



Słupno, 8th April 2025

**BART SPÓŁKA Z OGRANICZONĄ ODPOWIEDZIALNOŚCIĄ**

Cypriana Kamila Norwida Street 4

05-250 Słupno

*Data of the ordering party*

**TENDER INQUIRY No. 4/1.1.1/746/FENG-WI/2025**

in connection with the implementation of the project entitled: "*Construction of a plant for the production of innovative food additives and dietary supplements*" No. FENG.01.01-IP.02-0746/23, co-financed by the EUROPEAN REGIONAL DEVELOPMENT FUND under Measure FENG.01.01 SMART Path, Priority: FENG.01 *Support for entrepreneurs* under the EUROPEAN FUNDS FOR MODERN ECONOMY 2021-2027 Program.

by **BART SPÓŁKA Z OGRANICZONĄ ODPOWIEDZIALNOŚCIĄ**

We would like to invite you to participate in a tender competition for the **supply and assembly (installation and commissioning) of a brand new (unused) AUTOMATIC DOSING MACHINE FOR FLAVOURS WITH INSTRUMENTATION (1 unit)** for the implementation of the above-mentioned project.

**I. INTRODUCTION:**

1. The provisions of the Act of September 11, 2019 shall not apply to the proceedings. Public Procurement Law (Journal of Laws of 2022, item 1710, as amended).
2. The proceeding shall be conducted on a competitive basis in accordance with the *Expenditure Eligibility Guidelines for 2021-2027* in effect on the date of publication of the Tender Inquiry in accordance with the principles of fair competition, equal treatment of contractors, efficiency, openness and transparency.
3. The contract value was estimated on 28/03/2025, based on the approved application for funding. The estimated value of the contract exceeds the amount of 750,000 euros.
4. The proceedings are conducted in Polish.
5. Amendments to the content of the TENDER INQUIRY and clarifications provided by the Ordering Party to Contractors' inquiries become an integral part of the Tender Inquiry and are binding on Contractors.
6. Communication between the Ordering Party and the bidder is through the BK2021 application available at <https://bazakonkurencyjnosci.funduszeuropejskie.gov.pl>

**II. NAME AND ADDRESS OF THE ORDERING PARTY:**

**BART SPÓŁKA Z OGRANICZONĄ ODPOWIEDZIALNOŚCIĄ**

Street: Cypriana Kamila Norwida 4

Postcode: 05-250

City: Słupno

**III. DESCRIPTION OF THE SUBJECT OF THE CONTRACT :**

**CPV: 42990000-2:** Miscellaneous special-purpose machinery

**42200000-8:** Food, beverage and tobacco processing machinery and related parts

The subject of the contract is:

1. Purchase and delivery of a brand new (unused) AUTOMATIC DOSING MACHINE FOR FLAVOURS WITH INSTRUMENTATION (1 unit) in accordance with the specification attached as Annex No. 1 to this Tender Inquiry.

2. Delivery of a brand new (unused) AUTOMATIC DOSING MACHINE FOR FLAVOURS WITH INSTRUMENTATION (1 unit) meeting the requirements specified in this Tender Inquiry and in the annexes to this Tender Inquiry, in particular in the *Description of the subject of the contract*, constituting Annex No. 1 to this Tender Inquiry.
3. Transport of the AUTOMATIC DOSING MACHINE FOR FLAVOURS WITH INSTRUMENTATION to the Ordering Party's plant located in Małopole, on Warszawska Street (Poland, Mazovian Voivodeship, Wołomin County, Dąbrówka Municipality). The plant is under construction.
4. Assembly, installation and commissioning of (mechanical installation, as well as electrical connection of all devices) OF THE AUTOMATIC DOSING MACHINE FOR FLAVOURS WITH INSTRUMENTATION in the Ordering Party's plant located in Małopole, on Warszawska Street (Poland, Mazovian Voivodeship, Wołomin County, Dąbrówka Municipality).
5. Training of the Ordering Party's employees (min. 3 days) in the operation of the installation at the Ordering Party's facility by a competent person.
6. The supplied equipment and installations must be new, unused, complete, free of physical and legal defects, as well as encumbrances by third parties. The purchaser does not allow post-sale, used and prototype solutions. The delivered installation should be complete and in process fully functional.
7. The supplied equipment and installations must have all the required approvals allowing them to be used on the Polish market, as well as meet the required standards and safety requirements and have a CE certificate of conformity (in accordance with the Act of August 30, 2002 on the system of conformity assessment (consolidated text Journal of Laws 2023 item 215, as amended)
8. A detailed description of the subject matter of the contract is attached as Annex No. 1 to this Tender Inquiry. **Due to the fact that the information contained in Annex No. 1 constitutes a business secret as defined in Article 11(2) of the Act on Combating Unfair Competition of April 16, 1993 (Journal of Laws of 2022, item 1233, as amended), the documentation will be made available to interested bidders in an electronic version after signing and sending in an electronic version a Declaration of Confidentiality according to the template constituting Annex No. 4 to this Tender Inquiry.**

