TERMS OF REFERENCE

Delivery of a system for transmitting signals from rotating measuring instruments for a research laboratory

case number: 18/DE/Z/16

**Unrestricted tendering procedure**

**with the contract value greater than EUR 209,000**

**Warsaw, 04.03.2016**

Table of contents

[§ 1. Name and address of the Contracting Authority 3](#_Toc426703575)

[§ 2. Contract awarding procedure 3](#_Toc426703576)

[§ 3. Description of the object of the contract 3](#_Toc426703577)

[§ 4. Information on supplementary contracts 4](#_Toc426703578)

[§ 5. Contract performance date 4](#_Toc426703579)

[§ 6. Conditions of participation in the procedure and description of the assessment of conditions fulfilment 4](#_Toc426703580)

[§ 7. List of representations and documents which the Economic Operators are to provide to confirm meeting the participation conditions based on Article 22 section 1 and to demonstrate the absence of grounds for exclusion from the procedure under Article 24 section 1, 2, 2a and Article 24 b section 3 of the Act 5](#_Toc426703581)

[§ 8. Information on the representations and documents to be presented by the Economic Operators /remaining documents/ 7](#_Toc426703582)

[§ 8.1 Economic Operators jointly competing to the contract in accordance with Article 23 of the Act 7](#_Toc426703583)

[§ 9. Information on the method of communication with the Economic Operators and submission of representations and documents, and indication of persons authorised to communicate with the Economic Operators 8](#_Toc426703584)

[§ 10. Tender bond requirements 8](#_Toc426703585)

[§ 11. Tender validity period 9](#_Toc426703586)

[§ 12. Description of tender preparation method 9](#_Toc426703587)

[§ 13. Information constituting business secrets 10](#_Toc426703588)

[§ 14. Place and date of tenders submission and opening 11](#_Toc426703589)

[§ 15. Description of the price calculation method 12](#_Toc426703590)

[§ 16. Description of the criteria used by the Contracting Authority in selecting tenders, with indication of the importance of these criteria and the method of tenders assessment 12](#_Toc426703591)

[§ 17. Examination of tenders 13](#_Toc426703592)

[§ 18. Exclusion of Economic Operators 13](#_Toc426703593)

[§ 19. Rejection of tenders 13](#_Toc426703594)

[§ 20. Cancellation of the procedure 14](#_Toc426703595)

[§ 21. Notification of the outcome of the procedure 14](#_Toc426703596)

[§ 22. Information on the formalities which sould be attended to after tender selection in order to award the public procurement contract 15](#_Toc426703597)

[§ 23. Draft public procurement contract 15](#_Toc426703598)

[§ 24. Requirements regarding the good performance guarantee 15](#_Toc426703599)

[§ 25. Amendments to the public procurement contract 15](#_Toc426703600)

[§ 26. Information on appeals 16](#_Toc426703601)

[§ 27. Appendices to the ToR 16](#_Toc426703602)

# § 1. Name and address of the Contracting Authority

**Instytut Lotnictwa**

Al. Krakowska 110/114

02-256 Warszawa

[www.ilot.edu.pl](http://www.ilot.edu.pl)

Phone No: +48 22 846 0011 w. 841;

Fax No: + 48 22 046 65 67;

e-mail: [edyta.sitnik@ilot.edu.pl](mailto:edyta.sitnik@ilot.edu.pl);

# § 2. Contract awarding procedure

Procedure aimed at awarding the public procurement contract is conducted in the form of an **unrestricted** tendering procedure based on the provisions of the Public Procurement Law Act of 29 January 2004 (Journal of Laws of 2015, item 2164), hereinafter referred to as the PPL Act or the Act, with the value of the contract in excess of EUR 209,000.00. In matters not regulated by these Terms of Reference, hereinafter the ToR, by the Act and administrative provisions issued under the Act provisions of the Civil Code shall apply.

# § 3. Description of the object of the Contract

1. The object of the Contract is the **delivery of a system for transmitting signals from rotating measuring instruments for a research laboratory**.
2. The object of the Contract includes designing, delivering the system, participating in its assembly, start-up, testing at the registered office of the Contracting Authority, training of employees in the operation of the system. A detailed description of the object of the Contract constitutes **Appendix No 2 to the ToR.**
3. The Economic Operator shall grant a guarantee for the system delivered hereunder for a period of at least 12 months of the date of signing the final acceptance report by the representatives of the Contracting Authority and the Economic Operator, but no shorter than the manufacturer’s guarantee.
4. If the description of the object of the Contract indicates directly or indirectly the origin (brand, trademark, manufacturer, supplier) of the device’s components this shall mean the specification of the standard and technical properties. The Contracting Authority allows offering equivalent components of the device provided they guarantee technical parameters no worse than those assumed in the description of the object of the Contract (Appendix No 2 to the ToR), i.e. meeting the technical, functional and quality requirements at least matching those specified in the aforesaid document or better*.*
5. If the description of the object of the Contract contains references to standards, the use of appropriate equivalent standards shall be permitted, provided the standards applied guarantee maintaining standards no lower than the requirements set forth in the standards indicated.
6. The Contracting Authority requires the Economic Operator to hols a current and paid up third party liability insurance policy covering the activity connected with the Object of the Contract, valid for the entire term of the Contract and with the sum insured of at least PLN 2,500,000.00. The Economic Operator shall be obligated to submit to the Contracting Authority a copy of a third party liability insurance policy with a confirmation of the required payments within 3 days of the date of signing the Contract. In the event of the validity period of the policy being shorter (i.e. not covering the entire Contract performance period) the Economic Operator shall be obligated to ensure and document to the Contracting Authority the continuity of the third party liability policy as specified above. In the event of the Economic Operator failing to submit the required insurance policy on time the Contracting Authority shall have the right to withdraw from the Contract within 14 days of the date of occurrence of the aforesaid default.
7. The Contracting Authority requires the Economic Operator selected to perform the Contract to present to the Contracting Authority for approval prior to signing the Contract a schedule of the execution of the design, factory tests, deliveries and training.
8. The object of the Contract is defined in the Common Procurement Vocabulary as CPV Code:

