

**BOS/47/NZ/19**

1. Brake Static torque system.
2. Parking brake apply system.
3. Brake water spray system.

CPV 38.54.00.00-2

**SPECIFICATION OF ESSENTIAL TERMS  
OF THE CONTRACT (Polish SIWZ)**

**OPEN TENDERING PROCEDURE FOR AMOUNTS BELOW THE QUOTE DEFINED IN THE  
REGULATION ISSUED ON THE BASIS OF ARTICLE 11.8 OF THE ACT PUBLIC  
PROCUREMENT LAW - ACT OF 29 JANUARY 2004**

**(DZIENNIK USTAW (Journal of Laws) OF 2015 POS. 2164 and DZIENNIK USTAW OF 2016  
POS. 1020 WITH LATER AMENDMENTS),  
REFERRED TO IN THE SPECIFICATION OF ESSENTIAL TERMS  
OF THE CONTRACT AS 'THE PUBLIC PROCURMENT ACT'**

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**§1. SUBJECT OF THE MATTER OF THE CONTRACT**

1. The tender is for the supply, installation and startup of a new set of equipment for LINK M3000 dynamometer already acquired by the Awarding Entity; the set should include the following components

- 1.1. Brake static torque simulating system.
- 1.2. Parking brake apply system.
- 1.3. Brake water spray system.
- 1.4. PC control computer with Windows 10 system or equivalent, with LINK M3000 brake dynamometer software pre-installed for the integration of this software with above mentioned systems.

**2. Description and required technical parameters:**

2.1 Brake static torque simulating system should:

- a. Allow to generate a high braking torque at low rotational speed in order to perform parking brake testing such as: static breakaway and creep/groan.
- b. Ensure continuous operation for output rotational speed in range of 0 ... minimum 18 rpm with stepless adjustment,
- c. Be automatically launched through the control system, without the need of operators intervention,
- d. Have sensors which monitor the engagement state of the coupling,
- e. Have protection against self-engagement,
- f. Have a control system monitoring the state of the system and protect it from the damage,
- g. Have a control system automatically controlling all functions of the static torque system, including rotational speed, speed ramp rate, direction of rotation and system engagement.
- h. Have the maximum torque  $\geq 5650$  Nm.
- i. Have a range of output rotational speed 0... minimum 18 rpm.
- j. Cooperate and be compatible with the existing brake dynamometer LINK M3000, it should have all the necessary mountings and be possible to be installed in the existing free space inside the dynamometer housing - local vision recommended in accordance with Article 8(3) of Terms of Reference (Polish SIWZ)

2.2 Parking brake apply system should:

- a. Have the maximum parking brake line pulling force:  $\geq 3500$  N.
- b. Have a system measuring and recording the force and displacement of the parking brake line.
- c. Have the maximum force apply rate  $\geq 2500$  N/s.
- d. Have the maximum actuator stroke  $\geq 100$  mm.
- e. Cooperate and be compatible with the existing brake dynamometer LINK M3000, it should have all the necessary mountings and be possible to be installed in the existing free space inside the dynamometer housing - local vision recommended in accordance with Article 8(3) of Terms of Reference (Polish SIWZ)

2.3 Brake water spray system should:

- a. Be equipped with the filter in order to remove any contamination from water – minimum filter class -  $400\mu$ .
- b. Have the maximum water flow value  $\geq 7$  l/min, the water flow has to be initiated and controlled automatically.
- c. Assure a stepless adjustment of the water flow.
- d. Ensure a measurement and recording of the water flow values.
- e. Have a control system integrated with existing LINK M3000 brake dynamometer software and has to assure automatic operation of water spray system.
- f. Be equipped with a spray nozzle or spray nozzles set which will spray the water onto the tested brake, ensuring the possibility to spray the brake disc from both sides simultaneously. The spray nozzle/nozzles position should be adjustable in 3 directions in order to spray the whole brake or some its parts.



- g. Cooperate and be compatible with the existing brake dynamometer LINK M3000, it should have all the necessary mountings and be possible to be installed in the existing free space inside the dynamometer housing - local vision recommended in accordance with Article 8(3) of Terms of Reference (Polish SIWZ)

**3. Additional requirements:**

- 3.1. Delivered equipment have to be compatible with existing LINK M3000 brake dynamometer software as an integral set.
- 3.2. The brake dynamometer after the integration should be capable of performing automatic brake applications incorporating the use of primary brake (applied hydraulically) and parking brake (applied mechanically) functions alongside during one uninterrupted test sequence (for example test procedure SAE-J2784) without the necessity of operator interventions and use any additional software and computers.
- 3.3. Calibration certificates for measuring sensors

**§2. TERMS AND CONDITIONS OF PARTICIPATION IN THE CONTRACT AWARD (TENDER) PROCEDURE**

1. The tender procedure is open to contractors which

- a) are not excluded from the procedure for the award of the contract under Article 24(1)(12)-(23) and Article 24(5)(1), (5)-(6) and (8) of the Public Procurement Act.

