statement by the entity providing resources indicating that the entity is not subject to exclusion under Article 5k of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ EU L 229 of 31/7/2014, page 1) (**Appendix 4\_of this Specification**). This statement must also include a statement indicating that the entity is not subject to exclusion under s.7(1) of the Polish Act on special measures to prevent support for Russia's aggression against Ukraine and to protect Poland's national security (Dz.U. [Journal of Laws] of 2022, item 835).
5. At any time in the course of the contract award procedure, the Contracting Entity may decide that the Economic Operator lacks the required capability if the Economic Operator's conflicting interests, particularly if the Economic Operator's technical and/or professional resources are used for the Economic Operator's other business projects, may adversely affect the performance of the contract.



**GROUNDS FOR EXCLUSION OF THE CONTRACTOR FROM  
THE CONTRACT AWARD PROCEDURE**

1. An Economic Operator shall be excluded from this contract award procedure if any of the grounds for exclusion laid down in

A. s. 108(1) of the Act exists in relation to the Economic Operator:

*“s.108 of the Act [Grounds for mandatory exclusion of an economic operator from a contract award procedure]*

1. *An Economic Operator shall be excluded from a public contract award procedure*

1) *if the economic operator is a natural person who has ever been convicted and sentenced by a final and non-appealable judgment of and for any of the following offences:*

- a) *participation in an organised criminal group and/or an association that aims to commit the criminal offence and/or fiscal offence referred to in s.258 of the Polish Penal Code;*
- b) *the offence of trafficking in human beings referred to in s.189a of the Polish Penal Code;*
- c) *any of the offences referred in ss.228-230a, s.250a of the Polish Penal Code, ss.46-48 of the Polish Sports Act of 25 June 2010 (Dz.U. [Journal of Laws] of 2023, item 2048, and of 2024, item 1166) and/or s.54(1)-(4) of the Polish Act of 12 May 2011 on reimbursement for the cost of medicines, foodstuffs for particular nutritional uses and medical devices (Dz.U. [Journal of Laws] of 2024, item 930);*
- d) *terrorist financing as referred to in s.165a of the Polish Penal Code and/or or the crime of frustrating or obstructing the finding of the criminal origin of money or concealing its origin as referred to in s.299 of the Polish Penal Code;*
- e) *the terrorist offence referred to in s.115(20) of the Polish Penal Code or an offence with the intention to commit that offence;*
- f) *entrusting the performance of work to a minor foreigner as referred to in s.9(2) of the Polish Act of 15 June 2012 on the effects of entrusting work to foreigners residing unlawfully in the territory of the Republic of Poland (Dz.U. [Journal of Laws] of 2021, item 1745);*
- g) *an offence against business operations as referred to in ss.296-307 of the Polish Penal Code, the offence of fraud as referred to in s.286 of the Polish Penal Code, and/or an offence against the reliability of the documents as referred to in ss.270-277d of the Polish Penal Code, and/or a fiscal offence;*
- h) *the offence referred to in s.9(1), s.9(3) or s.10 of the Polish Act of 15 June 2012 on the effects of entrusting work to foreigners residing unlawfully in the territory of the Republic of Poland;*

*or an equivalent prohibited act under foreign law;*

2) *where an incumbent member of the economic operator's management or supervisory body, or a shareholder in a registered partnership [Polish: spółka jawna] or a limited partnership partnership [Polish: spółka partnerska] or a general partner in a limited partnership [Polish: spółka komandytowa] or a partnership limited by shares [Polish: spółka komandytowo-akcyjna] (if the economic operator is any such partnership), or the holder of the economic operator's commercial power of attorney [Polish: prokurent], has ever been convicted and sentenced by a final and non-appealable judgment of and for any of the offences described in paragraph 1;*

3) *if the economic operator is the subject to a final and non-appealable judgment of a court or a final and non-appealable administrative decision on being in arrears with taxes, levies or social or health insurance contributions, unless the economic operator has, as the case may be, before the expiry of the time limit for submitting applications for permission to tender for the contract or before the expiry of the closing date for tenders, paid the taxes, levies or social or health insurance contributions, including interest or fines as due or entered into a binding arrangement with a view to paying such amounts;*

- 4) *if the economic operator is banned finally and with no right to appeal from tendering for public contracts;*
- 5) *if the contracting entity has reasonable evidence that the economic operator has entered into an agreement with other economic operators with the aim of distorting competition, particularly if the parties to that agreement, while members of the same group of companies within the meaning of the Polish Competition and Consumer Protection Act of, have submitted individual tenders, partial tenders and/or applications for permission to tender for the contract, unless they prove that they have prepared such tenders or applications independently of one another;*
- 6) *where, in the cases referred to in s.85(1) of the Act, there has been a distortion of competition resulting from the prior involvement of that economic operator or an entity that belongs to the same group of companies (within the meaning of the Act of 16 February 2007 on the Protection of Competition and Consumers) to which the economic operator belongs, unless the resulting distortion of competition can be eliminated in a way other than by excluding the economic operator from the contract award procedure."*

- B. **s.109(1)(4) of the Act: where the economic operator is the subject of winding-up or insolvency proceedings, or where the economic operator has been declared bankrupt [insolvent], where its assets are being administered by a liquidator or by a court of law, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the law applicable to this contract award procedure;**
  - C. ss.7(1)(1)-(3) of the Polish Act of 13 April 2022 on special measures to prevent support for Russia's aggression against Ukraine and to protect Poland's national security (Dz.U. [Journal of Laws] of 2023, item 129);
  - D. Article 5k of Council Regulation (EU) 2022/576 of 8 April 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 111/1 of 08/04/2022).
2. The legal basis for exclusion of the Economic Operator shall be ss.110 and 111 of the Act.
  3. The Economic Operator will not be excluded under the circumstances described in s.108(1)(1), s.108(1)(2) or s.108(1)(5) of the Act or s.109(1)(4) of the Act, if it provides the Contracting Entity with evidence showing the Economic Operator meets all the requirements laid down in s.110(2) of the Act.
  4. The Contracting Entity will assess whether the actions taken by the Economic Operator, as described in s.110(2) of the act, can be accepted as sufficient evidence of the Economic Operator's reliability, taking into account the significance of and special circumstances concerning the Economic Operator's actions. If the Contracting Entity decides that the Economic Operator's actions are not sufficient evidence of its reliability, the Contracting Entity shall exclude the Economic Operator from the contract award procedure.

#### **SECTION 4. DOCUMENTS AND STATEMENTS CONCERNING THE ELIGIBILITY-TO-TENDER CRITERIA AND LACK OF GROUNDS FOR EXCLUSION. DOCUMENTS TO ACCOMPANY THE TENDER.**

1. The tender submitted by an Economic Operator (or Economic Operators in the case of a joint tender, or an entity providing resources) must be accompanied by a statement to the effect that the Economic Operator or entity is not subject to exclusion and meets the eligibility-to-tender criteria. This statement must be in the form of a **European Single Procurement Document (ESPD) (Appendix 2A\_of to this Specification)**, using the form specified in Commission Implementing Regulation (EU) 2016/7 of 5 January 2016 establishing the standard form for the European Single Procurement Document, subject to the following:

- 1.1. In Part IV, the Contracting Entity requires only a general statement concerning all the eligibility criteria (section (a)). Sections A, B, C and D do not have to be completed.
- 1.2. Part V (reduction of the number of qualified candidates) must be left blank.
2. The information provided in the ESPD, referred to in subsection 4.1, will be regarded as initial confirmation that the Economic Operator is not subject to exclusion and meets the eligibility-to-tender criteria.
3. **The tender [or joint tender] must also be accompanied by the Economic Operator's statement (Appendix 1\_of) with regard to grounds for exclusion, i.e. the statement referred to in**
- Article 5k** of Council Regulation (EU) 2022/576 of 8 April 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 111/1 of 08/04/2022) and
  - ss.7(1)(1)-(3) of the Polish Act of 13 April 2022 on special measures to prevent support for Russia's aggression against Ukraine and to protect Poland's national security (Dz.U. [Journal of Laws] of 2023, item 129).
- Where a joint tender is submitted, the above statement with regard to grounds for exclusion must be submitted by each of the Economic Operators tendering jointly for the contract (**Appendix 3\_of to this Specification**).
- Where an Economic Operator tendering for the contract relies on resources provided by another entity (s.118 of the Act), the tender must be accompanied by that entity's statement to the effect that there are no grounds of exclusion of that entity (**Appendix 4\_of to this Specification**).
4. Before the Contracting Entity selects the most advantageous tender, the Economic Operator whose tender was given the highest score will be requested to submit, within a set time limit of at least **10 days**, evidence confirming that there no grounds for exclusion of the Economic Operator and that the Economic Operator meets the eligibility-to-tender criteria and/or selection criteria [Polish: *podmiotowe środki dowodowe*].
5. Such evidence required from the Economic Operator (all the Economic Operators tendering for the contract jointly and the entity providing resources (if any)) includes:
- Information [a certificate] from the Polish National Criminal Register in connection with
    - s.108(1)(1) and s.108(1)(2) of the Act,
    - s.108(1)(4) of the Act (whether the Economic Operator or that entity is banned from tendering for public contracts as a penal measure.