32000000-3 radio, television, communication, telecommunication and related equipment

38500000-0 checking and testing apparatus

# § 4. Information on supplementary contracts

The Contracting Authority expects awarding a supplementary public procurement contract on the basis of a separate agreement or agreements concluded with the Economic Operator under a single-source procurement procedure pursuant to Article 67 section 1 clause 7 of the Act. A supplementary contract may be awarded within 3 years of the date of awarding the basic contract. A supplementary contract may be awarded after meeting the conditions set forth in the aforementioned provisions of the Act. The value of such supplementary contract shall not exceed 20% of the value of the basic contract.

# § 5. Contract performance deadline

Contract performance deadline: within 40 weeks of the date of signing the Contract; delivery of the system shall take place within 36 weeks of signing the Contract according to the choice of the Economic Operator indicated in the tender.

# § 6. Conditions of participation in the procedure and description of the assessment of conditions fulfilment

1. Economic Operators who meet the conditions set forth in Article 22 section 1 of the PPL Act may compete for the contract. In particular, the Economic Operator shall:
2. have the knowledge and experience, i.e. within the least three years prior to the expiry of the tenders submission deadline, and if the period of trading is shorter, within that period, they duly performed at least 5 deliveries with the total value no lower than PLN 4,000,000.00 gross, each of them including designing and delivering a system for transmitting signals from rotating measuring instruments with the total value of at least PLN 2,000,000.00, with each such system having at least 40 extensometer and/or thermocouple conditioning channels with signal bandwidth of min. 15 kHz for extensometers and min. 20 Hz for thermocouples;
3. have at his disposal personnel necessary for the performance of the Contract who will participate in the delivery of the object of the Contract, i.e. have a project manager who has co-ordinated at least 3 deliveries consisting in designing and delivering a system for transmitting signals from rotating measuring instruments with the total value of at least PLN 2,000,000.00, with each such system having at least 40 extensometer and/or thermocouple conditioning channels with signal bandwidth of min. 15 kHz for extensometers and min. 20 Hz for thermocouples;
4. be in an economic and financial situation ensuring the performance of the Contract, i.e. have funds or creditworthiness of at least PLN 2,000,000.00;
5. present a third party liability policy valid on the date of expiry of the tenders submission deadline, and in its absence another document confirming that the Economic Operator has a third party liability insurance covering the activity connected with the object of the Contract with the sum insured of at least PLN 2,500,000.00.
6. The Economic Operators participating in the public contract award procedure shall be excluded from the procedure in the event of the occurrence of the prerequisites specified in Article 24 section 1, 2 and 2a and in Article 24b section 3 of the PPL Act.
7. In the event of Economic Operators taking part in the public procurement procedure jointly the conditions referred to above must be met jointly, with a proviso that the condition pertaining to non-exclusion from the procedure to the extent specified in Article 24 section 1, 2 and 2a and Article 24b section 3 of the PPL Act must be met by each of them.
8. METHOD OF ASSESSMENT: The assessment of the fulfilment of the aforesaid conditions which must be met by the Economic Operators shall be made according to the “meets” – “does not meet” formula.

**§ 7. List of representations and documents which the Economic Operators are to provide to confirm meeting the participation conditions based on Article 22 section 1 and to demonstrate the absence of grounds for exclusion from the procedure under Article 24 section 1, 2, 2a and Article 24 b section 3 of the Act**

1. In order to demonstrate that the Economic Operator meets the participation conditions the following shall be submitted:
2. a representation on meeting the conditions set forth in Article 22 section 1 of the PPL Act – with the content set forth in **Appendix No 1a to the ToR**;
3. a list of principal services provided within the last three years prior to the lapse of the time limit set for submitting tenders, including periodic or permanent services being provided, if any, and if the period of trading is shorter, within that period, necessary for meeting the condition of knowledge and experience, specifying their value, object, dates of performance and entities on whose behalf the deliveries have been made, and enclosing evidence showing whether these services have been duly rendered– with the content set forth in **Appendix No 3 to the ToR**.

The evidence may include:

* a certificate (in the case of on-going periodic or permanent deliveries such certificate shall be issued no earlier than 3 months prior to the lapse of the tenders submission deadline),

or

* a representation of the Economic Operator – if for objective and justified reasons the Economic Operator is unable to obtain a certificate.

If for objective and justified reasons the Economic Operator is unable to obtain proof (certificate) of proper performance of deliveries, he may enclose with the tender his declaration of knowledge in this regard attaching evidence, including explanations, confirming the existence of objective reasons preventing him from obtaining the aforesaid certificate from the recipient of the deliveries.

**The Economic Operator shall not be obligated to submit the aforesaid documents if the Contracting Authority is the entity on whose behalf the services listed in the specification had been provided**.

In the event of presenting the value of the deliveries in a currency other than PLN, the value in PLN shall be additionally given in the List of deliveries, calculated on the basis of the average rate of exchange published by the National Bank of Poland on the day of contract performance, and if the contract is on-going on the date of expiry of the tenders submission deadline, on the day on which the Economic Operator maintains that the contract was performed to the extent necessary to show that the participation condition has been met.