Before sending information constituting a business secret, the Ordering Party reserves the right to verify whether the bidder meets the conditions for participation in the proceedings, in particular, whether it is authorized to perform the activity specified in the Tender Inquiry and whether the attempt to obtain information constituting a business secret is not an act of unfair competition. In the case of a reasonable suspicion that the actions of a potential bidder may constitute an act of unfair competition as defined in the Act on Combating Unfair Competition of April 16, 1993, the Ordering Party may refuse to provide information constituting business secrets, justifying its refusal in writing.

9. Where references are used in any procurement documents, particularly in the Description of the subject matter of the contract, to standards, European technical evaluations, approvals, technical specifications and technical reference systems, trademarks, patents or origin, source or specific process that characterizes the products or services supplied by a particular contractor, **it means that they are given by way of example and specify only the minimum expected quality parameters and the required standard. The contractor should assume that each such reference is accompanied by the words "or equivalent."** The Contractor may use equivalent materials, equipment and solutions, but with similar or better technical and quality parameters, the use of which will in no way adversely affect the proper functioning of the solutions adopted in the design documentation. The Ordering Part may not reject a bid

as incompatible with the Tender Inquiry, if the contractor proves in his bid that the proposed solutions in an equivalent degree meet the requirements specified in the Tender Inquiry. If the contractor, for reasons beyond his control, is unable to obtain the marking or label specified by the Ordering Party confirming that the supplies or services meet the equivalent requirements, the Ordering Party shall, within the time specified by it, accept other appropriate means of proof, in particular the manufacturer's technical documentation, provided that the contractor in question proves that the supplies or services to be performed by him meet the requirements of the specified marking or the specified requirements indicated by the Ordering Party

The use in the documentation of the requirement to have a certificate issued by a conformity assessment body or a test report from such a body as a means of proof of compliance with the requirements or characteristics specified in the description of the subject of the contract, the criteria for evaluation of tenders, or the conditions for performance of the contract means that the Ordering Party also accepts certificates issued by other equivalent conformity assessment bodies. The Ordering Party shall also accept other appropriate means of proof, in particular the manufacturer's technical documentation, where the contractor concerned has neither access to certificates or test reports, nor the ability to obtain them in a timely manner, provided that this lack of access cannot be attributed to the contractor concerned, and provided that the contractor concerned proves that the supplies or services it performs meet the requirements or criteria specified in the description of the subject of the contract or the conditions of performance. If the description of the subject of the contract includes provisions indicating the need to use specific equipment with specific parameters for the execution of the contract, the Ordering Party shall allow the use of other equipment, provided that it ensures the achievement of the assumed design parameters and does not cause the risk of non-compliance of the performed work with the design documentation.