**This certificate must be dated not earlier than 6 (six) months before its submitted;**
  - The Economic Operator's statement, in connection with s.108(1)(5) of the Act, to the effect that the Economic Operator is not a member of the same group of companies (within the meaning of the Polish Competition and Consumer Protection Act of 12 July 2023 (Dz.U. [Journal of Laws] of 2023, item 1689)) with any other Economic Operator that has submitted its own tender, a partial tender or an application for permission to tender for the contract, OR the Economic Operator's statement to the effect that the Economic Operator is a member of such a group, together with documents or information confirming that it has submitted its own tender, a partial tender or an application for permission to tender for the contract independently of any other Economic Operator that is a member of the same group (**Appendix 5A\_wez to this Specification**). **This statement is required only from Economic Operators (an Economic Operator tendering individually or each of the Economic Operators tendering jointly) and is NOT required from the entity (if any) providing resources;**
6. The Economic Operator's statement to the effect that the information provided in the statement referred to in s.125(1) of the Act is up-to-date, i.e. the statement concerning grounds for exclusion specified by the Contracting Entity and laid down in
- s.108(1)(3) of the Act,
  - s.108(1)(4) of the Act (whether the Economic Operator or that entity is banned from tendering for public contracts as a penal measure,
  - s.108(1)(5) of the Act (whether the Economic Operator is bound by an agreement which aims to distort competition),

- d. s.108(1)(6) of the Act (using **Appendix 5B\_wez to this Specification**). **This statement is required from Economic Operators (an Economic Operator tendering individually or each of the Economic Operators tendering jointly) and from the entity (if any) providing resources;**
7. An extract from the National Court Register or a statement from the Central Business Registration and Information Service, in connection with 109(1)(4) of the Act, which extract or statement **must not be dated earlier than 3 (three) months** before it is submitted, if the Economic Operator is required by law to be registered as a company or sole trader, respectively;
8. **A list of supplies (separately for each part of the contract in respect of which the Economic Operator is tendering for the contract)** comparable to the object of the contract and completed within the 3 (three) years [immediately preceding the closing date for tenders] or, if the Economic Operator has been in business for a shorter time, within that time, including the value and object(s) of the supplies, the completion dates and information identifying the customers for the supplies, accompanied by evidence of the conformity of such supplies with the relevant contracts. Such evidence must be reference (recommendation) letters and/or other documents issued by the customer(s) or, if it is impossible for the Economic Operator to obtain such evidence for reasons beyond its control, the Economic Operator's statement. All references (recommendation) letters or other documents submitted as evidence of the conformity of such supplies with the relevant contracts must have been issued within the **last 3 (three) months**, as required by section 3.2.4 (**Appendix 6\_wez to this Specification**).
9. **Where an Economic Operator is established or has a permanent residential address outside the Republic of Poland:**
- a. then instead of the documents described in subsection 5, the Economic Operator shall submit an extract from the relevant register, such as a court register, or, if no such register is kept, an equivalent document issued by a competent judicial or administrative authority in the country of the Economic Operator's establishment or residence or the country where the person to whom the extract or other document relates has their residence, with regard to the information described in subsection 5. **This extract or other document must be dated not earlier than 6 (six) months before its submitted;**
- b. then instead of the document described in in subsection 7, the Economic Operator shall submit a document or documents issued in the country of the Economic Operator's establishment or residence and confirming that (a) the Economic Operator is NOT the subject of winding-up or insolvency proceedings, (b) the Economic Operator has NOT been declared bankrupt [insolvent], (c) the Economic Operator's assets are NOT being administered by a liquidator or by a court of law, (d) the Economic Operator is NOT in an arrangement with creditors, (e) the Economic Operator's business activities are NOT suspended and (f) that no analogous situation has arisen from a similar procedure under the law applicable to this contract award procedure. Each such document **must not be dated earlier than 3 (three) months** before it is submitted.
10. If the country of the Economic Operator's establishment or residence or the country where the person to whom the extract or other document relates has their residence does not issue the documents described in subsection 5, or if such documents, even if issued, do not apply to all the cases described in this Specification, such documents shall be replaced fully or partially by a document containing the Economic Operator's statement, including information identifying the person(s) authorised to represent the Economic Operator, or a statement by the person to whom the document would otherwise have related. This statement must be made as an affidavit or, the country of the Economic Operator's establishment or residence or the country where the person to whom the extract or other document relates has their residence does not have any law or regulation permitting statements to be made as an affidavit, a statement made before a judicial or administrative authority, a notary, a professional self-government or an economic self-government organisation in the country of the Economic Operator's establishment or residence or the country where the person to whom the extract or other document relates has their residence. The requirements concerning the dates of the above documents or statements are the same as those specified in subsection 5.

11. The Contracting Entity will not request the Economic Operator (or an entity providing resources) to submit evidence confirming that there are no grounds for exclusion of the Economic Operator and that the Economic Operator meets the eligibility-to-tender criteria and/or selection criteria [Polish: *podmiotowe środki dowodowe*] if:
  - a. such evidence can be obtained free of charge from generally available databases, including (but not limited to) public registers within the meaning of the Act of 17 February 2005 on the computerisation of entities engaged in the performance of public tasks (Dz.U. [Journal of Laws] of 2023, item 57, as amended), **provided that the European Single Procurement Document (ESPD) or statement submitted by the Economic Operator contains information necessary for access to such sources;**
  - b. A statement that contains the information required in the statement referred to in s.125(1) of the Act will be accepted by such evidence [Polish: *podmiotowe środki dowodowe*].
12. No Economic Operator will be required to submit any such evidence [Polish: *podmiotowe środki dowodowe*] to the extent that the Contracting Entity has such evidence, provided that the Economic Operator specifies the evidence held by the Contracting Entity and confirms that the evidence is correct and up-to-date.
13. To the extent not provided for in the Act or covered by this Specification, all statements and documents submitted by the Economic Operator in the contract award procedure shall be governed by, in particular, the provisions of the Regulation of the Ministry of Labour and Technology of 23 December 2020 on evidence concerning economic operators and other documents or statements that contracting entities may require from economic operators (Dz.U. [Journal of Laws] of 2020, item 2415, as amended) and the provisions of the Regulation of the President of the Council of Ministers of 30 December 2020 on a method for the preparation and submission of information and technical requirements for electronic documents and means of electronic communication in public contract award procedures or contest procedures (Dz.U. [Journal of Laws] of 2020, item 2452).

#### RELIANCE ON RESOURCES PROVIDED BY OTHER ENTITIES

1. In order to confirm its satisfaction of the eligibility-to-tender criteria, an Economic Operator may, where appropriate and in respect of a particular public contract or its part, rely on the technical and/or professional ability of an entity providing its resources to the Economic Operator, irrespective of the legal nature of the legal relationship between them.
2. Where an Economic Operator relies on the ability and/or situation of such an entity, the Economic Operator's tender shall be accompanied by that entity's statement to the effect that the entity undertakes to provide its resources to the Economic Operator for the performance of the contract or by other evidence [Polish: *podmiotowy środek dowodowy*] confirming that the Economic Operator will use that entity's necessary resources in the performance of the contract. The statement form is contained in **Appendix 4\_of to this Specification**.
3. The Economic Operator will assess whether the technical and/or professional ability provided by the entity providing the Economic Operator with its resources can be accepted as the Economic Operator's evidence of its satisfaction of the eligibility-to-tender criteria and will assess whether the grounds for exclusion that apply to the Economic Operator exist in respect of that entity.
4. If the technical and/or professional ability of the entity providing resources is sufficient to confirm the Economic Operator's satisfaction of the eligibility-to-tender criteria or grounds for exclusion exist in respect of that entity, the Contracting Entity will require the Economic Operator to replace that entity with another entity (or other entities) or to provide evidence that it satisfies the eligibility-to-tender criteria independently.
5. **IMPORTANT!** After the closing date for tenders, the Economic Operator may not invoke reliance, to the extent of any part of the contract, on the ability and/or situation of any entity providing it with resources if it did not rely on the same and to the same extent before the closing date for tenders.

6. Where an Economic Operator relies on the ability and/or situation of any entity or entities providing it with resources, the Economic Operator's statement (**Appendix 2A\_of, ESPD**) must be accompanied by that entity's statement confirming that there are no grounds for its exclusion and that the entity meets the eligibility-to-tender criteria to the extent to which the Economic Operator invokes reliance on that entity's resources (**Appendix 2A\_of, ESPD, completed by the entity providing resources, and Appendix 4\_of**).

**INFORMATION FOR ECONOMIC OPERATORS TENDERING FOR THE CONTRACT JOINTLY (CIVIL-LAW  
PARTNERSHIPS OR CONSORTIA)**

1. Two or more Economic Operators may tender for the contract jointly. In such a case, the Economic Operators must appoint an agent to represent them in this contract award procedure OR to represent them in this contract award procedure and to enter into the agreement on the award of the contract. The power of attorney must submitted together with the joint tender.
2. Where two or more Economic Operators are tendering for the contract jointly, each of the Economic Operators must submit its relevant statements. In these statements, the Economic Operators must initially confirm that there are no grounds for their exclusion and that each of the Economic Operators meets the eligibility-to-tender criteria in respect of its participation in the performance of the contract.
3. The Economic Operators tendering for the contract jointly must submit a statement indicating which part or parts of the contract will be completed by each Economic Operator and that there are no grounds for exclusion (the Ukraine sanctions list) (**Appendix 3\_of to this Specification**).
4. The statements and documents confirming that there are no grounds for exclusion from this contract award procedure must be submitted by each of the Economic Operators tendering for the contract jointly

**PREPARATION OF TENDERS AND FORMAL REQUIREMENTS CONCERNING THE STATEMENTS AND  
DOCUMENTS THAT MUST BE SUBMITTED**

1. Each Economic Operator may submit only one tender for the contract.
2. The tender must be consistent with this Specification.
3. Each tender must be submitted using the Tender Form (**Appendix No. 1\_of do Specification**).