1. A list of persons taking part in the performance of the contract (to the extent necessary to show the fulfilment of the condition referred to in § 6 section 1 clause 2 of the ToR) with information on their professional qualifications, experience and education necessary for contract performance, and their job description, and information on the basis on which the Economic Operator may use these persons– with the content set forth in **Appendix No 5 to the ToR,**
2. Information from a bank or a credit union confirming the funds or the creditworthiness of the Economic Operator, issued no earlier than 3 months prior to the lapse of the tenders submission deadline (**to the extent necessary to show the fulfilment of the condition referred to in § 6 section 1 clause 3 of the ToR**).
3. a third party liability insurance policy valid on the date of expiry of the tenders submission deadline, and in its absence another document confirming that the Economic Operator has a third party liability insurance covering the activity connected with the Object of the Contract, with the sum insured of at least PLN 2,500,000.00 with proof of payment of the premiums.
4. In order to demonstrate the absence of grounds for exclusion of the Economic Operator from the contract award procedure the following shall be submitted:
5. **a representation of the Economic Operator on the absence of grounds for exclusion** to the extent specified in Article 24 section 1 and 2a of the PPL Act - with the content set forth in **Appendix No 1b to the ToR**.
6. a representation of the Economic Operator confirming his membership in a capital group within the meaning of the Competition Protection Act of 16 February 2007 (Journal of Laws of 2015, item 184, as amended), if the Economic Operator belongs to a capital group within the meaning of the aforesaid Act - with the content set forth in **Appendix No 1c to the ToR**.
7. a representation of the Economic Operator confirming that he does not belong to a capital group within the meaning of the Competition Protection Act of 16 February 2007 (Journal of Laws of 2015, item 184, as amended), if the Economic Operator does not belong to a capital group within the meaning of the aforesaid Act - with the content set forth in **Appendix No 1d to the ToR**.
8. a current excerpt from the appropriate register or central register of commercial activity, if separate regulations require entry in such register, in order to demonstrate the absence of grounds for exclusion under Article 24 section 1 clause 2 of the PPL Act, issued no earlier than 6 months prior to the lapse of the time limit set for submitting tenders.
9. a current certificates of the head of the competent tax office confirming respectively that the economic operator is not in arrears with the payment of taxes, or a certificate stating that the economic operator was legally entitled to exemption, deferment or spread of payment into instalments with reference to outstanding payments or stating that the execution of a decision of a competent authority has been stopped in its entirety – issued not earlier than 3 months prior to the expiry of the time limit for submitting tenders.
10. a current certificates of the relevant branch of the Social Insurance Institution (ZUS) or Agricultural Social Insurance Fund (KRUS) confirming respectively that the economic operator is not in arrears with the payment of taxes, fees and contributions payable towards health and social insurance, or confirmation that the economic operator was legally entitled to exemption, deferment or spread of payment into instalments with reference to outstanding payments or stating that the execution of a decision of a competent authority has been stopped in its entirety, – issued not earlier than 3 months prior to the expiry of the time limit for submitting tenders.
11. a current information from the National Criminal Records Register covering the data specified in Article 24 section 1 clause 4–8 of the PPL Act, issued no earlier than 6 months prior to the expiry of the time limit for submitting tenders.
12. a current information from the National Criminal Records Register covering the data specified in Article 24 section 1 clause 9 of the PPL Act, issued no earlier than 6 months prior to the expiry of the time limit for submitting tenders.
13. a current information from the National Criminal Records Register covering the data specified in Article 24 section 1 clause 10 and 11 of the PPL Act, issued no earlier than 6 months prior to the expiry of the time limit for submitting tenders.

If Economic Operators acting jointly compete for the contract, the aforesaid representations and documents shall be submitted by each of them.

1. If the economic operator is established or has the place of residence outside the territory of the Republic of Poland, instead of the documents, referred to in section 2:
2. clause 4), 5), 6) and 8) he shall submit a document or documents issued in the country of establishment or residence, confirming that:
3. he has not been placed in liquidation or declared bankrupt;
4. he is not in arrears with the payment of taxes, fees, social insurance or health insurance premiums, or stating that the economic operator was legally entitled to exemption, deferment or spread of payment into instalments with reference to outstanding payments or stating that the execution of a decision of a competent authority has been stopped in its entirety;
5. he has not been prohibited from competing for the contract;