The Awarding Entity shall, based on the information contained in the contractor's statement, verify whether this condition is satisfied, except that the information contained in that statement may only be interpreted as the Contractor's initial confirmation that it is not excluded from the procedure

- b) meet the technical and/or professional capacity condition for participation in the contract award procedure that is set out in Article (22)(1b)(3) of the Public Procurement Act.

This condition shall be deemed satisfied if the contractor has provided evidence showing that it has completed at least three supplies of the same nature and volume in the past three years (before the closing date for submitting tenders).

The Awarding Entity shall, based on the information contained in the contractor's statement, verify whether this condition is satisfied, subject to that the information contained in that statement may only be interpreted as the Contractor's initial confirmation that it is not excluded from the procedure.

**§3. DOCUMENTS AND STATEMENTS**

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

- a) In order to provide that the bidding contractor is not excluded from the procedure for the award of the contract, a statement valid as at the date of submitting the tender, that there are grounds for excluding the contractor from the contract award procedure under Article 24(1)(12)-(22) and Article 24(5)(1), (5)-(6) and (8) of the Public Procurement Act,

This statement (a form) is contained in Appendix 5 to the Terms of Reference (Polish SIWZ).

- b) In order to verify whether the contractor meets the conditions for participation in the tender procedure, a statement, valid as at the date of submitting the tender, that the contractor meets the technical and/or professional capacity condition set out in Article (22)(1b)(3) of the Public Procurement Act.

This statement (a form) is contained in Appendix 3 to the Terms of Reference (Polish SIWZ)

- c) a written statement by the entity / entities whose technical or professional capacity and/or financial or economic resources the contractor has stated to rely on in carrying out the contract, that each such entity agrees to provide the contract with such resources; this statement is to be submitted as evidence, under Article 22a(1) and Article 22a(2) of the Public Procurement Act, the contractor will use the necessary resources of such an entity / such entities in carrying out the contract.

This statement (a form) is contained in Appendix 4 to the Terms of Reference (Polish SIWZ)

**2. Statement to be provided by the Contractor to the Awarding Entity, within 3 days of posting the tender opening notice, referred to in Article 86(5) of the Public Procurement Act, on the website,**

The Contractor shall provide the Awarding Entity with a statement on whether or not the Contractor is "part of the same group of companies", specified in Article 24(1)(23) of the Public Procurement Act. This statement (a form) is contained in Appendix 6 to the Terms of Reference. Together with that statement, the Contractor may provide evidence that its relations with any other contractor do not and will not distort competition in this contract award procedure.

**3. Documents and statements to be submitted by the winning contractor at the written request of the Awarding Entity. According to Article 26(2) of the Public Procurement Act, the Awarding Entity will set a deadline (at least 5 days) for the Contractor for providing below mentioned statements and documents.**

- a) order to prove that the statutory grounds for exclusion from the contract award procedure are not fulfilled:
- a valid extract from the relevant register or a central business registration and information service, if the law requires registration of the Contractor, in order to prove that the Contractor is not excluded from contract award procedures under Article 24(5)(1) of the Public Procurement Act, such an extract to be issued on a date not earlier than 6 months before the closing date for submitting tenders;
  - a valid certificate issued by the head of the relevant tax authority confirming that the Contractor is not in arrears with taxes, issued on a date not earlier than 3 months before the closing date for submitting tenders, or any other document confirming that the Contractor has been granted a lawful exemption from, deferral of or the right to make outstanding payments in instalments or that the relevant authority's decision with respect to the Contractor has been suspended entirely, in each case issued on a date not earlier than three months before the closing date for submitting tenders;
  - a valid certificate issued by the relevant branch of Zakład Ubezpieczeń Społecznych (Polish National Social Insurance Institution) or Kasa Rolniczego Ubezpieczenia Społecznego (Farmers' Social Insurance Fund) confirming that the Contractor is not in arrears with health and social insurance contributions or that the Contractor has been granted a lawful exemption from, deferral of or the right to make outstanding payments in instalments or that the relevant authority's decision with respect to the Contractor has been suspended entirely, in each case issued on a date not earlier than three months before the closing date for submitting tenders;
  - a statement by the Contractor that the Contractor has never been convicted under a final court order to imprisonment and/or or a fine to the extent described by the Awarding Entity under Article 24(5)(5) and Article 24(5)(6) of the Public Procurement Act.