Each tender must be accompanied by:

- a. the tender form (**Appendix No. 1\_of do Specification**);
- b. statements in the form of a **European Single Procurement Document (ESPD)** (**Appendix 2A\_of to this Specification**) (These must be submitted by the Economic Operator if tendering independently, or each of the Economic Operators tendering jointly, and/or each entity providing resources to it/them);
- c. a statement of undertaking to provide resources, where applicable (**Appendix 4\_of to this Specification**), to be submitted by the entity providing resources;
- d. a statement required where two or more Economic Operators are tendering for the contract jointly: the joint tender (**Appendix 3\_of to this Specification**) (to be submitted by each of the Economic Operators tendering jointly) (where applicable);
- e. a power of attorney, where two or more Economic Operators are tendering for the contract jointly. Two or more Economic Operators may tender for the contract jointly. In such a case, the Economic Operators must appoint an agent to represent them in this contract award procedure OR to represent them in this contract award procedure and to enter into the agreement on the award of the contract. The provisions that apply to an Economic Operator tendering for the contract independently will apply accordingly to two or more Economic Operators tendering for the contract jointly.
- f. The Contracting Entity will require the Economic Operator to confirm that the person acting for or on behalf of the Economic Operator is authorised to do so. This confirmation must be an extract from the

National Court Register or a statement from the Central Business Registration and Information Service, or any other competent register. No Economic Operator will be required to submit the documents described above if the Contracting Entity can obtain them free of charge from generally available databases, provided that the Economic Operator has provided the Contracting Entity with information necessary for access to such documents. Where an Economic Operator is represented by a person whose authority to represent is not confirmed by the documents described above, the Contracting Entity may require the Economic Operator to submit a power of attorney or other document confirming that person's authority to represent the Economic Operator. The above will apply accordingly to a person acting for or on behalf of Economic Operators tendering for the contract jointly and to a person acting for or on behalf of any entity providing its resources to an Economic Operator or Economic Operators under s.118 of the Act.

4. The tender must be signed by a person authorised to represent the Economic Operator in accordance with the rules of its representation disclosed in the relevant register or other document (depending on the legal form of the Economic Operator), or by the Economic Operator's authorised representative.
5. If the tender is not signed by a person authorised to represent the Economic Operator in accordance with the rules of its representation disclosed in the relevant register or other document (depending on the legal form of the Economic Operator), the tender must be accompanied by a power of attorney or other document, in electronic form, confirming that person's authority to represent the Economic Operator.
6. The tender and all the other statements and documents for which the Contracting Entity has prepared forms in appendices to this Specification must be prepared using such forms (the column and row descriptions must be identical).
7. **The tender, including the European Single Procurement Document (ESPD), will be deemed validly submitted only if it is submitted in electronic form (signed using a qualified electronic signature).**

## **SECTION 5. TENDER PREPARATION INSTRUCTIONS**

1. Each Economic Operator may submit only one tender for each part of the contract, specifying only one clearly stated price in the tender. If two or more tenders are submitted by an Economic Operator for a particular part of the contract, all the tenders submitted by the Economic Operator for that part of the contract will be rejected. The tender form is contained in **Appendix No. 1\_of do Specification**.
2. The tender will be deemed validly submitted only if it is submitted in electronic form (and signed using a qualified electronic signature).
3. All statements and documents accompanying the tender will be deemed validly submitted only they are submitted in electronic form (and signed using a qualified electronic signature).
4. The tender must be signed by a person authorised to represent the Economic Operator and to bind the Economic Operator by an obligation to pay the amount equal to the price offered in the tender. It is the Contracting Entity's requirement that the tender and all documents accompanying the tender be signed in accordance with the rules of representation disclosed in the Economic Operator's entry in the relevant commercial register. If the person signing the tender is acting as an agent under a power of attorney, the power of attorney must authorise the agent to sign the tender.
5. The tender must be submitted as the original document, not a copy.
6. The tender must be submitted using the Tender Form. A description of the object of the contract will be deemed as an integral part of the tender.
7. The tender must be accompanied by the statements and documents required by this Specification.
8. The tender must be submitted in accordance with the law and this Specification, i.e. using the Tender Form, specifying the price exclusive of VAT, the VAT rate, the VAT amount, and the price inclusive of VAT for the object of the contract.
9. The Economic Operator may use one or more subcontractors to complete any part of the supply. The Economic Operator's tender must specify which parts of the contract will be subcontracted. It is, however, the Contracting Entity's requirement that if the Economic Operator intends to subcontract any part of the contract, the Economic

Operator must specify in its tender which part or parts of the contract will be subcontracted and provide the name(s) of the subcontractor(s) (if such names are known to the Economic Operator at that time).

10. The tender must be legible and meet the requirements of this Specification and all implementing provisions enacted under the Act.
11. **If any document or statement submitted contains information that constitutes a trade secret,**
  - a. the Economic Operator must clearly specify which information constitutes a trade secret and, when submitting such information, make a reservation to the effect that the information must not be disclosed (reservation of information from disclosure). **For the reservation to be valid, the Economic Operator must provide evidence** that the information constitutes a trade secret within the meaning of s.11(2) of the Polish Act of 16 April 1993 on combating unfair competition (consolidated text published in Dz.U. [Journal of Laws] of 2020, item 1913). The Economic Operator must, therefore, provide evidence that the reserved information as a whole or a specific combination and collection of parts of the information (a) is not generally known to persons normally dealing with this kind of information or (b) is not easily available and that it is the Economic Operator's technical, technological, organisational and/or other information of economic value and the person authorised to use and/or disclose such information has, while exercising due care, taken actions to keep the information confidential. The Economic Operator may not reserve the information described in s.222(5) of the Act.
  - b. The above information must be provided in a separate file properly described as trade secret information. For example, the file name may contain words such as **TP [ Polish for 'trade secret'] or *tajemnica* [Polish for 'confidential']**
  - c. The same rules must be followed in respect of information that constitutes a trade secret if such information is contained in, in particular, statements and/or documents (or explanatory notes or additions to statements and/or documents) submitted by the Economic Operator in the course of the contract award procedure. Such information must be described as trade secret information and evidence of its confidential nature must be provided not later than when such information is disclosed by the Economic Operator.
12. The costs and expenses of preparing the Economic Operator's tender shall be the responsibility of the Economic Operator.
13. The Economic Operator may, by the closing date for tenders, make changes, corrections, modifications and additions of or to the tender it has already submitted.
14. The Economic Operator may, by the closing date for tenders, withdraw its tender. If an Economic Operator has submitted two tenders, both tenders will be rejected.
15. The Contracting Entity will reject a tender if the grounds described in s.226 of the Act exist.
16. Provisions of explanations by the Contracting Entity in the process of examining and assessing tenders:
  - a. The Contracting Entity may request the Economic Operator to submit, correct and/or supplement its statement, evidence concerning the Economic Operator [Polish: *podmiotowe środki dowodowe*], other document and/or statement in accordance with s.128 of the Act.
  - b. The Contracting Entity will correct apparent typographical errors and apparent calculation errors, taking into account the consequences of correcting such calculation errors, and will immediately inform the Economic Operator of the same.
  - c. The Contracting Entity will correct other mistakes in the Economic Operator's tender that would otherwise make the tender inconsistent with the contract award procedure documents, provided that no such correction may not significantly change the content of the tender, and will immediately inform the Economic Operator of such corrections and will set a time limit for the Economic Operator to accept or disagree with the correction(s). In the event of no response within that time limit, the Economic Operator fails will be deemed to have accepted the corrections.
  - d. If the price or cost item, or a major component of the price or cost item, seems grossly low in relation to [the value] of the object of the contract and/or raises the Contracting Entity's doubts as to the Economic Operator's ability to supply the object of the contract in accordance with the requirements set out this



Specification and/or any law or regulation, the Contracting Entity will require the Economic Operator to explain the situation, including through evidence of how the price or cost item, or a major component of the price or cost item, was calculated by the Economic Operator. It is the Economic Operator's responsibility to prove that neither the price offered in its tender nor any cost item is grossly low. If the Economic Operator fails to explain the situation within a set time limit or if the Economic Operator's explanations and evidence do not justify the grossly low price and/or cost item, the tender will be rejected.

17. The Economic Operator must submit its tender, accompanied by supporting documentation, via the procurement platform at <https://platformazakupowa.pl/pn/bosmal>
18. **The tender will be deemed as validly submitted only if it is written in Polish and only if it is submitted as an electronic document signed using a qualified electronic signature.** The tender and/or any document or statement accompanying the tender may contain information in a language other than Polish (English, German or French) only if the information is not required by this Specification in connection with the contract award procedure and only if it is dictated by this Specification, the Act and/or implementing provisions enacted thereunder. This requirement is set out in s.9 of the Act. All documents that contain text and/or graphics and/or multimedia features must be prepared in accordance with the requirements of this Specification. In particular, such documents must be submitted in one or more than one of the following file formats: .txt; .rft; .pdf; .xps; .odt; .ods; .odp; .doc; .docx; .xls; .ppt; .docx; .xlsx; .pptx; .csv.
19. It is recommended that
- each Economic Operator should read the instructions for use of the procurement platform used in the contract award procedure before submitting its tender. The instructions are available at <https://platformazakupowa.pl/strona/instrukcje-wykonawca>
  - Each Economic Operator must read the instructions for tender submission. These instructions are contained in **Appendix 8 to this Specification (Instrukcje\_WYKONAWCA)**.
20. The tender must also be accompanied by a **brief description of the equipment offered in the tender with regard to the basic functions (features) and the requirements set out in section 2 of this Specification. This description must be in Polish.** Such documents (the technical description/translations) will constitute an integral part of the tender must be signed by the Economic Operator using a qualified electronic signature.
21. Each Economic Operator may submit only one tender and offer only one, final price in the tender.
22. The price offered in the tender must be stated in PLN (the Polish currency).
23. If the Economic Operator is represented by an agent, the tender must be accompanied by a power of attorney showing the scope of the agent's authority and signed by a person or persons authorised to represent the Economic Operator using a qualified electronic signature. The power of attorney must be submitted
- as the original document in electronic form,
- OR
- a notarised electronic certified copy of the power of attorney (an electronic statement by a notary certifying that the copy of the power of attorney is an true copy of the original document). This notarised electronic certified copy must be signed by the notary using a qualified electronic signature (s.97(2) of the Polish Notaries Act of 14 February 1991 (Dz.U. [Journal of Laws] of 2019, item 540, as amended).