and

1. clause 7) and 9) - he shall submit a certificate issued by a competent judicial or administrative body of the place of residence of the person, to whom the documents covering matters specified in Article 24 section 1 clause 4-8, 10 and 11 of the PPL Act pertain.
2. The documents referred to in section 3 clause 1) sub-clause a) and c) clause 2 shall be issued no earlier than 6 months prior to the lapse of the time limit for tenders submission.
3. The document referred to in section 3 clause 1 sub-clause b) shall be issued not earlier than 3 months prior to the lapse of the time limit for submitting tenders.
4. If in place of residence of a person or the country in which the economic operator has the seat or place of residence, the documents, referred to in section 3 are not issued, they shall be replaced by a document containing a declaration made before a competent judicial or administration authority or a competent professional or trade body in the place of residence of a person or the country in which the economic operator is established or has his place of residence, respectively, or before a notary. Provision of section 4 and 5 shall apply accordingly.
5. If, in the case of an Economic Operator established in the territory of the Republic of Poland, the persons, referred to in Article 24 section 1 clause 5-8, 10 and 11 of the Act, reside outside the territory of the Republic of Poland, the Economic Operator shall submit a certificate of a competent judicial or administration agency of their place of residence regarding the absence of a criminal record covering the data mentioned in Article 24 section 1 clause 5-8, 10 and 11 of the Act, issued no earlier than 6 months prior to the expiry of the time limit for submission of the tenders. If, in the place of residence of these persons such certificates are not issued, they shall be replaced by a document containing a representation made before a competent judicial, administration authority or a body of a professional or economic self-government of the place of residence of these persons, or before a notary.
6. In the event of doubts as to the content of a document submitted by an Economic Operator established or residing outside the territory of the Republic of Poland, the Contracting Authority may ask the competent authorities of the country of residence of the person or the country in which the Economic Operator is established or resides to provide the necessary information regarding such document.
7. If the Economic Operator demonstrated in the documents referred to in § 7 section 1 of the ToR that he relies on the resources of other entities regardless of the legal nature of the relations existing between the, he shall be obligated to prove to the Contracting Authority that he will be able to use these resources in the course of contract performance, in particular, by presenting to this end a written commitment of these entities to put at his disposal the resources necessary for performing the contract. Such written commitment shall contain, in particular: 1) designation of the entity making available the resources; 2) designation of the entity receiving the resources (the Economic Operator); 3) the content of the declaration of will making available the resources containing: a) the scope of the resources made available to the Economic Operator and the manner of their utilisation in the course of contract performance; b) the period in which the resources are to be made available to the Economic Operator; c) the nature of the legal relationship between the Economic Operator and the entity providing the resources in the course of contract performance.

# § 8. Information on the representation and documents to be presented by the Economic Operators /remaining documents/

1. Completed and signed Tender Form – as per the draft forming **Appendix No 1 to the ToR**.
2. In the case of Economic Operators jointly competing for the contract the Tender shall be signed by a designated attorney.

# § 8.1 Economic Operators jointly competing for the public procurement contract in accordance with Article 23 of the Act

1. Economic Operators may jointly compete for the contract. In such situation they shall appoint an attorney to represent them in the contract award procedure or to represent in the procedure and contract conclusion.
2. Economic Operators acting jointly shall document meeting the conditions of participation in the public procurement contract award procedure referred to in § 6 of the ToR on the basis of the document mentioned in § 7 of the ToR and enclose the documents referred to in § 8 in accordance with the provisions of these paragraphs.
3. Any and all correspondence shall be conducted only with the attorney referred to in section 1.

# § 9. Information on the method of communication with the Economic Operators and submission of representations and documents, and indication of persons authorised to communicate with the Economic Operators

1. The persons authorised to contact the Economic Operators shall be: Edyta Sitnik, email: edyta.sitnik[@ilot.edu.pl](mailto:edyta.sitnik@ilot.edu.pl)
2. In this procedure the correspondence between the Economic Operators and the Contracting Authority shall take place by electronic mail. Any and all questions, motions, representations and notices shall be sent to the following e‑mail address: [edyta.sitnikl@ilot.edu.pl](mailto:edyta.sitnik@ilot.edu.pl)
3. The electronic form may not be used in the case of the following actions which must be made in writing, otherwise being null and void: tender submission, tender modification, notification of the Contracting Authority of withdrawal of the tender submitted by the Economic Operator.
4. The Economic Operator may ask the Contracting Authority to clarify the content of the ToR.
5. The Contracting Authority shall be obligated to provide explanations immediately, but no later than 6 days prior to the lapse of the tenders submission deadline, provided the request for clarification of the ToR was received by the Contracting Authority no later than by the end of the day on which half of the tenders submission deadline lapses.
6. The Contracting Authority shall publish the questions and explanations on: [www.ilot.edu.pl](http://www.ilot.edu.pl) in the *tenders and announcements* tab, in the section pertaining to the subjective procedure.
7. The Contracting Authority has no intention of calling a meeting of the Economic Operators.
8. In justified cases the Contracting Authority may, at any time prior to the lapse of the deadline set for submitting tenders, modify these Terms of Reference. The Contracting Authority shall immediately convey the information about such modifications to the Economic Operators who have received the ToR and make it available on the website referred to in section 6. In the event of the aforesaid modification resulting in an amendment to the contract notice published in the Official Journal of the European Union, the Contracting Authority shall submit an announcement regarding additional information, information on incomplete procedure or correction for publication in this Journal.
9. Modifications shall be binding on the Economic Operators.
10. The Contracting Authority shall extend the deadline set for tenders submission if as a result of modifications to the ToR additional time is required for making changes in the tenders. The Contracting Authority shall immediately convey the information about such extension of the tenders submission deadline to the Economic Operators who have received the ToR and publish this information on the following website: [www.ilot.edu.pl](http://www.cke.edu.pl).

# § 10. Requirements regarding tender bond

* 1. The tender bond shall be: **PLN 50,000.00**.
  2. The tender bond must be provided prior to the lapse of the tenders submission deadline.
  3. The tender bond may be provided in one or several of the forms given below, at the option of the Economic Operator:

1. in cash into the Contracting Authority’s account carried at Bank Pekao S.A., number: 90 1240 6247 1111 0000 4977 2760 with the following annotation: **Dostawa systemu transmisji sygnałów z wirujących przyrządów pomiarowych dla laboratorium badawczego, postępowanie nr 18/DE/Z/16.**
2. in banks or credit union sureties, with the latter always being a cash surety,
3. in bank guarantees,
4. in insurance guarantees,
5. in sureties granted by the entities referred to in Article 6b section 5 clause 2 of the Act on the Establishment of the Polish Agency for Enterprise Development of 9 November 2000 ‎‎(Journal of Laws of 2007, No 42, item 275, of 2008 No 116, item 730 and 732 and No 227, item 1505 and of 2010 No 96, item 620).‎
   1. Effective provision of the tender bond in cash shall take place upon the crediting of the bank account referred to in section 3 clause 1).
   2. The tender bond provided in the forms specified in section 3 clause 2-5 must contain a commitment of the guarantor on account of the occurrence of the events referred to in Article 46 section 4a and 5 of the PPL Act, and:
   3. in the case of Economic Operators jointly competing for the contract, these documents must cover any and all claims of the Contracting Authority on account of the actions or omissions of each of them connected with the contract award procedure,
   4. these documents shall contain clauses guaranteeing payment of the bond amount to the Contracting Authority unconditionally and at the first demand,
   5. these documents shall be submitted in the original form.