10. The Ordering Party undertakes to acquire all licenses, permits and certificates necessary for both parties to fulfill the scope of the contract;
11. The Ordering Party undertakes to provide uninterrupted access to the test material, all media, and provide an operator for physical assistance.
12. Connection to the main supply lines for water, compressed air, steam (if applicable), and electricity to the main power panel/cabinet is the responsibility of the Ordering Party.
13. Connecting the Internet cable to the equipment is the responsibility of the Ordering Party.
14. The unloading and transportation of equipment at the site is the responsibility of the Ordering Party under the supervision and with the assistance of the Bidder.

#### **PLACE OF CONTRACT EXECUTION:**

Production plant BART Sp. z o.o. in Małopole on Warszawska Street (Poland, Mazovian Voivodeship, Wołomin county, Dąbrówka municipality). The plant is under construction.

#### **IV. DESCRIPTION OF PARTS OF THE CONTRACT - IF SUBMISSION OF PARTIAL AND VARIABLE OFFERS IS PERMITTED:**

The Ordering Party **does not allow** partial bids, when the installations covered by the contract must be functionally interconnected.

The Ordering Party **does not allow** the submission of a variant bid.

#### **V. ORDER COMPLETION DATE:**

DELIVERY CONDITIONS: after ordering/contract signing, the manufacturer is expected to deliver the complete equipment, mechanical and electrical parts to the site designated by the Investor within a maximum period of 54 weeks after ordering/contract signing.

After placing the order/signing the contract, it is expected that the manufacturer will start-up and commission the complete equipment, with mechanical and electrical parts, at the site designated by the Buyer, within a maximum period of 60 weeks from the signing of the contract, and provide complete detailed designs of the entire system, including designs for automation, process guidelines, data and other unspecified elements customarily included in the scope of documentation, within a maximum period of 62 weeks from the signing of the contract.

**PROPOSED PAYMENT TERMS:** The formal issues and form of payment will be determined and accepted jointly by the Buyer and the Manufacturer, with an advance payment of no more than 30% of the contract value. The following payment stages are preferred: 1. 30% down payment, 2. 60% upon full completion of the design/engineering phase, after FAT testing and declaration of readiness to ship the order, 3. 10% after commissioning, acceptance and performance/process testing.

Planned contract date 05/2025

## **VI. PLACE AND DATE OF BID SUBMISSION:**

Bids responding to the inquiry (including attachments) should be submitted using the completed Form for Bidders attached as Annex No. 2 to the Inquiry **exclusively** through the **BK2021 database**

available at <https://bazakonkurencyjnosci.funduszeuropejskie.gov.pl>,

**The deadline for submitting bids is: 9<sup>th</sup> May 2025--**

Timely submission of a bid is determined by the date of submission through BK2021.

### **NOTE!!!!**

Annex No. 4 *Confidentiality statements* prior to bid preparation should be sent via e-mail to the Ordering Party at the following address: [mikolaj.cieslak@bart.pl](mailto:mikolaj.cieslak@bart.pl) (in order to obtain the contract specifications necessary for bid preparation), and then attached to the bid sent via BK2021.

## **VII. DESCRIPTION OF HOW TO PREPARE A BID:**

1. The bid should be made in one copy, on the form *attached* as Annex 2 to the Tender Inquiry.
2. The bid must be signed by a person authorized to represent the Bidder, in accordance with the form of representation specified in the national court register or other registration document, appropriate for the given organizational form of the Bidder, or by a person authorized by an authorized person, whereby the power of attorney must be attached to the bid.
3. All places where the Bidder has made changes should be initialed/signed by the person(s) signing the bid.
4. The bid should be written in Polish. Documents drawn up in a foreign language must be submitted with a translation into Polish.
5. The submitted bid should:
  - a. be signed with a qualified electronic signature, trusted signature or personal signature by the person or persons authorized to sign the bid,
  - b. be prepared in a legible manner, in accordance with the description of the subject of the contract,
  - c. Be dated with the date of the offer,