**Questions and requests for clarifications of this Specification**

24. Each Economic Operator may request the Contracting Entity for clarification of the content of this Specification.
25. Section 135 of the Act [Clarification of the content of the Specification]
- Each Economic Operator may request the Contracting Entity for clarification of the content of this Specification.

- b. The Contracting Entity must provide the requested clarification immediately, but not later than 6 (six) days before the closing date for tenders, provided that the Contracting Entity received the request not later than 14 (fourteen) days prior to the closing date for tenders.
26. If the Contracting Entity fails to provide the requested clarification by the deadline specified in subclause 25b, the closing date for tenders shall be postponed by such time as will be needed for the Economic Operator(s) concerned to become familiarised with the clarifications necessary to prepare and submit its/their tenders as required.
27. If the request for clarification is not received by the deadline specified in subclause 25b, the Contracting Entity will not be required to provide any clarification or to postpone the closing date for tenders.
28. No postponement of the closing date for tenders in accordance with subclause 26 shall not affect the time period for requesting clarifications of this Specification and/or a description of the needs and requirements of the Contracting Entity.
29. All requests and the requested clarifications will be made available by the Contracting Entity on the website of the contract award procedure, but the sources of such requests will not be disclosed.
30. In justified cases, the Contracting Entity may amend this Specification before the closing date for tenders. Such amendments will be made available on the website for the contract award procedure.
31. The contact persons for communication with Economic Operators are: Ms Beata Kalińska and Ms Magdalena Matlak.
32. The following will not be available in the course of the contract award procedure:
- a 'mandatory' site visit under s.131(2)(1) of the Act,
  - a meeting of Economic Operators.

**Information to be published on the website for the contract award procedure**

33. The information that the Contracting Entity will publish on the website for the contract award procedure, i.e. <https://platformazakupowa.pl/pn/bos>, and in the INSTITUTE/ORDERS/PUBLIC TENDERS section of the contracting entity's website at [www.bosmal.com.pl](http://www.bosmal.com.pl) will include (but will not be limited to) the following:
- this Specification, published from the date on which the tender notice is published in the Official Journal of the European Union,
  - requests for clarifications of the Specification published on the website and the requested clarifications,
  - amendments to this Specification,
  - information on amendments to the tender notice published in the Official Journal of the European Union,
  - the amount that the Contracting Entity intends to pay for the object of the contract,
  - information on changes of the tender opening date,
  - information obtained by opening the tenders, i.e. the information described in s.222(5) of the Act (to be published immediately after the tenders are opened),
  - copies of letters of appeal where the appeal is against the content of the tender notice and/or or any tender-related document, requesting the Economic Operators to join the appeal procedure,
  - information about the decision to annual the contract award procedure, in which case the factual and legal reasons must be stated,
  - information on the selection of the most advantageous tender, which will include the name, registered office address or residence address (if the residence address is the winning Economic Operator's place of business), as well as the names, registered office addresses or residence addresses of the Economic Operators who have submitted tenders for the contract (the residence address of any such Economic Operator will be given only if it is that Economic Operator's place of business), and the scores assigned to the tenders for each assessment criterion, and the total score for each tender.
34. None of the following methods of communication are permitted in this contract award procedure:

- a. through a postal service operator within the meaning of the Polish Postal Services Law (Act of Parliament) of 23 November 2012 (Dz.U. [Journal of Laws] of 1529, and of 2015, item 1830);
- b. through a messenger,
- c. by phone,
- d. personal service (delivery) of letters, enquiries, documents, shipments, explanatory statements and/or tenders.

**Format and Submission of Documents and Statements Required by the Contracting Entity from the Economic Operator in the Course of the Contract Award Procedure**

35. The tenders and statements referred to in s.125(1) of the Act, the evidence concerning the Economic Operator [Polish: *podmiotowe środki dowodowe*], including the statement referred to in s.117(4) of the Act, the statement of undertaking to provide resources referred to in 118(3) of the Act and powers of attorney must be submitted in the formats specified in the relevant provisions enacted under the Act of 17 February 2005 on the computerisation of entities engaged in the performance of public tasks (Dz.U. [Journal of Laws] of 2020, items: 346, 568, 695, 1517 and 2320). All information, statements and/or documents other than those described above and submitted to the Contracting Entity in the course of the contract award procedure must be submitted electronically in the formats specified in the relevant provisions enacted under the Act of 17 February 2005 on the computerisation of entities engaged in the performance of public tasks or as text in a message sent electronically in accordance with the technical and organisational requirements set out in this Specification for preparing, sending and receiving electronic communications.
36. If a document submitted electronically in the course of the contract award procedure contains any information that constitutes a trade secret within the meaning of the provisions of the Polish Act of 16 April 1993 on combating unfair competition (Dz.U. [Journal of Laws] of 2020, item 1913), such information must be provided in a separate file properly described as trade secret information to ensure that the confidentiality of the information is preserved.
37. All evidence concerning the Economic Operator [Polish: *podmiotowe środki dowodowe*] and other documents and/or statements prepared in a language other than Polish must be accompanied by their translations into Polish.
38. If any evidence concerning the Economic Operator [Polish: *podmiotowe środki dowodowe*], other documents, including documents that confirm the authority of any person to represent an Economic Operator or two or more Economic Operators tendering for the contract jointly, or an entity providing resources under s.118 of the Act ("documentary evidence of authority to represent") are issued as electronic documents by an authorised person other than an Economic Operator, including an Economic Operator tendering for the contract jointly with one or more than one Economic Operator, or by an authorised person other an entity providing resources ("authorised persons"), such documents must be submitted.
39. The requirements for the preparation and submission of information, and the technical requirements for electronic documents and methods of electronic communication in public contract award procedures are set out in the regulation published in Dz. U. [Journal of Laws] 2020.2452 of 31/12/2020, as amended).
40. Requirements for submitting documentary evidence of authority to represent:
  - a. if any evidence concerning the Economic Operator [Polish: *podmiotowe środki dowodowe*], evidence to confirm that what is offered by the Economic Operator meets the requirements set out by the Contracting Entity [Polish: *przedmiotowe środki dowodowe*], other documents and/or documentary evidence of authority to represent is/are issued in hard copy format by any authorised person shall be submitted in as digital versions signed using a qualified electronic signature or, in the case of a procurement procedure or procurement competition with a contract value below the relevant EU procurement threshold, signed using a qualified

electronic signature, trusted signature or personal signature to certify that the digital version is a true and accurate representation of the hard copy document.

b. The certification that the digital version of a hard copy document is a true and accurate representation of the document, i.e. the certification described in subsection 40b, shall be made:

- in the case of evidence concerning the Economic Operator [Polish: *podmiotowe środki dowodowe*] and documentary evidence of authority to represent, by an Economic Operator, including an Economic Operator tendering for the contract jointly with one or more than one Economic Operator, or by an entity providing resources, or by a subcontractor, with each such person certifying the evidence that relates to it;
- in the case of evidence to confirm that what is offered by the Economic Operator meets the requirements set out by the Contracting Entity [Polish: *przedmiotowe środki dowodowe*], by an Economic Operator, including an Economic Operator tendering for the contract jointly with one or more than one Economic Operator;
- in the case of any other documents, by an Economic Operator, including an Economic Operator tendering for the contract jointly with one or more than one Economic Operator, with each such operator certifying the documents that relate to it.

The certification that the digital version of a hard copy document is a true and accurate representation of the document, i.e. the certification described in subsection 40b, may also be made by a notary.

The digital version of a hard copy document, as referred to in subsection 40b, is an electronic document being an electronic copy of the content of a hard copy document and allowing for such content to be read and understood without direct access to the original hard copy document.

**SECTION 6. EXAMINATION AND ASSESSMENT OF TENDERS TENDER SELECTION CRITERIA**

1. After opening the tenders received, the Contracting Entity will first assess whether the tenders meet the requirements set out in this Specification and the law to verify whether they should be rejected under s.266(1) of the Act or accepted.
2. The Contracting Entity will then assess the tenders it has not rejected under s.266(1) of the Act against the assessment criteria described below. The following calculations will be based only on data provided in tenders not rejected by the Contracting Entity. The Economic Operator whose tender is given the highest score will be requested to submit documents and statements in satisfaction of the eligibility-to-tender criteria and as evidence that there are no grounds for its exclusion from the contract award procedure.
3. The tender assessment criteria are specified in Table 2.