**Placing the original of the guarantee or surety in the tender is recommended.**

* 1. The Contracting Authority informs that pursuant to Article 46 section 4a of the PPL Act the Contracting Authority shall retain the tender bond together with interest, if the Economic Operator in response to the call, referred to in Article 26 section 3, due to reasons attributable to him, fails to submit the documents or declarations, referred to in Article 25 section 1, powers of attorney, a list of entities belonging to the same capital group, referred to in Article 24 section 2 clause 5, or the information stating that he is not part of the same capital group, or has not given the consent to correcting the error, referred to in Article 87 section 2 clause 3, which resulted in the inability to select the most advantageous tender submitted by the Economic Operator.
  2. The Contracting Authority informs that pursuant to Article 46 section 5 of the PPL Act the Contracting Authority shall retain the deposit together with interest, if the Economic Operator whose tender has been selected:

1. refused to sign the public procurement contract on terms specified in the tender;
2. failed to produce the required good performance guarantee;
3. the public procurement contract could not be signed due to circumstances attributable to the Economic Operator.

# § 11. Tender validity period

The Economic Operators shall be bound by their tenders for a period of **60 days** of the date of expiry of the tenders submission deadline.

# § 12. Description of tender preparation method

* + 1. Each Economic Operator may submit one tender.
    2. The tender must correspond to the ToR, subject to Article 87 section 2 clause 3 of the PPL Act.
    3. The tender must be signed by a person / persons authorised to represent the Economic Operator. The tender and all the enclosed documents shall be signed by a person / persons authorised to represent the Economic Operator disclosed in the register or records. If the tender and all the enclosed documents are signed by a person / persons not disclosed in the register or records, a power of attorney for this person / persons granted by the person / persons disclosed in the register or records shall be enclosed with the tender. The power of attorney shall authorise to represent the Economic Operator in the public procurement contract award procedure or to represent the Economic Operator in the procedure and conclusion of the public procurement contract.
    4. The tender must be drawn up in the Polish language, on a typewriter, computer or in longhand in indelible ink.
    5. Numbering pages and stapling them together in a manner preventing accidental decompletion is recommended.
    6. Documents submitted in foreign languages must be submitted together with a translation into the Polish language.
    7. The documents making up the tender may be presented as originals or true copies certified by the Economic Operator, with a proviso that the representations specified in § 7 section 1 clause 1) and section 2 clause 2) and 3), the commitment of the entity making available its own resources referred to in § 7 section 9 and the power of attorney shall be submitted by the Economic Operator in the original form or as a notarised true copy. All copies of documents must be certified as being true copies by a person / persons authorised to represent the Economic Operator. In the case of Economic Operators jointly competing for the contract and in the case of other entities on whose resources the Economic Operator relies pursuant to Article 26 section 2b of the PPL Act, copies of documents pertaining to the Economic Operator or these entities shall be certified as true copies by the Economic Operator or by these entities.
    8. Any and all places in the tender where the Economic Operator has made corrections or changes must be initialled by a person/persons authorised to represent the Economic Operator.
    9. Draft forms must be filled in strictly in accordance with the guidelines provided in the ToR.
    10. The Contracting Authority does not allow any changes to the content of the enclosed forms.
    11. No documents making up the tender shall be returned by the Contracting Authority.
    12. The Economic Operator shall place the tender in a sealed envelope. The envelope shall bear the name, address of the Economic Operator and the Contracting Authority and the following annotation: OFERTA na **dostawę systemu transmisji sygnałów z wirujących przyrządów pomiarowych dla laboratorium badawczego, postępowanie nr 18/DE/Z/16**. Dostarczyć do kancelarii ogólnej w budynku A. Nie otwierać przed dniem  **14.04.2016 r**. **godz. 10:30**
    13. The Economic Operator shall bear any and all expenses connected with preparing and submitting the tender.
    14. Any breach of the rules set forth in section 1-13, excluding section 5 and 11, may result in the tender being rejected.

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# § 13. Information constituting business secrets