- d. include the bidder's data such as name, address, tax ID number, name of contact person with contact information.
6. The bid should be in accordance with the description of the subject of the contract.
7. **The bid should be accompanied by:**
- a) A current extract from the relevant register, issued no earlier than 3 months before the deadline for submission of tenders. Entities with registered offices outside the territory of the Republic of Poland may submit equivalent documents (with translation into Polish);
  - b) Power of attorney to act on behalf of the Bidder, if the right to represent the Bidder in the above regard does not directly result from the registration document;
  - c) Documents confirming the fulfilment of the conditions described in point XI of the TENDER INQUIRY.
  - d) Detailed specifications and characteristics of the offered installations and equipment.
  - e) *Annex No. 2a* according to the model provided by the Ordering Party - the model of the attachment will be made available after the submission of the Declaration of Confidentiality (*Annex No. 4*);
  - f) Statement of no personal and capital relations with the Employer according to *Annex No. 3* to the TENDER INQUIRY;
  - g) Declaration of Confidentiality (*Annex No. 4*) - sent before submitting the bid to the Ordering Party's email address: [mikolaj.cieslak@bart.pl](mailto:mikolaj.cieslak@bart.pl), and then attached to the bid submitted through BK2021, according to the procedure described in paragraph. VI of this inquiry;
  - h) List of technical potential, human resources, knowledge and experience of the Bidder according to *Annex No. 5* to the TENDER INQUIRY.
8. The Bidder will bear all costs associated with the preparation and submission of the bid;
9. The Bidder may submit only one bid;
10. In the course of examining and evaluating bids, the Ordering Part may request clarifications from Bidders regarding the content of their bids;
11. The Ordering Party informs that bids submitted in the procurement procedure are open and subject to access after the end of the procedure, with the exception of information constituting a business secret within the meaning of the provisions on counteracting unfair competition, if the Contractor, no later than on the deadline for submission of bids, reserved that they cannot be made available and demonstrated that the reserved information constitutes a business secret: i. by a business secret within the meaning of Article 11(2) of the Act of April 16, 1993 on counteracting unfair competition (i.e. Journal of Laws of 2022, item 1233.) shall be understood as technical, technological, organizational information of the company or other information of economic value, which as a whole or in a particular juxtaposition and set of its elements is not generally known to persons normally dealing with this type of information or is not readily available to such persons, provided that the person authorized to use or dispose of the information has taken, with due diligence, actions to keep it confidential.
- If the Contractor fails to prove that the reserved information is a business secret in the meaning of art. 11 paragraph 4 of the Act of 16.04.1993 on counteracting unfair competition, the Ordering Part will consider the reservation of secrecy as ineffective, of which it will inform the Contractor. Among other things, the Contractor may not reserve information regarding the price and contract completion date contained in the bid. If these data are reserved, they will be automatically declassified by the Ordering Party.

Information constituting a business secret should be grouped and constitute a separate part of the offer, described as follows: "company secret - only for inspection by the Ordering Party".

12. The bid should be prepared in PLN/EUR/USD. If a bid is submitted in foreign currencies (other than PLN). The Ordering Party shall convert the value of the offer using the average exchange rate for a given currency announced by the National Bank of Poland, as of the date of making the Tender Inquiry public.

**In the case of formal deficiencies, obvious clerical or accounting errors, if the information or documentation, submitted by the contractor, is incomplete or incorrect, or if the attachments are missing, the Ordering Party may call on bidders to supplement the indicated deficiencies setting a deadline of 3 working days. Failure to supplement the deficiencies of the bid within the specified period shall result in its rejection. Supplementation of formal deficiencies of the bid may not lead to its substantive change.**

#### **VIII. THE TERM OF BINDING THE BID:**

The bidding period is **60 days** from the deadline for submission of bids.