**Table 2. Assessment Criteria**

Item	Criterion	Description	Significance (%)
1.	Price (inclusive of VAT)	This price must include VAT and all costs and expenses incurred by the Economic Operator.	70
2.	Guarantee period offered (in months)	This is the guarantee period offered by the Economic Operator (12 – 36 months).	20
3.	Technical parameter	Rated power of the dynamometer (continuous operation)	10
<b>TOTAL</b>			<b>100</b>

Tender assessment formula:

$$L = 100 \times \left( \frac{C_{min}}{C} \times W_1 + \frac{G - 12}{24} \times W_2 + \frac{M}{M_{max}} \times W_3 \right)$$

$C_{min}$  = the lowest price offered in the tenders not rejected

$M_{max}$  = the highest value of the technical parameter (the rated power of the dynamometer under continuous operation conditions) = the lowest price offered in the tenders not rejected

$C$  = the price offered in the tender under assessment,

$G$  = the guarantee period offered by the Economic Operator (12 – 36 months),

$M$  = value of the technical parameter based the tender under assessment,

$W_i$  = the weight coefficient [%],

$i$  = item number

4. The price stated in the tender must be given in the Polish currency (PLN).  
If the Contracting Entity selects the most advantageous tender, the Contracting Entity shall convert the price stated in the tender using the PLN/EUR currency rate published on the website of the National Bank of Poland and effective as at the closing date for tenders given in the Specification. The exchange rate shall be taken from <https://nbp.pl/statystyka-i-sprawozdawczosc/kursy/tabela-a/>.
- The price in the Agreement shall be the price stated in the tender in the Polish currency (PLN) and its equivalent in EUR as converted using the PLN/EUR exchange rate in effect as at the closing date for tenders according to the Specification.
- After completing the supply under the Agreement, the Economic Operator may elect to issue an invoice for its remuneration in EUR or PLN. If the invoice is issued in EUR, the invoice amount shall be converted to PLN using the PLN/EUR exchange rate in effect on the date immediately preceding the date of the invoice [according to] a document confirming the exchange rate. The exchange rate shall be taken from the same exchange rate schedule that was the basis for converting the price stated in the tender.
- If the date immediately preceding the date of converting the price in tender into EUR or the invoice date is a date when exchange rate information is not published on the website of the National Bank of Poland, the last date when such information was published shall be used.*
5. If it is impossible to select the most advantageous tender for the reason that two or more tenders are given the same score based on the price and other assessment (selection) criteria, the Contracting Entity will select the tender with the lowest price or the lowest cost item. If two or more tenders offer the same price, the Contracting Entity will request the Economic Operators that have submitted these tenders to submit additional tenders within a set time limit.
6. If the Contracting Entity has received a tender which, if selected, would result in the Contracting Entity's tax liability under the Polish VAT Act of 11 March 2004 (Dz.U. [Journal of Laws] of 2024, items 361 and 852), the Contracting Entity will increase the price offered in the tender by the VAT amount payable by the Contracting Entity. **Please note that additional requirements are laid down in s.225(2) of the Act, and these are included in the tender form.**
7. The Contracting Entity will notify Economic Operators of its selection of the most advantageous tender or its annulment of the contract award procedure by publishing a notice on the website for the contract award procedure, i.e. <https://platformazakupowa.pl/pn/bosmal>, containing this Specification, and on the [https://www.bosmal.com.pl/72-przetargi\\_publiczne](https://www.bosmal.com.pl/72-przetargi_publiczne) website.

## **SECTION 7. FORMAL REQUIREMENTS**

### **1. Communication with Economic Operators**

- 1.1. The persons authorised to communicate with Economic Operators are Ms Beata Kalińska and Ms Magdalena Matlak, who are available from Monday to Friday, from 7:00 AM to 3 PM, except for bank/public holidays.
- All communication between the Contracting Entity and Economic Operators will be based on the <https://platformazakupowa.pl/pn/bosmal> purchasing platform, and all tenders must be submitted only via the <https://platformazakupowa.pl/pn/bosmal> platform.
- 1.2. The technical and organisational requirements for sending and receiving electronic documents, for digital versions of hard copy documents and for information provided in such documents are described in the instructions for the <https://platformazakupowa.pl/strona/instrukcje-wykonawca> platform and in the Terms of Use for the <https://platformazakupowa.pl/strona/1-regulamin> platform. By tendering for the contract in this

contract award procedure, the Economic Operator is deemed to have accepted such requirements, terms and conditions.

The maximum size of any file transmitted via the <https://platformazakupowa.pl/pn/bosmal> platform is 150 MB. The maximum file size in other communication is 500 MB.

1.3. Each tender will be deemed to have been submitted on the date when it is uploaded into the <https://platformazakupowa.pl/pn/bosmal> platform. Each application, notification, electronic document, statement, electronic version of a hard copy document or other information will be deemed to have been submitted on the date when it is uploaded into the <https://platformazakupowa.pl/pn/bosmal> platform.

1.4. The minimum technical requirements for use of the <https://platformazakupowa.pl/pn/bosmal> platform are as follows:

- a. permanent access to the Internet with a guaranteed bandwidth of not less than 512 kbps;
- b. a PC or MAC computer with the following configuration: min. 2 GB RAM, the Intel IV 2 GHz processor or its newer version, one of the following operating systems: MS Windows 7, Mac Os x 10 4, Linux, or their newer versions;
- c. any web browser other than Internet Explorer installed;
- d. JavaScript enabled;
- e. Adobe Acrobat Reader or other software that supports the .pdf file format installed;
- f. Encryption on [platformazakupowa.pl](https://platformazakupowa.pl) is based on the TLS 1.3 protocol;
- g. The indication of the time of receipt of data by the purchasing platform is the date and exact time (hh:mm:ss) generated according to the local time of the server synchronized with the clock of the Central Office of Measures [Polish: Główny Urząd Miar].

1.5. The tender, the European Single Procurement Document (ESPD) and statements concerning the grounds for exclusion under Article 5k of Regulation 833/2014, will be deemed validly submitted only if it is submitted in electronic form (and signed using a qualified electronic signature).

Details about how to obtain the qualified electronic signature service and how to use this service can be found on the websites of Qualified Trust Service Providers (QTSPs). For a list of QTSPs, please visit <http://www.nccert.pl/kontakt.htm>.

1.6. Submission of tenders:

- a) Each tender must be submitted via the tender submission form available on the <https://platformazakupowa.pl/pn/bosmal> platform.

In the tender form (Appendix 1 to the Specification), the Economic Operator must specify the e-mail address to be used for communication in the contract award procedure.

- b) An Economic Operator interested in tendering for the public contract in this contract award procedure is **not required** to register on the purchasing platform.
- c) All tenders must be prepared in Polish. The tender will be deemed validly submitted only if it is submitted **in electronic form (and signed using a qualified electronic signature)**. The file formats must be in accordance with the National Interoperability Framework defined in the Regulation of the Council of Ministers of 21 May 2024 on National Interoperability Framework, minimum requirements for public registers and electronic exchanges of information, and minimum requirements for ICT systems (Dz. U. [Journal of Laws] 2024.773). It is the Contracting Entity's recommendation that tenders be submitted in PDF format and signed using a qualified electronic signature in .pades format. The instructions for submitting tenders, including tender encryption instructions, are described on the <https://platformazakupowa.pl/strona/instrukcje-wykonawca> website.

- d) Any trade secret information (within the meaning of the Act of 16 April 1993 on combating unfair competition) which has been reserved by the Economic Operator as trade secret information must be submitted in a separate file, with the *Załącznik stanowiący tajemnicę przedsiębiorstwa* [An attachment containing trade secret information] checked. This file and all files containing nonconfidential information must be compressed (zipped) into one file.
- e) Each tender must be accompanied by the European Single Procurement Document (ESPD) and statements concerning the grounds for exclusion under Article 5k of Regulation 833/2014, and these must be submitted **in electronic form (and signed using a qualified electronic signature)** and, subsequently, encrypted together with the tender files.
- f) The Economic Operator may, before the expiry of the closing date for tenders, change or withdraw its tender on the <https://platformazakupowa.pl/pn/bosmal>. The instructions for changing or withdrawing tenders are provided in the INSTRUKCJE [INSTRUCTIONS] section of the <https://platformazakupowa.pl/strona/instrukcje-wykonawca> website.
- g) After the closing date for tenders, no Economic Operator will be able to change or withdraw its tender effectively.

1.7. Communication between the Contracting Entity and Economic Operators (not applicable to submission or withdrawal of tenders):

- a) All communication between the Contracting Entity and Economic Operators, including (without limitation) for the purposes of submitting statements, requests and notices and/or providing information, shall be via the <https://platformazakupowa.pl/pn/bosmal> purchasing platform. The contract award procedure reference, given in this Specification, must be quoted by the Contracting Entity and Economic Operators in all communications between them.
- b) All electronic documents, statements or electronic versions of hard copy documents or other information must be submitted as attachments by Economic Operators via the <https://platformazakupowa.pl/pn/bosmal> platform.
- c) All electronic documents must be prepared in accordance with the provisions of the Regulation of the President of the Council of Ministers of 30 December 2020 on a method for the preparation and submission of information and technical requirements for electronic documents and means of electronic communication in public contract award procedures or contest procedures (Dz.U. [Journal of Laws] of 2020, item 2452) and the provisions of the Regulation of the Ministry of Labour and Technology of 23 December 2020 on evidence concerning economic operators and other documents or statements that contracting entities may require from economic operators (Dz.U. [Journal of Laws] of 2020, item 2415).

**2. REQUIREMENTS for electronic submission of documents, statements and requests by Economic Operators in the course of the contract award procedure, including after the closing date for tenders**

2.1. The data formats accepted by the Contracting Entity include (without limitation) pdf., doc., docx., rtf., xps., odt., and xml. The file formats must be in accordance with the National Interoperability Framework defined in the Regulation of the Council of Ministers of 12 May 2024 on National Interoperability Framework, minimum requirements for public registers and electronic exchanges of information, and minimum requirements for ICT systems (Dz. U. [Journal of Laws] 2024.773 of 22/05/2024).

**3. Where a document or statement submitted by an Economic Operator in this contract award procedure is written in a language other than Polish, that document or statement must be accompanied by its translation into Polish and signed by the Economic Operator using a qualified electronic signature in accordance with the following instructions.**

**4. Format of documents submitted as part of the tender and format of the European Single Procurement Document (ESPD).** These documents must be submitted electronically and signed using a qualified electronic signature (s.63(1) of the Act), otherwise they will be regarded as invalid.



**5. Bid security**

5.1. Each Economic Operator must provide a bid security in respect of its tender. The security must be provided by the closing date for tenders and maintained throughout the tender validity period. **The security amount is PLN 30,000 (thirty thousand zloty).**

If the bid security is paid in a currency other than the Polish currency (PLN), the bid security amount will be converted to PLN using the average exchange rate published by the National Bank of Poland and effective on the closing date for tenders set out in the Specification (Exchange Rate Table A). Exchange rate tables are available at

<https://nbp.pl/statystyka-i-sprawozdawczosc/kursy/tabela-a/website>.

5.2. The bid security must be provided by the closing date for tenders and maintained throughout the tender validity period, except for the cases described in s.98(1)(2), s.98(1)(3) and s.98(2) of the Act.