If the Contractor is to rely on the capacity or situation of another entity, under Article 22a of the Public Procurement Act, the Contractor must provide the aforesaid documents referring to such entity;

- b) in order to verify whether the contractor meets the conditions for participation in the tender procedure:
- a list of at least three supplies of the same nature and volume completed within three years before the closing date for submitting tenders or, if the Contractor has been in operation for less than three years, then within the period of its operation, providing the value of the supplies, the subject matter of each supply, the date of completion and the name of the entities for whom the supplies were performed,



accompanied by evidence of appropriate performance of the supplies, a an evidence of meeting the technical or professional capacity condition.

Such evidence may take the form of testimonials or other documents issued by the entity or entities for whom the supplies were performed, or the Contractor's statement to that effect, if the Contractor is unable to obtain such documents for justified and objective reasons.

In order to verify whether the Contractor, if it is to rely on the capacity or situation of another entity under Article 22a of the Public Procurement Act, will have access to the necessary resources to the extent necessary to perform the contract, and to verify whether the relation between the Contractor and each such entity guarantees that the Contractor has actually access the resources of such entities, the Awarding Entity requires documents specifying, in particular, the following:

- the scope of the resources to be made available to the Contractor;
- how the resources made available to the Contractor will be used by the Contractor in performing the contract;
- the extent and period to and for which each such entity is to be provide its resources in performing the contract.

4. The documents described in Article 3(3a) and Article 3(3b) must be issued in accordance with the Regulation of the Minister of Development of 26 July 2016 (Dz.U. (Journal of Laws) 2016, item 1126) and the Regulation of the Minister of Entrepreneurship and Technology of 16 October 2018 on the types of documents that an awarding entity may require a contractor to provide as part of the contract award procedure (Dz.U. (Journal of Laws) 2018, item 1993).

The above documents must be submitted as originals or photocopies certified as true copies of the originals. The attestation of conformance of copies with the originals, made in paper form, is made by bearing with handwritten signature on a copy of the document or a copy of the statement. The copies of the documents relating to any other entities whose resources the Contractor is to rely on in accordance with Article 22a(2) of the Public Procurement Act must be certified as true copies of the originals by such entities.

5. If the Contractor's registered business office or place of residence is based outside the Republic of Poland, then instead of the documents described in Article 3(3a), the Contractor must submit the documents specified in Article 7 of the Regulation of the Minister of Development of 26 July 2016 on the types of documents that an awarding entity may require a contractor to provide as part of the contract award procedure (Dz.U. (Journal of Laws) 2016, item 1126) , confirming that:

- a) the Contractor is not in arrears with health and social insurance contributions or that the Contractor has been granted a lawful exemption from, deferral of or the right to make outstanding payments in instalments or that the relevant authority's decision with respect to the Contractor has been suspended entirely;
- b) no liquidation procedure has been initiated against the Contractor and that the Contractor has not been declared bankrupt.

The document referred to in 5b) should be issued on a date not earlier than 6 months before the closing date for submitting tenders. The document referred to in 5a) should be issued on a date not earlier than 3 months before the closing date for submitting tenders.

6. If any of the documents listed in section 5 is not issued in the country of residence of a person or in the country of the Contractor's registered business office or place of residence, the document must be replaced with a document containing a statement, which shall also name the persons authorized to represent the Contractor, made before the relevant judicial, administrative, professional self-government or economic self-government authority in the country of residence of a person or in the country of the Contractor's registered business office or place of residence, or made before a notary public..
7. **Each document drawn up in a foreign language must be accompanied by its translation into Polish**

8. If there is any doubt as to the content of any document submitted by the Contractor, the Awarding Entity may contact the relevant authority in the country of residence of the person to whom the document relates or in the country of the Contractor's registered business office or place of residence, to request the necessary information about the document.

In the event of any doubt or inconsistency, the provisions of the regulation issued under Article 25(2) of the Public Procurement Act shall prevail in each case.

9. If it is necessary to ensure that the contract award procedure is carried out properly, the Awarding Entity may, at any time in the course of the procedure, request the bidding contractor(s) to submit all or any of the statements and/or documents confirming that they are not excluded from participation in the contract award procedure or, if there are reasonable grounds to believe that a statement or document previously submitted is out-of-date or is no longer valid, to submit an up-to-date version of the statement or document.