#### **IX. GROUNDS FOR REJECTION OF THE OFFER**

The Ordering Party will reject the bid:

1. Not meeting the parameters, indicated in the Description of the subject of the contract (Annex No. 1) - verification on the basis of the Order Specification Form (Annex No. 2a) or technical specifications of the installation prepared by the Bidder,
2. Not meeting the requirements referred to in Item No. XI of this Tender Inquiry,
3. Representing a period of contract execution longer than indicated in the Tender Inquiry - verification on the basis of the Bid Form (Annex No. 2),
4. Presenting a warranty period shorter than that indicated in the Order Specification, verification on the Order Specification Form (Annex No. 2a),
5. A contractor with personal and capital relations with the Ordering Party. Fulfilment of the condition will be verified on the basis of the "Statement of no relationship", the template of which is attached as Annex No. 3 to this Tender Inquiry.
6. Unsigned or signed by a person or persons who are not authorized to represent the Bidder, in accordance with the form of representation specified in the court register or other document appropriate for the given organizational form of the Bidder, or by a person who is not authorized by the person or persons authorized, whereby the power of attorney must be attached to the bid.

#### **X. BID EVALUATION CRITERIA AND THEIR WEIGHTING**

<b>Total net price - 90 points. (90%)</b>
<b>Warranty period (in months) - 5 points. (5%)</b>
<b>Environmental aspects (total energy consumption expressed through electrical power of equipment [kW]) - 5 points. (5%)</b>

The Supplier will be selected on the basis of the highest number of points awarded according to the following methodology:

By the criterion "**Total net price**", the Employer means the total net price (excluding VAT) for the execution of the subject matter of the contract, as specified by the Bidder in the Bid Form constituting Annex No. 2 to this Tender Inquiry.

The bid price can be only one, no price variances are allowed. Any discounts/discounts should be immediately included in the calculation of the price, so that the calculated price for the execution of the Subject of the Order is the final price, without the need for recalculation and other actions by the Ordering Party to determine it.

The score under the criterion "*Total net price*" ( $K_c$ ) will be calculated based on the following formula:

$$K_c = (C_{min}/C_o) \times 90\% \times 100$$

Where:

$C_{min}$  - the lowest proposed net price among non-rejectable bids;

$C_o$  - the net price proposed in the tested bid;

$K_c$  - number of points awarded to a given offer in the criterion "*Total net price*"

By the criterion "**Warranty period**" the Purchaser means the warranty period (given in full months) for the device being the subject of this Tender Inquiry, as specified by the Bidder in the form constituting Annex No. 2a to this Tender Inquiry, counted from the date of commissioning of the installation.

**NOTE!!! The required min. warranty period for the device counted from the date of installation start-up is 18 months (no limit of hours) and the max. is 120 months.**

Proposing a warranty period of less than 18 months and more than 120 months for the offered equipment will result in considering the offer as not in compliance with the specification.

The score under the criterion "*Warranty period*" ( $K_g$ ) will be calculated based on the following formula:

$$K_g = (G_o/G_{max}) \times 5\% \times 100$$

Where:

$G_o$  - the warranty period proposed in the tested bid;

$G_{max}$  - the longest allowable warranty period, i.e. 120 months;

$K_g$  - number of points awarded to a given bid in the criterion "*Warranty period*";

By the criterion "**Environmental Aspects (Energy Consumption - total energy consumption expressed through electrical power of equipment [kW])**" The Employer understands the Bidder's specified electricity consumption expressed through the power of the designed system (in kilowatts) given in the form constituting Annex No. 2a to this Tender Inquiry.

**NOTE!!! According to the provisions of the contract specifications, consumption should not exceed 18 kW of electrical power (400V/50Hz);**

The score under the criterion "*Environmental aspects (energy consumption [kW])*" ( $K_z$ ) will be calculated based on the following formula:

$$K_z = (Z_{min}/Z_o) \times 5\% \times 100$$

Where:

$Z_{min}$  - the lowest energy consumption (in kilowatts) - the total for the offered system among the non-rejectable bids;

$Z_o$  - energy consumption (in kilowatts) - the total for the offered system proposed in the tested bid;

$K_z$  - number of points awarded to a given bid in the criterion "*Environmental aspects (energy consumption [kW])*";

**CONCLUSIVE CRITERION:**

In the event of an equal number of points, the number of points obtained in the criterion "Environmental aspects (energy consumption [kW])" and then in the criterion "Total net price" will determine the selection of the bid.