5.3. The tender validity period may be extended only if the validity period of the bid security deposit is extended or, if this is not possible, if a new bid security deposit is paid for the extended tender validity period.

5.4. The bid security may be provided, at the Economic Operator's discretion, as one or more than one of the following:

- a. money,
- b. a bank guarantee,
- c. an insurance guarantee,
- d. a surety [Polish: *poręczenie*] granted by any of the persons specified in s.6b(5)(2) of the Polish Agency for Enterprise Development (PARP) Act of 9 November 2000 (Dz.U. [Journal of Laws] of 2024, item 419).

5.5. If the bid security is provided in money, it must be paid by bank transfer into the bank account specified by the Contracting Entity.

The bid security provided in money will be kept by the Contracting Entity in a bank account.

If the bid security is provided in money, the payment must be made into the Contracting Entity's bank account held with Bank Pekao SA O/Bielsko-Biała:

- Account# (PLN): 32 1240 4142 1111 0000 4823 8630;

The description of the transfer must be worded in Polish as "**wadium - hamulec dynamometryczny dużej mocy**" [*bid security: high power brake dynamometer*].

The payment will be deemed validly made if it is credited to the Contracting Entity's account by the closing date for tenders stated in this Specification.

5.6. If the bid security is a guarantee or a surety, the Economic Operator must provide the Contracting Entity with the original guarantee or surety document in electronic form, signed using a qualified electronic signature.

**Where the bid security is provided as a guarantee or a surety and submitted via the purchasing platform, the document must be submitted in electronic form and signed using a qualified electronic signature by the guarantor / surety grantor, i.e. the issuer of the guarantee or surety document.**

The guarantee or surety must be irrevocable and unconditional. It must be delivered upon first written request and issued in accordance with applicable law, and must contain at least the following:

- a. the name of the Economic Operator, the beneficiary of the guarantee (the Contracting Entity), the guarantor (the bank or insurance company granting the guarantee), and their registered addresses;
- b. the claim or amount payable to be secured with the guarantee or surety;
- c. the amount of the guarantee or surety,
- d. the validity period of the guarantee or surety;
- e. the guarantor's/surety grantor's undertaking to "pay the guarantee amount in the event of the occurrence of the circumstances described in s.98(6) of the Act".

All disputes concerning any such guarantee will be resolved in accordance with the law of the Republic of Poland by a court of law competent for the registered office (legal seat) of the Contracting Entity.

The foregoing provisions will apply accordingly to sureties.

5.7. The Contracting Entity shall return the bid security to the Economic Operator immediately, but not later than within 7 days of the occurrence of any of the following events:

- a. the tender validity period expires,
- b. an agreement on the award of the contract is entered into,
- c. the contract award procedure is annulled, except where an appeal against the annulment has not been decided or the time limit for such an appeal has not expired.

5.8. The Contracting Entity shall return the bid security to the Economic Operator immediately, but not later than within 7 days of the Economic Operator's request for its return, in the event that:

- a. the Economic Operator withdrew its tender before the closing date for tenders,
- b. the Economic Operator's tender has been rejected,
- c. the most advantageous tender has been selected, except that the bid security will not be returned to the Economic Operator's whose tender is the winner tender,
- d. the contract award procedure is annulled, except where an appeal against the annulment has not been decided or the time limit for such an appeal has not expired.

5.9. If the request for the return of the bid security referred to in subsection 5 is submitted, the legal relationship between the Economic Operator and the Contracting Entity will automatically terminate, resulting in the Economic Operator's losing its right to use the remedies described in Title IX of the Act.

5.10. If the bid security was provided in money, the Contracting Entity shall return the bid security amount, together with the interest payable under the agreement for the bank account in which the money has been kept, less account maintenance costs and less the bank charge for transferring the money into a bank account specified by the Economic Operator.

5.11. If the bid security was provided in a form other than in money, the Contracting Entity shall return the bid security by making a statement to the guarantor or surety grantor to the effect that the bid security has been released.

5.12. The Contracting Entity shall retain the bid security, together with any interest, or, if the bid security was provided in the form of a guarantee or a surety, as referred to in ss.97(7)(2)-(4), request the guarantor or surety grantor, as the case may be, to pay the bid security, in the event that

- a. the Economic Operator fails to submit, as requested under s.107(2) or s.128(1) [of the Act], for reasons on its part, the evidence concerning the Economic Operator [Polish: *podmiotowe środki dowodowe*] and/or the evidence to confirm that what is offered by the Economic Operator meets the requirements set out by the Contracting Entity [Polish: *przedmiotowe środki dowodowe*], as referred to in s.57 or s.106(1) [of the Act], and/or the statement referred to in s.125(1) [of the Act], and/or any other document or statement, and/or has not consented [for the Contracting Entity] to correct the mistake referred to in s.223(2)(3), if the foregoing has prevented the Economic Operator's tender from being selected as the most advantageous tender;
- b. the Economic Operator whose tender has been selected
  - refuses to sign an agreement on the award of the contract on the terms set out in its tender,
  - has not provided the required performance bond,
- a. it has been impossible to enter into an agreement on the award of the contract for reasons for which the Economic Operator whose tender has been selected is responsible.

**Information about the formalities that must be completed after the winning tender is selected and for an agreement on the award of the contract to be signed.**

6. Immediately after selecting the most advantageous tender, the Contracting Entity shall provide all the Economic Operators who have tendered for the contract with
- a. information on the selection of the most advantageous tender, which will include the name, registered office address or residence address (if the residence address is the winning Economic Operator's place of business), as well as the names, registered office addresses or residence addresses of the Economic Operators who have submitted tenders for the contract (the residence address of any such Economic Operator will be given only if it is that Economic Operator's place of business), and the scores assigned to the tenders for each assessment criterion, and the total score for each tender.
  - b. information identifying the Economic Operators whose tenders have been rejected, together with the factual and legal reasons for their rejection.

The information described in paragraph 6a shall be published by the Contracting Entity on the website specified in this Specification.

7. If the winning tender is a joint tender submitted by two or more Economic Operators (a consortium), the Contracting Entity shall require them to provide it with a copy of the consortium agreement before an agreement on the award of the contract is signed.

The tender, including any statements, declarations and information therein, shall form an integral part of the agreement on the award of the contract.

#### **8. Performance bond requirements**

- 8.1. The Contracting Entity shall require the Economic Operator whose tender has been selected as the most advantageous tender to provide a performance bond **equal to 5%** of the total fixed price (inclusive of VAT) stated in the tender. The performance bond must be provided before the agreement on the award of the contract is signed.

If the performance bond is provided in a currency other than the Polish currency (PLN), the bond amount will be converted to PLN using the average exchange rate published by the National Bank of Poland and effective:

- for sureties/guarantees: on the date on which the performance bond is created,
- for money: on the date when the amount is transferred into the Contracting Entity's bank account,

(Exchange Rate Table A). Exchange rate tables are available at

<https://nbp.pl/statystyka-i-sprawozdawczosc/kursy/tabela-a/>

- 8.2. The performance bond may be provided, at the Economic Operator's discretion, as one or more than one of the following:
- a. money,
  - b. a surety [Polish: *poręczenie*] granted by a bank or a credit union [a savings and credit union], provided that a surety from a credit union shall, in any case, a monetary obligation,
  - c. a bank guarantee,
  - d. an insurance guarantee,
  - e. a surety [Polish: *poręczenie*] granted by any of the persons specified in s.6b(5)(2) of the Polish Agency for Enterprise Development (PARP) Act of 9 November 2000.

The bank guarantee or insurance guarantee (surety) provided as a performance bond shall, as a minimum,

- name the beneficiary of the guarantee, this being Instytut Badań i Rozwoju Motoryzacji BOSMAL Sp. z o.o., Sarni Stok 93, 43-300 Bielsko-Biała, Poland,
- specify the guaranteed amount in the Polish currency (PLN),
- specify the validity period [expiry date] of the guarantee,
- be an irrevocable, unconditional and payable on first demand within 14 days,
- specify the subject matter of the guarantee,
- specify that it is issued as security for any claims arising from the Economic Operator's failure to perform or defective performance of the agreement on the award of the contract and, if it is issued in connection with a quality guarantee, that it issued as security for any claims under the statutory implied warranty [Polish: *rękojmia*].

The foregoing provisions shall apply if the Economic Operator provides a surety [Polish: *poręczenie*] as a performance bond.

If the performance bond is provided in money, this must be paid by the Economic Operator by bank transfer only and into the bank account specified by the Contracting Entity.

8.3. The Contracting Entity shall return **70%** of the performance within **30 days** of completed performance of the contract and the Contracting Entity's acceptance of the performance (final acceptance).

8.4. The Contracting Entity shall retain **30%** of the performance bond as security for claims under the statutory implied warranty [Polish: *rękojmia*].

The Contracting Entity shall return the above amount not later than on **the 15th day** after the expiry of the quality guarantee or the statutory implied warranty.

If the performance bond was provided in money, the Contracting Entity shall keep the money in an interest-bearing bank account. If the performance bond was provided in money, the Contracting Entity shall return the performance bond amount, together with the interest payable under the agreement for the bank account in which the money has been kept, less account maintenance costs and less the bank charge for transferring the money into the Economic Operator's bank account.

8.5. If the winning tender is a joint tender submitted by two or more Economic Operators (a consortium), the Contracting Entity shall require them to provide it with a copy of the consortium agreement before an agreement on the award of the contract is signed.

8.6. Each Economic Operator that is a private limited company shall, **if the value of the agreement on the award of the contract exceeds twice the amount of that company's share capital, provide [the Contracting Entity], not later than on the date signing that agreement, with a resolution of that company's shareholders whereby the shareholders have consented for the company's management board [directors] to enter into a transaction the value of which exceeds twice the amount of that company's share capital**, in accordance with s.230 of the Polish Commercial Companies and Partnerships Code [Polish: Kodeks spółek handlowych], unless the company's articles provide otherwise, in which case the Economic Operator must provide [the Contracting Entity] with a copy of that company's articles authorising such a transaction.