#### **§4. DESCRIPTION OF THE FORMAT OF TENDER PREPARATION**

1. Tenders must be written in the Polish language (a technical description in English may be provided) and prepared using means that prevent the text of the tender from being deleted without leaving a trace of its deletion (Article 9 of the Public Procurement Act).
2. The Awarding Entity suggests that:
  - the first page of the tender document be the completed TENDER FORM (Appendix 1 to the Terms of Reference);
  - the pages of the tender document be numbered successively starting from number 1 on the first page of the TENDER FORM (the pages of any documents enclosed with the tender document must also be numbered);
  - all the pages be fastened or stapled in a way that prevents any sheet from becoming loose;
  - each page of the tender document be initialled by a person authorised to sign the document;
  - each correction, if any, of the tender document be initialled by a person authorised to sign the document.
3. The tender document must be accompanied by the statements and documents specified in Article 3(1)
4. The tender document must additionally be accompanied a technical description of the offered equipment. This description may be provided in English.
5. The Contractor may only submit one tender, offering only one, final price.
6. The Awarding Entity will accept tenders expressed in and settlements with the Contractor in the Polish currency (PLN) or EUR.
7. The Awarding Entity will not accept variant or partial tenders.
8. The Awarding Entity will not accept tenders submitted by electronic means.
9. The tender and each document enclosed with the tender must be signed by a person authorised to represent the bidding Contractor in business transactions, as named in the contractor's registration documents and in accordance with the applicable statutory requirements.
10. If the Contractor is represented by an agent, the tender document must be accompanied by the agent's power of attorney, specifying the scope of powers and signed by persons authorised to represent the Contractor.
11. If the tender document is accompanied by materials other than required by the Awarding Entity, e.g. advertising or information materials, it is desirable for such materials to be permanently separated from the tender document.
12. It is the Awarding Entity's suggestion that tenders be submitted in a sealed package with the following text:  
**„Oferta w trybie przetargu nieograniczonego na wyposażenie dynamometru do badań hamulców LINK M3000”.***(Tender in an open tender procedure for the supply of LINK M300 inertia brake dynamometer equipment)*



13. Any information provided in the course of the tender procedure and classified as the Contractor's secrets as defined in the Act on Combating Unfair Competition (Polish: Ustawa o zwalczaniu nieuczciwej konkurencji) with respect to which the Contractor has stated no later than the deadline for submission of offers, that the information may not be made available to other bidders must be marked with the following text: **"Nie udostępniać innym uczestnikom postępowania. Informacje stanowią tajemnicę przedsiębiorstwa, w rozumieniu Art. 11, ust.2 ustawy o zwalczaniu nieuczciwej konkurencji"** (English: This information may not be made available to other bidders. This information is classified as a business secret as defined in Article 11(2) of the Act on Combating Unfair Competition) and enclosed as permanently separated from the tender document. The information referred to in Article 86(4) of the Public Procurement Act may not be classified as a business secret by the Contractor.

#### 14. Joint tenders/consortium

A group of contractors tendering for the contract in question ("Consortium") should meet the conditions for participation in the tender procedure and submit documents confirming that they meet the conditions in accordance with the provisions of Articles 2 and 3 of the Terms of Reference.

The statements and documents confirming that there are no grounds for exclusion from the procedure for the award of the contract under Article 24(1)(12)-(22) and Article 24(5)(1), (5)-(6) and (8) of the Public Procurement Act must be submitted by each member of the Consortium. The statements and documents confirming that the condition for participation in the contract award procedure in accordance with Article 22(1b)(3) of the Public Procurement Act is met must be submitted by at least one of the Consortium members.

In the case of a Consortium, the tender document must be accompanied by a document appointing an agent for the Consortium, pursuant to Article 23 of the Public Procurement Act, submitted as an original or a copy certified in accordance with the provisions of the Civil Code.

### §5. TENDER SELECTION METHOD AND CRITERIA

- Pursuant to Article 24(1)(12) - (23) and Article 24(5)(1), (5)-(6) and (8) of the Public Procurement Act, a contractor that has failed to prove that it meets the conditions for participation in the tender procedure is excluded from participation in the procedure. The tender submitted by an excluded Contractor is deemed rejected under Article 24(4).
- Pursuant to Article 89(1)(2) of the Public Procurement Act, the Awarding Entity will reject each tender that fails to meet the material conditions of the contract (Terms of Reference, Polish SIWZ), subject to Article 87(2)(3) of the Public Procurement Act.
- The offered testing / measurement equipment must meet all the requirements specified in Articles 2 and 9 of the Terms of Reference (Polish SIWZ).
- The Awarding Entity may require the Contractor, pursuant to Article 87(1) of the Public Procurement Act, to provide explanations regarding the content of their tenders and to correct obvious errors in their tenders pursuant to Article 87(2) of the Public Procurement Act, while being required to notify the Contractor of the same immediately.
- The Awarding Entity has set the following tender evaluation criteria (Table 2):

**Table 1. Evaluation criteria**

No.	Criterion	Description	Significance (%)
1.	Price (incl. VAT)	The gross price for the performance of the contract, which should include any and all costs incurred by the Contractor.	80
2.	Warranty period	Warranty period more than 24 months	20
<b>TOTAL:</b>			<b>100</b>

A score (points) will be calculated for each tender using the following formula:

$$L = L_{C1} + L_{C2}W_{C2}$$

where:  $L_{C1}$  – means the points for the price criterion

$L_{C2}$  – means the points for a warranty period; (1 - if warranty period longer than 24 months is offered, 0 – other cases),