**Among the valid bids, the Ordering Party will consider the most advantageous and will select the bid that meets all the requirements specified in the detailed description of the subject matter of the contract and has obtained the highest number of points in the final evaluation.**

$$K = K_c + K_g + K_z$$

Where:

K - number of points awarded to a given offer in the final evaluation'

K<sub>c</sub> - number of points awarded to a given offer in the criterion "Total net price"

K<sub>g</sub> - number of points awarded to a given offer in the criterion "Warranty period"

K<sub>z</sub> - number of points awarded to a given bid in the criterion "Environmental aspects (energy consumption [kW])"

The point values in each criterion will be given to two decimal places, and rounding will be done in accordance with generally accepted mathematical principles.

## **XI. CONDITIONS FOR PARTICIPATION IN THE PROCEEDINGS:**

A Bidder meeting the following conditions may apply for the contract:

### **ECONOMIC AND FINANCIAL SITUATION**

1. Is in an economic and financial position to perform the contract.
2. The bidder is not the subject of initiated bankruptcy proceedings, nor is it declared bankrupt, is not subject to a liquidation process, and its affairs are not subject to a receivership or court order.
3. The bidder is not in arrears in the payment of taxes, fees or contributions to social or health insurance.
4. The members of the bodies/shareholders authorized to represent the Bidder have not been validly convicted of a crime committed in connection with the procurement procedure, a crime of bribery, a crime against economic turnover or any other crime committed for the purpose of financial gain.

Fulfilment of the conditions will be verified, among other things, on the basis of the Bidder's statement contained in Annex No. 2 - Bid and Price Form, and additional documents that the Bidder should attach to the bid (in the case of documents drawn up in a foreign language, a translation of the document into Polish should also be attached), i.e.:

- a) proof of civil liability insurance with respect to business activity related to the subject matter of the contract for the guarantee amount not less than PLN 2,000,000, together with confirmation of payment of the policy. In the case of policies issued in foreign currencies (other than PLN), the Ordering Party shall convert the value of the policy using the average exchange rate for a given currency announced by the National Bank of Poland, as of the date of publication of the Tender Inquiry.

In addition, at the request of the Ordering Party, the Bidder should provide financial statements for the years 2023-2024, unless the period of operation is shorter, for this period. The Ordering Party reserves the right to verify the submitted financial documents in order to assess whether the Bidder is not at risk of insolvency, does not meet the prerequisites for declaring bankruptcy or initiating restructuring, reorganization or sanitation proceedings

### **KNOWLEDGE AND EXPERIENCE, TECHNICAL POTENTIAL**

1. Has the authority to conduct business activities. Fulfilment of the condition will be verified on the basis of the Bidder's statement contained in Annex No. 2 - Bid and Price Form, and



PKD codes (Classification of activities), types of business conducted, contained in the Bidder's registration document or Articles of Incorporation.

2. Has the necessary technical capacity to perform the contract;
3. Has relevant experience in the implementation of supplies corresponding to the nature of the subject matter of the contract. In order to confirm the fulfilment of the aforementioned condition, the Bidder must provide, in Annex No. 5 - List of *the Bidder's technical potential, human resources, knowledge and experience* (a list of **at least 5 deliveries corresponding to the subject matter of the order, i.e. automatic dosing equipment, based on a weight-based control system of the dosing process, using (taking into account in its configuration/installation) each time at least 100 different raw materials, made for the food industry (flavours, fragrances), cosmetics (fragrances) or pharmaceutical industry, with an order value of min. PLN 2,000,000 each, carried out in the last 5 years before the deadline for submission of tenders, and if the period of activity is shorter - in this period. If the value of reference orders is indicated in foreign currencies (other than PLN), the Ordering Party will convert their value according to the average exchange rate of a given currency announced by the National Bank of Poland on the day the Tender Inquiry is made public.**

Fulfilment of the conditions will be verified, among other things, on the basis of the Bidder's statement and also a list of references from the last 5 years, submitted by the Bidder, concerning the execution of the technology that is the subject of the contract, i.e. automatic dispensing equipment.