1. If the tender, representations or documents referred to in § 6-8 of the ToR contain information constituting business secrets within the meaning of the Act on Combating Unfair Competition of 16 April 1993 /Journal of Laws of 2003, No 153, item 1503, as amended/ the Economic Operator shall in a manner not giving rise to doubts stipulate prior to the lapse of the tenders submission deadline that it may not be disclosed and demonstrate that such information constitutes business secrets. This information shall be placed in a separate internal packaging, bound in a permanent way and numbered. Information disclosed to the public during the opening of the tenders, i.e. information regarding the price, contract performance date, guarantee period contained in the tender may not constitute business secrets.
2. **In the event of classifying some of the information/documents in the tender as business secrets the Economic Operator shall be obligated to submit together with the tender the following explanations**:
3. the group of persons/entities in the organisational structure of the Economic Operator with access to the information/documents classified by the Economic Operator as business secrets. If the group of persons with access to the classified information/documents has been restricted to the group of persons with access to these materials, whether these persons have been obligated in writing to keep this information confidential (agreement, written commitment, procedures) and whether this commitment/procedures provide for sanctions for a breach of confidentiality. In the event of the existence of such commitment or procedures their existence must be indicated using documents confirming the fact of concluding such commitment/implementing the procedures;
4. how is the information/documents protected against disclosure at the place of storage by the Economic Operator? Are they stored at places with limited access? If yes, all the measures taken to protect them against unauthorised disclosure should be indicated;
5. have the classified information/documents been made public by the Economic Operator on websites, in folders and other information media?
6. were the classified information/documents obtained as a result of participation in open public procedures financed with public funds, including public procurement contract procedures?
7. in the event of contract performance by entities jointly competing for the contract / with participation of third parties, the information referred to in clause 1-4) shall also be referred to these entities.
8. In the event of the Economic Operator failing to provide detailed explanations as required above or if the explanations provides do not indicate that the classified documents constitute business secrets within the meaning of the Act on Combating Unfair Competition of 16 April 1993 /Journal of Laws of 2003, No 153, item 1503, as amended/ the Contracting Authority **may** call for further explanations to establish whether the information/documents submitted constitute business secrets.

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# § 14. Place and date of tenders submission and opening

1. Tenders shall be submitted at the registered office in the Contracting Authority: Instytut Lotnictwa, Al. Krakowska 110/114, 02-256 Warszawa, general chancellery, building A, by **10.00 a.m. local time on 14.04.2016.**

Tenders shall be submitted on working days between **08:00** and **15:00,** with a proviso that on the day of expiry of the tenders submission deadline tenders must be submitted by **10:00 a.m.** In the event of failing to meet the above requirements the Economic Operator shall bear the negative consequences.

1. Tenders received by the Contracting Authority after the deadline specified in section 1 shall be returned to the Economic Operator unopened after the lapse of the time limit set for filing an appeal. The Contracting Authority shall immediately notify the Economic Operator if the tender was submitted after the lapse of the tenders submission deadline.
2. Tenders may be modified or withdrawn by Economic Operators provided the Contracting Authority receives a written notice of such modifications or withdrawal of the tender prior to the lapse of the tenders submission deadline stipulated herein. The notice of tender modification or withdrawal shall be delivered in a sealed envelope marked in the manner specified in § 12 section 12 of the ToR, with the following annotation: zmiana lub wycofanie oferty.
3. The request for tender withdrawal or modification shall be signed by a person holding a written authorisation of the Economic Operator to withdraw or modify the tender.
4. Public opening of the tenders shall take place on **14.04.2016 at 10:30 a.m.** local time at the registered office of the Contracting Authority: Instytut Lotnictwa, Al. Krakowska 110/114, 02-256 Warszawa, **in conference room No 3 in building X2 (1st floor).**
5. The opening of tenders shall be open to the public.
6. **Persons interested in taking part in the opening of tenders are requested to arrive at the ground floor of building A (guards’ room) and to register there (obtain the visitor status). These persons will then be taken by an employee of Instytut Lotnictwa – a member of the Public Procurement Committee at 10:30 a.m. The tenders opening procedure begins with the collection of the aforesaid persons.**
7. Immediately prior to opening the tenders the Contracting Authority will inform of the amount it intends to spend on financing the contract.
8. During the opening of tenders the Contracting Authority will announce the names (business names) and addresses of the Economic Operators, as well as information on the price, contract performance date, guarantee periods and payment terms contained in the tenders.
9. The information referred to in clause 8 and 9 shall be immediately conveyed to the Economic Operators not attending the opening of tenders, at their request.

# § 15. Description of the price calculation method

* 1. The gross price of contract performance shall be given by the Economic Operator in PLN, accurate to two decimal points.
  2. The prices given in the tender must take into account all the requirements specified by the Contracting Authority in the ToR and include any and all expenses incurred by the Economic Operator, including all charges and taxes (also the goods and service tax).
  3. If a tender has been submitted, the choice of which would result in the creation of a tax liability of the Contracting Authority in accordance with the VAT regulations, in order to assess this tender the Contracting Authority shall add to the price given in the tender the VAT amount payable in accordance with these regulations. Submitting a tender the Economic Operator shall be obligated to inform the Contracting Authority whether the choice of that tender would result in a tax liability of the Contracting Authority, indicating the name (type) of the goods or service whose supply or provision would lead to such liability and indicate their value excluding tax. (in accordance with Article 91 section 3a of the PPL Act)

# § 16. Description of the criteria used by the Contracting Authority in selecting tenders, with indication of the importance of these criteria and the method of tenders assessment

* 1. The maximum number of points an Economic Operator / Economic Operators jointly competing for the contract may receive in all tenders assessment criteria is 100. In selecting the most advantageous tender the Contracting Authority shall be guided by the following tenders assessment criteria:

1. **price - weight 60%**.Maximum number of points: 60. The Contracting Authority shall award points according to the following formula:

C = \* 60 points

where:

C – the number of points received for the price,

C*min* – the lowest price offered,

C*oferty* – the price of the examined tender;

1. **system delivery date** **– 20%.** Maximum number of points: 20. Points will be awarded to the Economic Operator in accordance with the scores given below. The Economic Operator shall be obligated to indicate in the tender form the system delivery date.
   1. up to 28 weeks from the date of contract signing– 20 points.
   2. up to 30 weeks from the date of contract signing – 15 points.
   3. up to 32 weeks from the date of contract signing – 10 points.
   4. up to 34 weeks from the date of contract signing **–** 5 points.
   5. up to 36 weeks from the date of contract signing **–** 0 points.
2. **system guarantee period – weight 20%.** Maximum number of points: 20. Points will be awarded to the Economic Operator in accordance with the scores given below. The Economic Operator shall be obligated to indicate in the tender form the system guarantee period.
   1. 24 months – 20 points.
   2. 18 months – 10 points.
   3. 12 months – 0 points.
3. Calculations shall be carried out with accuracy of two decimal points, with no rounding up.
4. If it is not possible to select the most advantageous tender due to the fact that two or more tenders present the same balance of price and other tenders assessment criteria, the Contracting Authority shall choose the tender with the lowest price.
5. The Contracting Authority shall award the contract to the Economic Operator who receives the highest number of points in accordance with the aforesaid tenders assessment criteria.