- The points received for criterion – **price**

$$L_{C1} = \frac{C_{\min}}{C_i} \times W_1 \times 100 \text{ pkt}$$

$C_{\min}$  - means the lowest of all the prices offered in the non-rejected tenders;

$C_i$  - means the price offered in the tender under evaluation;

$W_{C1}$  - means the criterion significance

$i$  - means an ordering number

6. Prices expressed in EUR will be converted to the Polish currency PLN at the average exchange rate of the National Bank of Poland as at the date of opening the tenders.
7. If the submitted tender requires the Awarding Entity to pay goods and services tax, in accordance with goods and services tax regulations, the Awarding Entity will, for the purpose of evaluating the tender, increase the offered price by the amount of such goods and services tax payable by the Awarding Entity in accordance with the applicable laws and regulations. The Contractor must, when submitting its tender, inform the Awarding Entity whether the selection of the tender will result in a tax liability for the Awarding Entity and, if yes, must specify the goods and/or services in respect of which the tax liability will arise, as well as the pre-tax value of such goods and/or services
8. The Awarding Entity will communicate the results of the tender procedure to the tendering contractors by fax and electronic mail and also on the Awarding Entity website [www.bosmal.com.pl](http://www.bosmal.com.pl).

## **§6. FORMAL REQUIREMENTS**

### **1. Communication with contractors**

#### **a) Persons authorised to communicate with contractors**

Contractors may contact the Awarding Entity to request explanations of the terms and conditions of the contract on business days, from 7 a.m. to 2 p.m. The following persons have been authorised by the Awarding Entity to communicate with contractors:

- Commercial enquiries: Mrs Beata Kalińska, Purchasing and Warehousing Department, e-mail: [beata.kalinska@bosmal.com.pl](mailto:beata.kalinska@bosmal.com.pl),
- Technical enquiries: Mr Tomasz Dąbrowski, Mechanical Testing Laboratory, e-mail: [tomasz.dabrowski@bosmal.com.pl](mailto:tomasz.dabrowski@bosmal.com.pl).

#### **b) Method of communication of the Awarding Entity with contractors**

All communication between the Awarding Entity and contractors shall be via a postal service operator within the meaning of the Postal Law Act of 23 November 2012 (Dz.U. (Journal of Laws) of 2012, item 1529; and of 2015, item 1830), by personal delivery, courier, fax by electronic means within the meaning of the Polish Act of 18 July 2002 on the Provision of Services by Electronic Means (Dz.U. (Journal of Laws) of 2013, item 1422; of 2015, item 1844; and of 2016, items 147 and 615).

All statements, notices, notifications or information must be provided by contractors as part of the tender procedure in question by fax at +48 33 82 28 846 or by electronic mail to [zakupy@bosmal.com.pl](mailto:zakupy@bosmal.com.pl)



All statements, notices, notifications or information must be provided by the Awarding Entity as part of the tender procedure in question at the fax numbers and/or e-mail addresses given by the contractors in their tenders. The party receiving any such statement, notice, notification or information must confirm its receipt immediately when requested to do so by the sending party.

If the receipt of the statement, notice, notification or information referred to above is not confirmed by the receiving contractor, that statement, notice, notification or information will be deemed made or given at the time of its receipt by the receiving party in such a way that the receiving party could have read it..

***If the contractor submits declarations according to Article (25a) of the Public Procurement Act, additions or corrections, the Awarding Entity allows their submission only in written form***

- ***via a postal service operator within the meaning of the Postal Law Act of 23 November 2012 (Dz.U. (Journal of Laws) of 2012, item 1529; and of 2015, item 1830)***
- ***by personal delivery***
- ***by a courier***

***The Awarding Entity does not allow in this case, submission of declarations according to Article (25a) of the Public Procurement Act, by electronic means of***

**c) Procedure for making tender documentation available**

Each interested party has the right to familiarise itself with the documentation of the tender procedure in question, upon a request made to the Awarding Entity. In reply to the request, the Awarding Entity will be required to specify the place, date and conditions of making the documentation available, in accordance with the rules set out in the Public Procurement Act and in the Regulation of the Minister of Development of 28 July 2016 on the protocol for the public contract award procedure (Dz.U. (Journal of Laws) of 2016, item 1128), issued under Article 96(5) of the Public Procurement Act

## **2. Bid bond**

Each Contractor must provide security for its performance of the contract, in the form a bid bond provided before the closing date for submitting tenders and for the tender binding period, in the amount of PLN 4000 (four thousand zlotys) or EUR 1000 (one thousand euros).

The bid bond may be provided in any of the forms specified in Article 45.6 of the Public Procurement Act.