**The purchaser reserves the right to conduct reference visits to verify the correct operation of the offered technology under industrial conditions.**

## **PERSONS CAPABLE OF PERFORMING THE CONTRACT**

1. Has or will have at its disposal persons capable of performing the contract. Fulfilment of the conditions will be verified, among others, on the basis of the bidder's statement included in Annex No. 2 - Bid and Price Form

## **CONDITIONS FOR EXCLUSION FROM THE PROCEEDINGS**

### **1. A Bidder who:**

- Performed directly activities related to the preparation of the conducted proceedings or used persons involved in such activities to prepare a bid, unless the participation of this Economic Operator in the proceedings will not hinder fair competition;
- Submitted false information affecting the outcome of the proceedings;
- Is an entity related to the Ordering Party in terms of personal or capital. A capital or personal relationship means a mutual relationship between the Awarding Entity or persons authorized to incur liabilities on behalf of the Awarding Entity, or persons performing activities on behalf of the Awarding Entity related to the preparation and execution of the procedure for selecting the Economic Operator and the Economic Operator, consisting in particular of:
  - a) participation in a company as a partner in a civil partnership or partnership,
  - (b) ownership of at least 10% of shares,
  - c) serving as a member of the supervisory or management body, proxy, attorney,
  - d) remaining in such a legal or factual relationship that may raise reasonable doubts about the impartiality of the contractor's selection, in particular remaining in a marital relationship, in a relationship of consanguinity or affinity in a direct line, in a relationship of consanguinity or affinity in a lateral line, or in a relationship of adoption, custody or guardianship, or remaining in cohabitation.

The above condition will be verified on the basis of the Bidder's Statement (Annex No. 3 to the Tender Inquiry).

The Ordering Party reserves the right to verify the Bidder's fulfilment of this condition on the basis of its knowledge and available documents (for example, KRS – National Court Register Number).

- It is an entity designated under Article 7(1) of the Law of April 13, 2022, on special solutions to prevent support for aggression against Ukraine and to protect national security (Journal of Laws 2023, item 129, as amended).

- He did not make a statement, that the implementation of the contract does not involve the appropriation of funds:

- a) for activities banned under acts of EU law adopted or amended in connection with Russia's aggression against Ukraine, i.e. Council Regulations: (EU) 2022/263<sup>1</sup>, (EU) No. 833/2014, (EU) No. 692/2014<sup>2</sup> or (EC) No. 765/2006<sup>3</sup>, Council Decisions: (CFSP) 2022/266<sup>4</sup>, 2014/512/CFSP<sup>5</sup>, 2014/145/CFSP or 2012/642/CFSP ];<sup>6</sup>
- b) to satisfy the claims referred to in Article 11 of Council Regulation (EU) No. 833/2014, in Article 11 of Council Regulations (EU) No. 269/2014, (EU) No. 208/2014, Article 10 of Council Regulation (EU) 2022/263, Article 6 of Council Regulation (EU) No. 692/2014, Article 8d of Council Regulation (EC) No. 765/2006, Article 7 of Council Decision 2014/512/CFSP, or Article 2n of Council Decision 2012/642/CFSP;
- c) for trade with Russia or investment in Russia, for trade with Belarus or investment in Belarus ;

## **XII. INDICATION OF PERSONS AUTHORIZED TO COMMUNICATE WITH BIDDERS:**

To communicate with the Bidders on matters related to the proceedings, the following are authorized:

**Mikołaj Cieślak** [mikolaj.cieslak@bart.pl](mailto:mikolaj.cieslak@bart.pl)

The Ordering Party stipulates that communication (including all questions, answers and clarifications to the Tender Inquiry) between the Ordering Party and the Bidders shall take place through the BK2021 application available at:

<https://bazakonkurencyjnosci.funduszeuropejskie.gov.pl>

## **XIII. TERMS OF CONTRACT AND CONTRACT AMENDMENTS**

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<sup>1</sup> Council Regulation (EU) 2022/263 of February 23, 2022 on restrictive measures in response to the recognition of the non-government-controlled areas of Ukraine's Donetsk and Lugansk regions and the ordering of the deployment of Russian military forces in these areas (Official Journal of the EU L 42I of February 23, 2022, p. 77, as amended).