**9. Payments under the agreement on the award of the contract with the winning Economic Operator shall be based on the Economic Operator's invoice according to the following:**

- a. **20%** shall be paid after the agreement on the award of the contract is signed,
- b. **50%** shall be paid after the supply under the contract is completed;
- c. **30%** of the value of the contract shall be paid after the equipment is started up and the final acceptance certificate is signed.

The final payment shall be made within **30 days** and be conditional upon the equipment being installed and started up, the training contracted for being delivered, the Economic Operator delivering the documents required under the contract, and the final acceptance certificate for the equipment being signed by the Parties.

## **SECTION 8. DEADLINES (TIME LIMITS)**

### **1. Closing date for tenders**

1.1. Each tender, accompanied by a statement to the effect that there are no grounds for exclusion of the Economic Operator and that the Economic Operator meets the eligibility-to-tender criteria, and other statements or documents submitted together with the tender, must be submitted in accordance with **this Specification by 10:00 AM on 12 February 2025.**

**All tenders will be opened at 12:00 noon on 12 February 2025.**

1.2. In accordance with s.222(5) of the Act, the Contracting Entity shall publish the following on the website for the contract award procedure and on its own website:

- the amount that the Contracting Entity intends to pay for the object of the contract,
- its record of tender opening.

See the ORDERS/PUBLIC TENDERS section of the contracting entity's website at

[https://www.bosmal.com.pl/72-przetargi\\_publiczne](https://www.bosmal.com.pl/72-przetargi_publiczne) and <https://platformazakupowa.pl/pn/bosmal>.

1.3. All tenders submitted after the time and date specified in paragraph 1(1) will be rejected.

1.4. If an ICT system is used to open the tenders, then in the event the system's failure prevents the opening of the tenders at the time and on the date specified by the Contracting Entity, the opening shall take place as soon as the failure is repaired. Information on the actual tender opening date will be published on the website for the contract award procedure.

### **2. Tender validity period**

2.1. The Economic Operator shall remain bound by its tender until **14 April 2025 (14/04/2025)**. The tender validity period shall begin upon the closing date for tenders.

2.2. If the most advantageous tender is not selected within the tender validity period specified in paragraph 2.1, the Contracting Entity shall, within that period, request each Economic Operator only once for its consent to an extension of the tender validity period by the time specified by the Contracting Entity, which extension shall not be longer than 60 days.

2.3. The extension to the tender validity period referred to above shall only be effective if the Economic Operator has submitted a written statement to the effect that it has consented to that extension.

2.4. If the Contracting Entity requires a bid security, the tender validity period may be extended, as referred to in paragraph 2.2., only if the validity period of the bid security is extended or, if this is not possible, if a new bid security is provided for the extended tender validity period.

### **3. Performance of the contract**

The equipment to be supplied under the contract must be delivered and started up **within 26 weeks of the date of signing the agreement on the award of the contract, which is a strict requirement.**

## **SECTION 9. OTHER TERMS**

1. Each Economic Operator shall ensure that

1.1 a quality guarantee is in place for a **minimum of 12 months** as of the date of start-up (the date of signing the acceptance certificate). The guarantee shall cover all things that must be done to detect (identify) and repair defects (This will be taken into account in the tender assessment process).

1.2 The guarantee must allow for defects to be reported at least by electronic mail, on a 24-hour basis and seven days a week.

1.3 The repairer's response time, i.e. the time from the receipt of a report of a defect to the time when the repair begins repairing the defects, must not be longer than 4 days, except for bank (public) holidays. The time for

repairing the reported defect must not be longer than 15 days of the defect being reported, except for bank (public) holidays.

1.4 Spare parts and post-guarantee repairs must be available for at least 7 years of the date of signing the final acceptance certificate.

1.5 The response time for post-guarantee repairs must not exceed 15 days (a trained repairer will be required to carry out the repair on the Contracting Entity's premises), except for bank (public) holidays.

1.6 The Economic Operator shall supply, together with the equipment, a complete set of documentation in **Polish** or **English** (electronic documents, except for certifications, which must be hard copy documents), containing as a minimum:

- a. technical drawings of the entire system (a setup/configuration diagram),
- b. diagrams of all the items of gas, pneumatic and hydraulic equipment,
- c. diagrams of all electrical/wiring parts and their connections, including usage codes,
- d. manuals containing operation, repair and maintenance instructions, together with a complete description of measurement and calibration procedures, to the extent required by the provisions of Regulation (EU) 2023/1230 of the European Parliament and of the Council of 14 June 2023 on machinery ( They must be accompanied by their translations into Polish),
- e. a description of the operation of the system equipment and the software for the equipment,
- f. a list of spare parts,
- g. a list of the spare parts that BOSMAL must have in stock in order to reduce equipment shutdown times to a minimum in the event of system failure,
- h. verification procedure reports (calibration reports) for the equipment after it is started up (to be carried out on the Economic Operator's premises),
- i. information and warning pictograms displayed on the equipment and, if any such information is displayed as descriptions, this must be in Polish,
- j. descriptions in Polish for all control parts/components. This requirement does not apply to electronic control panels, if they are an integral part of English-language software,
- k. CE marking,
- l. declarations of conformity in accordance with the following safety standards:
  - Regulation (EU) 2023/1230 of the European Parliament and of the Council of 14 June 2023 on machinery,
  - Directive 2014/35/EU ( Low Voltage Directive),
  - Directive 2014/30/EU (Electromagnetic Compatibility Directive).

2. The Contracting Entity agrees that *equivalent solutions* may be implemented during the performance of the contract, provided that each such solution meets all the requirements set out in this Specification and the tender (the assessment criteria) and provided that it is demonstrated that any replacement product meets these requirements. Each equivalent solution shall meet all the requirements set out in this Specification, laws and regulations, and no such solution may result in the supply of a product with technical, quality and/or operating parameters worse than those of the originally intended product.

The equivalent product shall not result in an increase in the price of the supply or any postponement of (or extension to) the time for completing the supply under the contract and/or any other time limit or period related to the contract (such as the quality guarantee period or the repairer's response time).

3. In accordance with s.455(1)(1) of the Act, the Contracting Entity agrees that the agreement on the award of the contract may be amended as described in the Essential Terms of the Agreement (**Appendix 7 to this Specification**).

4. The contract award procedure may be annulled in the cases described in s.255 of the Act.

5. **This translation of the Polish text is provided for convenience only, and the Polish text of this document (Polish: SWZ, Specyfikacja Warunków Zamówienia) will be binding in the case of any doubt.**

**SECTION 10. DATA PRIVACY NOTICE ARTICLE 13 OF THE GDPR**

As required by Article 13 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 processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ EU L 119 of 04/05/2016, p. 1, "GDPR", as amended), please be informed that

- the controller in respect of your personal data is Instytut Badań i Rozwoju Motoryzacji BOSMAL Sp. z o.o. (Sarni Stok 93, 43-300 Bielsko-Biała, Poland).
- If you have any questions about data processing, feel free to share them with our data protection officer (DPO), who is available by e-mail at [iod@bosmal.com.pl](mailto:iod@bosmal.com.pl).
- Your personal data will be processed pursuant to Article 6(1)(c) of the GDPR. The purpose of the processing is connected with the open-tender contract award procedure with reference number **BOS/30/NZ/20**.
- Recipients of your personal data will include individuals and/or entities with access to the contract award procedure documentation under s.8 and s.96(3) of the Polish Public Procurement Law (Act of Parliament) (consolidated text published in Dz. U. [Journal of Laws] of 2017, items 1579 and 2018) ("the Act").
- Your personal data will be retained for a term calculated, above all, in accordance with the Regulation of the President of the Council of Ministers on document workflow management instructions, standard filing mechanisms, and archiving instructions for organisations, unless specific provisions provide otherwise. You are legally required to provide your personal data under the Act on the basis of your tendering for public contract. The consequences of your refusal or failure to provide your personal data are described in the Act.
- Your personal data will not be subject to automated decision-making.
- Pursuant to s.18 of the Act, the Contracting Entity may disclose the personal data referred to in Article 10 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 processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ EU L 119 of 04/05/2016, p. 1, with Article 53 amended) ("Regulation 2016/679") to enable the exercise of the remedies described in Title IX of the Act until any such remedy is applied for.
  - Pursuant to s.96(3a) of the Act, the principle of openness provided for in s.18 of the Act shall apply to all personal data, except for the data referred to in Article 9(1) of Regulation 2016/679 and collected in the course of a contract award procedure or a contest procedure. The restrictions of the principle of openness which are provided for in s.18 of the Act, shall apply accordingly.
  - Pursuant to s.18 of the Act, if the right provided for in Article 18(1) of Regulation 2016/679 is requested after the contract award procedure ends, resulting in restriction of the processing of the personal data contained in the record of the procedure and in any appendices to the record, the Contracting Entity shall not disclose the data contained in the record of the procedure and/or in any appendices to the record, unless the conditions described in Article 18(2) of Regulation 2016/679 are fulfilled.
- Pursuant to s.8a(4) of the Act, if the right provided for in Article 18(1) of Regulation 2016/679 is requested, this shall not restrict the processing of your personal data in the course of the contract award procedure or a contest procedure.
- Pursuant to s.18 of the Act, where personal data is disclosed by the Contracting Entity in the Biuletyn Zamówień Publicznych [Public Procurement Bulletin] publication, the rights provided for in Article 15 and Article 16 of Regulation 2016/679 shall be exercised on the basis of a request made to the Contracting Entity.
- Pursuant to s.18 of the Act, the President of the Polish Public Procurement Office shall ensure that the ICT system through which the Biuletyn Zamówień Publicznych [Public Procurement Bulletin] publication is made available is kept technically functional and shall specify the storage period in respect of the personal data disclosed in that publication.
- You have the following rights:

- Article 15 of the GDPR gives you the right to access your personal data. Under s.8a(2) and s.97(1a) of the Act, the Contracting Entity may require you to provide additional information to identify the name and/or date of the related contract award procedure. Under s.97(1a) of the Act, this also applies to data in storage, i.e. the data contained in the record of the procedure and in any appendices to the record;
- Article 16<sup>1</sup> of the GDPR gives you the right to have your personal data rectified. However, your exercise of this right shall not change the result of the contract award procedure and/or amend the provisions of the agreement on the award of the contract against the provisions of Act (s.8a(3) of the Act) and shall not affect the integrity of the record of the procedure and/or any appendix to the record (s.97(1b) of the Act).
- Article 18<sup>2</sup> of the GDPR gives you the right to require the controller to restrict the processing of your personal data, except for the cases described in Article 18(2) of the GDPR;
- You have the right to lodge a complaint to the President of the Office of Personal Data Protection if you believe that your personal data is processed in violation of the GDPR.
- However, you may not exercise the following rights:
  - in connection with Articles 17(3)(b), 17(3)(d) or 17(3)(e), the right to have your personal data deleted;
  - the right to data portability under Article 20 of the GDPR;
  - **under Article 21 of the GDPR, the right to object to the processing of your personal data, as the legal basis for the processing of your personal data is Article 6(1)(c) of the GDPR.**

**If you request the exercise of the right provided for in Article 18(1) of Regulation 2016/679, this shall not restrict the processing of personal data in the course of a contract award procedure or a contest procedure.**

**During and after the contract award procedure, if compliance with the obligations provided for in Articles 15(1)-(3) of the GDPR requires a disproportionate effort, the Contracting Entity may require the data subject to provide additional information to be used, in particular, to identify the name and/or date of the related contract award procedure.**

## **SECTION 11. INFORMATION ABOUT REMEDIES AVAILABLE TO ECONOMIC OPERATORS IN THE COURSE OF THE CONTRACT AWARD PROCEDURE**

1. The remedies described in this section are available to any economic operators, contest participants or any other person having or having had an interest in obtaining a contract or a prize in a contest procedure and has suffered or may suffer loss or damage as a result of the Contracting Entity's violation of the Public Procurement Act.
2. The remedies in relation to a tender notice, contest notice or any document related to a public contract are also available to any organisation named in the list referred to in s.469(15) and the Polish Ombudsman for Small and Medium-Sized Enterprises.
3. All appeal procedures shall be conducted in Polish.
4. All documents must be submitted in Polish or, where a document is originally issued in a foreign language, the party to or the participant in the appeal procedure who invokes that document must submit a translation of the document into Polish. In justified situation, the National Appeals Chamber may require a translation of such a document certified by a sworn translator.
5. An appeal may be lodged against

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<sup>1</sup> However, your exercise of the right to have your data rectified or supplemented shall not change the result of the contract award procedure and/or amend the provisions of the agreement on the award of the contract against the provisions of Act.

<sup>2</sup> Pursuant to s.18 and s.19 of the Act, if the right provided for in Article 18(1) of Regulation 2016/679 is requested, this shall not restrict the processing of your personal data in the course of the contract award procedure.



- a. the Contracting Entity's action in violation of the Public Procurement Act taken in the course of a contract award procedure, in the process leading to the conclusion of a framework (or master) agreement, in a dynamic purchasing system (DPS), an economic operator assessment system and/or a contest procedure, including the provisions of any draft agreement;
  - b. the Contracting Entity's omission to take a particular action in the course of a contract award procedure, in the process leading to the conclusion of a framework (or master) agreement, in a dynamic purchasing system (DPS), an economic operator assessment system and/or a contest procedure, if the Contracting Entity was required by the Act to take that action;
  - c. the Contracting Entity's decision not to conduct a contract award procedure or a contest procedure under the Act, although the Contracting Entity was legally required to do so.
6. Appeals shall be lodged to the President of the National Appeals Chamber.
7. The appellant must deliver a copy of the appeal to the Contracting Entity before the expiry of the time limit for the appeal in such a way as to allow the Contracting Entity to familiarise itself with the appeal before the expiry of that time limit.
8. The Contracting Entity will be deemed to have been able to familiarise itself with the appeal before the expiry of the time limit for the appeal if it was delivered a copy of the appeal by electronic means before the expiry of the time limit.
9. The appeal must contain:
- a. the appellant's name (or business name), residential address (or registered business address), phone number and e-mail address, and the full name(s) of the appellant's representative(s);
  - b. the name and registered office address of the Contracting Entity, and its phone number and e-mail address;
  - c. the appellant's PESEL [national identification number] or NIP [tax ID number] if the appellant is an individual and if they are required to have such numbers or if they have such numbers without a legal requirement;
  - d. if the appellant is not an individual: the appellant's registration number at the Polish National Court Register or any other relevant register, or the appellant's NIP [tax ID number] if the appellant is not required to have any such registration and if they are required to have the tax ID number;
  - e. designation of the object of the contract,
  - f. the tender notice reference number if the notice is published in the Biuletyn Zamówień Publicznych [Public Procurement Bulletin] publication or the Official Journal of the European Union;
  - g. a description of the action or omission that violates the provisions of the Polish Public Procurement Law (Act of Parliament);
  - h. a concise description of the appellant's allegation(s);
  - i. a description of how the appellant expects in reply to the appeal;
  - j. a description of the actual and legal circumstances that justify the appeal, together with evidence in support of the circumstances;
  - k. the appellant's signature, or the appellant's representative's / representatives' signature(s);
  - l. a list of appendices.
10. The appeal shall be accompanied by:
- a. proof of payment of the required filing fee for the appeal,
  - b. proof of sending a copy of the appeal to the Contracting Entity,
  - c. a document confirming the right of the appellant's representative to represent the appellant.
11. The appeal shall be considered
- a. if it meets all the formal requirements,
  - b. if the required filing fee for the appeal has been paid.
12. The filing fee for the appeal must be paid before the expiry of the time limit for the appeal.
13. Time limit for appeals
- The time limit for filing an appeal shall be
- 13.1 if the value of the contract is equal to or exceeds the relevant EU procurement threshold, within

- a. 10 days of the appellant having been informed of the Contracting Entity's action that is the basis for the appeal, if such information was provided using a method of electronic communication;
  - b. 15 days of the appellant having been informed of the Contracting Entity's action that is the basis for the appeal, if such information was provided using a method other than that specified in a) above;
- 13.2. The time limit for filing an appeal in relation to a tender notice, a contest notice, or a document related to a public contract is
- 10 days of the notice being published in the Official Journal of the European Union or the public contract document(s) being published on the website for the contract award procedure, if the value of the contract is equal to or exceeds the relevant EU procurement threshold.
- 13.3. The time limit for filing an appeal in cases other than those described in paragraphs 13.1 and 13.2 shall be
- 10 days of the date when the appellant became aware or may be expected to have become aware, by exercising reasonable care, of the circumstances that serve as the basis for the appeal, if the value of the contract is equal to or exceeds the relevant EU procurement threshold.
14. The Contracting Entity shall send the copy of the appeal to other Economic Operators tendering for the contract immediately, but not later than within 2 (two) days of receiving the copy, and, if the appeal has been filed in relation to the tender notice or any document related to the public contract, the Contracting Entity shall publish the copy on the website containing the tender notice or documents related to the public contract, thus requesting [the other] Economic Operators to join the appeal procedure.
15. An Economic Operator may join the appeal procedure within 3 (three) days of receiving the copy of the appeal, specifying which side of the procedure it wishes to join and explaining why they are interested in the appeal being decided in favour of the side it wishes to join.
16. The request to join the appeal procedure shall be delivered to the President of the National Appeals Chamber, and copies of the request shall be sent to the Contracting Entity and the Economic Operator that filed the appeal. The request to join the appeal procedure shall be accompanied by proof of sending copies of the request to the Contracting Entity and the Economic Operator that filed the appeal.
17. Each Economic Operator that has joined the appeal procedure shall have the status of *participant* in the procedure if is interested in the appeal being decided in favour of one of the sides.
18. No action taken by a *participant* in the appeal procedure may stand in conflict with any action taken or statement made by the side joined by that participant, except where the objection provided for in s.523(1) of the Polish Public Procurement Law (Act of Parliament) has been filed by a participant that has joined the Contracting Entity in the appeal procedure.

**SECTION 12. A LIST OF APPENDICES TD THE SPECIFICATION****Appendices to be completed by the Economic Operator and submitted together with the tender**

1. Appendix 1\_of: Tender Form
2. Appendix 2A\_of: European Single Procurement Document (ESPD) (editable file)
3. Appendix 2B\_of: European Single Procurement Document (ESPD) (PDF format)
4. Appendix 2C\_of: Instructions for Completing the European Single Procurement Document (ESPD) (a letter of opinion from the Polish Public Procurement Office)
5. Appendix 3\_of: Statement by Economic Operators Tendering for the Contract Jointly (where applicable)
6. Appendix 4\_of: Statement by an Entity Providing Resources (where applicable)

**Appendices to be completed by the Economic Operator and submitted when requested**

7. Appendix 5A\_wez: Updated Statement by the Economic Operator/ an Economic Operator Tendering for the Contract Jointly with other Economic Operators
8. Appendix 5B\_wez: Updated Statement by the Economic Operator/ an Economic Operator Tendering for the Contract Jointly with other Economic Operators / an Entity Providing Resources
9. Appendix 6\_wez: List of Supplies (reference letters required)

**Contract performance requirements**

10. Appendix 7: Essential Terms of the Agreement
11. Appendix 8: Instructions for Use of the Electronic Purchasing Platform for the Contract Award Procedure (for tender submission)