# § 17. Examination of tenders

* + 1. The Contracting Authority shall verify whether the tender has been prepared in compliance with legal regulations in force and the ToR.
    2. First, the Contracting Authority shall check the tenders from the formal point of view.
    3. The Contracting Authority will correct in the tender’s text:

1. obvious typing errors;
2. obvious calculation errors, taking into account the consequences of such corrections;
3. other errors consisting in non-compliance of the tender with the ToR which do not result in material changed of its content.
   * 1. The Contracting Authority shall immediately notify the Economic Operator whose tender has been corrected of such correction.
     2. In the course of tenders examination and assessment the Contracting Authority may demand explanations from the Economic Operators regarding their tenders.
     3. The Contracting Authority shall call the Economic Operators who failed to submit on time the representations or documents referred to in Article 25 section 1 of the PPL Act or who failed to submit powers of attorney or who submitted the representations and documents required by the Contracting Authority and referred to in Article 25 section 1 containing errors or who submitted defective powers of attorney, to submit them on time, unless despite their submission the tender of the Economic Operator is subject to rejection or it would be necessary to cancel the procedure. The representations and documents submitted in response to the request of the Contracting Authority shall confirm the meeting by the Economic Operator of the participation conditions and the fulfilment by the services offered of the requirements set forth by the Contracting Authority no later than on the day of expiry of the tenders submission deadline.

# § 18. Exclusion of Economic Operators

1. The Contracting Authority shall exclude from the procedure Economic Operators who fail to meet the conditions referred to in Article 24 section 1 and 2 and Article 24b section 3 of the PPL Act, subject to Article 26 section 3 of the PPL Act.
2. Moreover, pursuant to Article 24 section 2a of the Act the Contracting Authority shall exclude from the contract award procedure Economic Operators who during the three years prior to the commencement of the procedure, culpably violated professional duties in a serious manner, in particular where the Economic Operator, as a result of deliberate action or gross negligence, failed to perform or improperly performed a contract, which the Contracting Authority is able to demonstrate by any means of evidence, if the Contracting Authority provided for such exclusion of the Economic Operator in the contract notice, in the terms of reference or in the invitation to negotiate. The Contracting Authority shall not exclude from the contract award procedure Economic Operators who can demonstrate having taken specific technical, organizational and personnel measures designed to prevent culpable and serious violations of professional duties in the future and have made good the damage caused by a breach of professional duties or have committed themselves to ma king good such damage.
3. The tender of an excluded Economic Operator shall be deemed as having been rejected.
4. Immediately after selecting the most advantageous tender the Contracting Authority shall notify the Economic Operators who submitted tenders of the Economic Operators excluded from the contract award procedure, giving actual and legal grounds.

# § 19. Rejection of tenders

* + 1. The Contracting Authority shall reject a tender if:

1. it is contrary to the Act;
2. its content does not comply with the ToR, subject to Article 87 section 2 clause 3 of the PPL Act;
3. its submission constitutes an act of unfair competition within the meaning of regulations on combating unfair competition;
4. it contains an abnormally low price of the object of the contract;
5. it was submitted by an Economic Operator excluded from the contract award procedure;
6. contains errors in the price calculations;
7. within 3 days of receiving a notice the Economic Operator refused to agree to the correction of the error referred to in Article 87 section 2 clause 3 of the PPL Act;
8. it is invalid under separate regulations.
   * 1. Immediately after selecting the most advantageous tender the Contracting Authority shall notify the Economic Operators who submitted tenders of the Economic Operators whose tenders have been rejected, giving actual and legal grounds.

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# § 20. Cancellation of the procedure

* + - 1. The Contracting Authority shall cancel the procedure if:

1. no tender not subject to rejection has been submitted;
2. the price of the most advantageous tender or the tender with the lowest price exceeds the amount the Contracting Authority intends to spend on financial the contract, unless the Contracting Authority may increase this amount to match the price of the most advantageous tender;
3. in the cases referred to in Article 91 section 5 of the PPL Act additional tenders with the same price have been submitted;
4. a material change in the circumstances has occurred which causes the conduct of the procedure or the execution of the contract to be no longer in the public interest and which could not have been foreseen earlier;
5. the award procedure is encumbered with irreparable defect which prevents the conclusion of a valid public procurement contract;
   * + 1. A notice on the cancellation of the procedure shall be sent by the Contracting Authority simultaneously to all Economic Operators who:
   1. competed for the award - in the event of cancellation of a procedure prior to the final date for submission of tender;
   2. submitted tenders - in the event of cancellation of a procedure after the final date for submission of tenders

- providing factual and legal grounds.

* + - 1. In the case of cancellation of the contract award procedure, at the request of an Economic Operator who competed for the contract, the Contracting Authority shall inform of the start of another procedure which concerns or includes the same object of contract.