If the bid bond is a cash deposit, the amount must be paid into the Awarding Entity's bank account held with Bank Pekao SA O/Bielsko-Biała:

- ☐ for PLN: Account No. 32 1240 4142 1111 0000 4823 8630;
- ☐ For EUR: Account No. 39 1240 4142 1978 0000 4823 0559 – SWIFT: PKOPPLPW;

with the following text in the bank transfer description field: **wadium - przetarg nieograniczony na dostawę wyposażenia dynamometru do badań hamulców LINK M3000** (Bid bond in an open tender procedure for the supply of an indication system).

If the bid bond is a cash deposit, the cash deposit will be deemed to have been paid on the date when the payment is credited to the Awarding Entity's bank account.

If the bid bond is provided in any other form acceptable by the Awarding Entity, it must be enclosed, in the original, with the tender document.

The Contractor's guarantee must be irrevocable, unconditional, drawn up in accordance with the applicable laws and regulations and should contain at least the following:

- a) the name of the Contractor, the beneficiary of the guarantee (the Awarding Entity), the guarantor (the bank or insurance institution providing the guarantee), including their registered offices;
- b) the claim to be guaranteed,
- c) the guarantee amount,
- d) the validity period of the guarantee,
- e) the guarantor's undertaking to pay the guarantee amount in the event of the occurrence of the circumstances described in Article 46(4a) and Article 46(5) of the Public Procurement Act.



The Awarding Entity will retain the bid bond amount and interest if the Contractor, in reply to the request referred to in Article 26(3) and Article 26(3a), fails, for reasons for which it is responsible, to submit any of the statements and/or documents confirming the facts referred to in Article 25(1), and/or the statement referred in Article 25a(1), and/or the required powers of attorney and/or fails to give the error correction consent referred to in Article 87(2)(3), thus preventing the Contractor's tender from being selected as the best tender.

Any disputes regarding the guarantee will be resolved in accordance with the laws of the Republic of Poland before a court of law with jurisdiction over the Awarding Entity's registered office.

The above provisions will apply to sureties (Polish: poręczenie) accordingly.

The Awarding Entity will refund or, in justified cases, retain the bid bond in accordance with the provisions of Article 46 of the Public Procurement Act.

In the case of a Consortium, the bid bond may be provided by one member of the Consortium.

The Awarding Entity may require the Contractor to provide the bid bond already refunded to the Contractor, pursuant to Article 46(3) of the Public Procurement Act.

### **3. Information on the formalities to be completed to enter into the contract after selecting the contractor.**

The selected Contractor will be required to sign the contract in accordance with the Material Provisions of the Contract as contained in Appendix 2 to the Terms of Reference and in accordance with the Articles 139 and 140 of the Public Procurement Act.

The Awarding Entity requires that the Contractor provides a performance bond equal to 5 (five) % of the gross value of the contract, in any of the forms provided for in Article 148(1) of the Public Procurement Act. The selected Contractor shall provide the performance bond in the full amount, irrespective of the form of the bond, not later than on the day of signing the contract, but before signing the contract.

If the selected Contractor fails to provide the required performance bond, the Awarding Entity may select the best of the other submitted tenders, pursuant to Article 94(3) of the Public Procurement Act, unless the conditions described in Article 93(1) of the Public Procurement Act are fulfilled.

If the selected tender is a joint tender submitted by a group of contractors, the Awarding Entity will require the Contractor to submit an agreement governing the terms and conditions of the individual contractors' co-operation, such an agreement to be submitted before the contract is entered into.

If the selected Contractor carries on a business as a limited liability company, then if the value of the contract exceeds twice the amount of the Contractor's share capital, the Contractor will, not later than on the day of signing the contract, submit the resolution provided for in Article 230 of the Polish Companies Code (Kodeks spółek handlowych), authorizing the company's management board to enter into the contract, unless that company's deed of formation provides otherwise, in which case the Contractor must provide an extract of the Contractor's company formation deed to confirm that the company is authorized to assume such obligations.

## **§7. DEADLINES**

### **1. Closing date of submitting tenders**

Tenders must be submitted to the Purchasing and Warehousing Department of Instytut Badań i Rozwoju Motoryzacji BOSMAL Sp. z o.o., at the address of ul.Sarni Stok 93 (93 Sarni Stok street), Room 330 or 361, 43-300 Bielsko-Biała, by **12 o'clock (noon) on 24 May 2019.**

All tenders submitted after the above deadline will, irrespective of the reasons for their late submission, be returned after the expiry of the time limit for objections, of which prior notification will be given to the relevant contractor in accordance with Article 84(2) of the Public Procurement Act..

### **2. Opening tenders**

The tenders validly received will be opened in Room 401 in the building of Instytut Badań i Rozwoju Motoryzacji BOSMAL Sp. z o.o., at **12:30 (half past twelve in the afternoon) on 24 May 2019.**



The record of the tender opening procedure will be posted immediately on the [www.bosmal.com.pl](http://www.bosmal.com.pl) website, in the Zamówienia/PRZETARGI PUBLICZNE section, in accordance with Article 86(5) of the Public Procurement Act.