# § 21. Notification of the outcome of the procedure

* + - 1. Immediately after selecting the most advantageous tender the Contracting Authority shall notify the Economic Operators who submitted tenders of the choice of the most advantageous tender, giving the name (business name) or first name and surname, registered office or place of residence and address of the Economic Operator whose tender has been selected, the grounds for its selection and the names (business names) or first names and surnames, registered offices or places of residence and addresses of the Economic Operators who submitted tenders and the scores awarded to the tenders in each tenders assessment criterion and the total score.
      2. The Contracting Authority shall also notify the Economic Operators of the date after which it will be possible to conclude a public procurement contract.
      3. In addition, the Contracting Authority shall place the aforesaid information on [[www.ilot.edu.pl](http://www.cke.edu.pl)](http://www.cke.edu.pl) and display it at a place accessible to the public at its registered office.

# § 22. Information on the formalities which should be attended to after tender selection in order to award the public procurement contract

1. In the event of a tender submitted by Economic Operators jointly competing for the contract being selected the Economic Operators shall be obligated to submit, no later than by the date of signing the public procurement contract, an agreement regulating the co-operation between these Economic Operators.
2. Prior to signing the contract, the Economic Operator chosen for the performance of the contract shall deliver to the Contracting Authority for approval the technical specification of the system which shall indicate at least all the minimum parameters required by the Contracting Authority. The aforesaid specification shall form an appendix to the contract.

# § 23. Draft public procurement contract

The draft public procurement contract forms **Appendix No 4 to the ToR**.

# § 24. Requirements regarding the good performance guarantee

1. Prior to concluding the contract the Contracting Authority shall demand from the selected Economic Operator the provision of a good performance guarantee equal to 10% of the gross value of the object of the contract proposed in the price form.
2. The guarantee shall be used to satisfy claims on account of non-performance or undue performance of the contract.
3. The selected Economic Operator may provide the good performance guarantee in a form chosen by the Economic Operator:
   1. in cash,
   2. in bank or credit union sureties, with the latter always being a cash surety,
   3. in bank guarantees,
   4. in insurance guarantees,
   5. in sureties granted by the entities referred to in Article 6b section 5 clause 2 of the Act on the Establishment of the Polish Agency for Enterprise Development of 9 November 2000 ‎‎(consolidated text Journal of Laws of 2007, No 42, item 275, of 2008 No 116, item 730 and 732 and No 227, item 1505 and of 2010 No 96, item 620.).
4. The good performance guarantee provided in cash shall be paid into the account of Instytut Lotnictwa: Bank Pekao S.A., account number 90 1240 6247 1111 0000 4977 2760.
5. Security provided in non-pecuniary forms must be submitted in the original. The content of the guarantee/surety must clearly state the manner of representation of the Guarantor. The guarantee must be signed by a duly authorised representative of the Guarantor. The signature shall allow the identification of the signatory, i.e. should be affixed together with a stamp or be legible.
6. Security provided in non-pecuniary forms shall be issued with a validity date 30 days longer than the term of the contract.
7. If the contract is not performed by the deadline specified in the tender of the Economic Operator, the obligation to provide the good performance guarantee shall remain until the date of actual performance of the contract confirmed by an acceptance report without objections.

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# § 25. Amendments to the public procurement contract

1. In accordance with Article 144 section 1 of the Act the Contracting Authority provides for a possibility of amending the public procurement contract if:
2. it becomes necessary to change the contract performance deadlines specified in the public procurement contract due to objective factors resulting from the needs of the Contracting Authority or factors not attributable to the Economic Operator, where the performance of the contract within the aforesaid deadlines is not possible, with a proviso that the remuneration of the Economic Operator shall not be changed.
3. a change of the remuneration payment terms and methods – without increasing the remuneration of the Economic Operator,
4. it is possible to apply newer and more advantageous technological or technical solutions than those existing at the time of signing the contract, without changing the remuneration due for the performance of the contract. Solutions more advantageous to the Contracting Authority shall mean solutions which better meet the requirements of the Contracting Authority from the point of view of cost effectiveness or higher utility value.
5. changes of the technology or parameters characteristic for a given component of the object of the contract, made at the request of the Economic Operator, approved by the Contracting Authority, with a proviso that such change does not result in a change of the remuneration for the performance of the contract and that the change of the technology does not impair the quality of the object of the contract.
6. amendments to mandatory legal regulations to the extent affecting the costs of contract performance, i.e. changes regarding: the VAT rate, the minimum wage set under Article 2 section 3-5 of the Minimum Wage Act of 10 October 2002 (Journal of Laws of 2002, No 16, item 1679, as amended, the rules of social or health insurance contributions payment or the amount of the social or health insurance contributions.
7. The changes specified in section 1 clause 5 above shall require a justified written request submitted by the Economic Operator to the Contracting Authority and shall come into effect as of that date of signing an annexe to the contract by the Parties, with a proviso that the Parties shall make every effort to sign such annexe no later than within 7 days of the date of submission of the request by the Economic Operator.

# § 26. Information on appeals

In accordance with Title VI of the Public Procurement Law Act of 29 January 2004.

# § 27. Appendices to the ToR

Appendix No 1 to the ToR – Tender Form;

Appendix No 1a to the ToR – Draft representation from Article 22 section 1;

Appendix No 1b to the ToR – Draft representation from Article 24 section 1 and 2a;

Appendix No 1c to the ToR – Draft representation – capital group membership;

Appendix No 1d to the ToR – Draft representation – no capital group membership;

Appendix No 2 to the ToR – Description of the object of the contract;

Appendix No 3 to the ToR – List of principal deliveries;

Appendix No 4 to the ToR – Draft contract;

Appendix No 5 to the ToR – List of persons;