### 3. Tender binding period

The bidders will be bound by their tenders for a period of 30 days from the closing date for submitting tenders.(Article 85(1)(1) of the Public Procurement Act)

### 4. Contract performance

The offered equipment must be delivered and started up within **24 (twenty four) weeks of the date of entering the contract**, as a requirement.

## §8.OTHER CONDITIONS

#### 1. The Contractor should provide:

- a) Basic, at least one-day training (included in the offered price) in the operation of delivered system, Such training should be provided at BOSMAL's premises.
- b) and warrant the correct operation of the whole equipment for 24 months of its start-up (the day of signing the acceptance report). The warranty must cover all the work needed to repair defects in the equipment. The warranty period will be evaluated in Article 5(5), Table 1;**
- c) the possibility of reporting defects, at least by electronic mail, 24 days a day and 7 days a week
- d) the service team's response time from the time a defect is reported by the Awarding Entity to the time the Contract contacts the Awarding Entity to agree upon details of correcting the defect is not longer than 2 business days. Repair work to correct the defect must begin not later than within 10 business days of the time of reporting the defect during the warranty period.
- e) availability of spare parts to buy and post-warranty servicing for at least 10 years from the date of signing the acceptance record;
- f) availability of post-warranty servicing not later than within 15 business days of the time of reporting the defect

#### 2. The Contractor shall supply, together with the equipment, complete sets of user manuals prepared in accordance with the Machinery Directive, in Polish (if English-language manuals are supplied, those parts of the manuals that cover, as a minimum, basic maintenance and operation instruction, user safety information and installation requirements, must be translated into Polish), accompanied by an installation manual, all other manuals for the equipment (English-language versions are acceptable) and a declaration of conformity with the currently effective Directives (2006/42/EC, 2014/35/EU, 2014/30/EU) in Polish; all the equipment supplied must be CE-marked.

#### 3. On-site visit

Contractors are advised by the Awarding Entity to make a on-site visit, before submitting their tenders, to the Awarding Entity's site to see the existing LINK M3000 testing station and obtain information that may be necessary in the process of preparing their tenders, irrespective of the information contained in the Specification of Essential Conditions of the Procurement (Polish: SIWZ).

Each contractor may make such a visit to the Awarding Entity's premises not later than **5 days** before the deadline for tenders.

Each contractor interested in such a visit should notify the Awarding Entity in writing to the address Instytut Badań i Rozwoju Motoryzacji BOSMAL Sp. z o.o., ul. Sarni Stok 93, 43-300 Bielsko-Biała or by e-mail to [zakupy@bosmal.com.pl](mailto:zakupy@bosmal.com.pl). one day before the date of the visit.

#### 4. In the event of the occurrence of unexpected circumstances, the Awarding Entity will accept an equivalent solution that meets all the requirements laid down in the Terms of Reference and the submitted tender (evaluation criteria), provided that the substitute product is proved to meet such requirements.

The supply of a substitute product will not result in an increase in the price or an extension of the time limit for the performance of the contract or any extension of any related periods (the warranty period, the service team's response time etc.).



5. Pursuant to Article 144(1) of the Act, the Awarding Entity will accept amendments to the contract if the time limit for performance of the contract is extended, in accordance with the description in the Material Provisions of the Contract (Appendix 2).
6. Contractors and other entities that have or had an interest in being awarded the contract have the right to exercise the legal remedies provided for Articles 179-198g of the Act in cases where the value of the contract is equal to or exceeds the amounts specified in the provisions of law issued under Article 11(8) of the Public Procurement Act.
7. The tender procedure may be invalidated in the cases specified in Article 93 of the Public Procurement Act.
8. The English-language version, as a translation, of the Specification of Essential Conditions of the Procurement (Polish: SIWZ) is provided for convenience only, and in the case of any discrepancy between the Polish-language text and the translation, the Polish-language version will apply as binding

### **§9. DATA PROTECTION NOTICE (ARTICLE 13 OF GDPR)**

As required by Articles 13(1),13(2) and 13(3) 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 (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1) ("GDPR"), please be informed that:

- the (data) controller in respect of your personal data is Instytut Badań i Rozwoju Motoryzacji Bosmal Sp. z o.o. (registered address: Sarni Stok 93, 43-300 Bielsko-Biała);
- the data protection officer for Instytut Badań i Rozwoju Motoryzacji Bosmal Sp. z o.o. is Mr Henryk Dębski, who is available by email [Henryk.debski@bosmal.com.pl](mailto:Henryk.debski@bosmal.com.pl) or by phone: +48 33 813 0 463;
- Your personal data will be processed under Article 6(1)(c) of GDPR for purposes connected with public contract award procedure No. BOS/47/NZ/19 on an open tender basis;
- the recipients of your personal data will be individuals and/or organisations that will be provided with the public contract award procedure documentation under Sections 8 and 96(3) of the Public Procurement Act of 29 January 2004 (Dz.U. (Journal of Laws) of 2017, items 1579 and 2018) ("Public Procurement Act");
- Your personal data will be retained, in accordance with Article 97(1) of the Public Procurement Act, for a period of 4 years from the date of completion of the public contract award procedure or, if the duration of the contract exceeds 4 years, the retention period will cover the full term of the contract;
- the obligation to provide such personal data relating directly to you is a statutory requirement set out in the provisions of the Public Procurement Act, and it is related to your participation in the public contract award procedure; the consequences of failing to provide such data are provided for under the Public Procurement Act;
- in relation to your personal data, no automated individual decision-making will be used (Article 22 of GDPR);
- in accordance with Article 8 (5) under the Public Procurement Act The awarding entity shall make available 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 (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1) ("Regulation 2016/679"), to enable the exercise of the remedies referred to in Section VI, until the expiry of the period within which any such remedy may be applied for.
- on the basis of Article 96 (3a) of the Public Procurement Act, the rule of openness provided for in subsection 3 shall apply to all personal data, with the exclusion of the personal data referred to in Article 9(1) of Regulation 2016/679, gathered in the course of a public contract award procedure and/or competition. The limitations of the rule of openness which are referred to in Sections 8(3)-(5) shall apply accordingly
- in accordance with Article 96 (3b). of the Public Procurement Act, as of the date of conclusion of a public contract award procedure, if the making of the request referred to in Article 18(1) of Regulation 2016/679 results in restriction of the processing of the personal data contained in the report and appendices to the report, the contracting entity shall not make such personal data available unless the conditions set out in Article 18(2) of Regulation 2016/679 are met



- in accordance with Article 8a(4) of the Public Procurement Act, the making of the request referred to in Article 18(1) of Regulation 2016/679 shall not restrict the processing of personal data until the conclusion of the public contract award procedure.
- in accordance with Article 11(6a) of the Public Procurement Act, to the extent of the personal data provided by the contracting entity in the Public Procurement Bulletin, the rights referred to in Articles 15 and 16 of Regulation 2016/679 may be exercised on the basis of a request made to the contracting entity
- in accordance with Article 11(6b) of the Public Procurement Act The President of the Public Procurement Office shall ensure technical maintenance of the ICT system with the use of which the Public Procurement Bulletin is made available and specify the retention period in respect of the personal data included in the Public Procurement Bulletin
- you have the following rights in respect of your personal data:
  - the right of access your personal data (Article 15 of GDPR); according to Article 8a(2) and Article 97(1a) of the Public Procurement Act, If compliance with the obligations set out in Articles 15(1)-(3) of Regulation 2016/679 requires a disproportionately great effort, the contracting entity may require the data subject to provide additional information to make the data subject's request precise, including (but not limited to) the name and/or date of the public contract award procedure and/or competition; it also applies to the data of a public contract award procedure already completed (Article 97(1a) of the Public Procurement Act);
  - the right for rectification of your personal data (Article 16 of GDPR); personal data rectified or made complete shall not result in a change of the result of the public contract award procedure and/or competition or a change to the contract against the provisions of this Act (Article 8a(3) of the Public Procurement Act), also personal data rectified or made complete under Article 16 of Regulation 2016/679 shall not affect the integrity of the report and appendices to the report (Article 97(1b) of the Procurement Act).
  - the right to require the (data) controller to restrict the processing of your personal data (Article 18 of GDPR), except for the cases referred to in Article 18(2) of GDPR\*\*\*;
  - the right to file a complaint to the President of the Office for Personal Data Protection, if you believe that the processing of your personal data violates the provisions of GDPR;
- you do not have the following rights:
  - the right to erasure of your personal data (Articles 17(3)(b), (d) or (e) of GDPR);
  - the right to transfer your personal data (Article 20 of GDPR);
  - **the right to object to the processing of personal data (Article 21 of GDPR), since the legal basis for the processing of your personal data is Article 6(1)(c) of GDPR.**

## **§10. LIST OF APPENDICES**

1. Page One of the Tender Form (Appendix 1)
2. Material Provisions of the Contract (Appendix 2)
3. Contractor's Statement on Meeting the Conditions for Participation in the Tender Procedure (Appendix 3)
4. Third party's undertaking to make available, to the contractor, of the necessary resources for use in the performance of a public contract – (Appendix 4).
5. Contractor's Statement on No Grounds for Exclusion (Appendix 5)
6. Statement on Being / not Being Part of the Same Group of Companies (Appendix 6)
7. Contractor's statement of compliance with the obligations to provide information under Articles 13 and/or 14 of GDPR (Appendix 7)

## **END OF THE TERMS OF REFERENCE**