<sup>2</sup> Council Regulation (EU) No. 692/2014 of June 23, 2014 on restrictive measures in response to the illegal annexation of Crimea and Sevastopol (Official Journal of the EU L 183 of June 24, 2014, p. 9, as amended).

<sup>3</sup> Council Regulation (EC) No. 765/2006 of May 18, 2006 concerning restrictive measures in view of the situation in Belarus and Belarus' participation in Russia's aggression against Ukraine (Official Journal of the EU L 134 of May 20, 2006, p. 1, as amended).

<sup>4</sup> Council Decision (CFSP) 2022/266 of February 23, 2022 on restrictive measures in response to the recognition of the non-government-controlled areas of Ukraine's Donetsk and Luhansk regions and the ordering of the deployment of Russian military forces in these areas (OJ EU L 42, February 23, 2022, p. 109, as amended)

<sup>5</sup> Council Decision 2014/512/CFSP of July 31, 2014 concerning restrictive measures in view of Russia's destabilizing actions in Ukraine (Official Journal of the EU L 229 of July 31, 2014, p. 13, as amended).

<sup>6</sup> Council Decision 2012/642/CFSP of October 15, 2012 concerning restrictive measures in view of the situation in Belarus and Belarus' participation in Russia's aggression against Ukraine (Official Journal of the EU L 285, October 17, 2012, p. 1, as amended)

- 1) The contract will be concluded on a model prepared by the Ordering Party, but the Ordering Party may take into account the proposals of the Bidder's model contract.
- 2) The Bidder's general terms and conditions of contract will not apply to the contract, unless the Ordering Party agrees (in whole or to selected provisions).
- 3) No terms and conditions of delivery, sale, or other documents of the Supplier or Orgalime shall apply to the contract and in the performance of any part thereof, even if set forth in the Supplier's offer. Such terms and conditions presented by the Supplier in its offer shall be deemed not to be reserved. The parties may take into account the Supplier's or Orgalime's terms and conditions in the negotiation of the contract, but in no case shall Orgalime's provisions contrary to the T&Cs or giving the Supplier more rights or exemptions from liability than are provided by law or general liability rules apply to the contract, unless otherwise agreed by the parties in the negotiations.
- 4) The bidder will be liable for damages (contractual and tort) under the general principles of the Civil Code of Polish law.
- 5) The parties shall be free from liability for total or partial failure to perform the obligations set forth in the Agreement in cases caused by circumstances of force majeure or state of emergency (e.g. state of emergency, state of war, state of natural disaster, etc.). The parties are obliged to notify each other within 24 hours of the cessation of force majeure.
- 6) The Party that has been hindered in the performance of its obligations under this Contract by force majeure shall be obliged to exercise due diligence to remove the effects of the force majeure as soon as possible and undertake further performance of the Contract. If force majeure on the part of the Bidder persists for a period of 30 days, the Ordering Party may withdraw from the Contract.
- 7) Failure to meet the original contract completion date for reasons other than those mentioned above will result in a contractual penalty, with the proviso that the Ordering Party may assert claims in excess of the contractual penalties, which will be regulated in the contract with the Contractor.
- 8) The manufacturer's warranty shall not exclude or limit the Purchaser's rights under the warranty.
- 9) The Ordering Party provides for the possibility of amending the concluded contract in the event of the following circumstances:
  - a) The occurrence of changes in generally applicable laws to the extent affecting the performance of the subject matter of the contract.
  - b) Resulting discrepancies or ambiguities in the meaning of terms used in the contract, which cannot be removed in any other way, and the amendment will allow to remove discrepancies and clarify the contract in order to unambiguously interpret its provisions by the parties.
  - c) Change in the date of execution of the subject of the contract for reasons beyond the control of the Contractor;
  - d) The occurrence of the need for changes caused by the following circumstances:
    - change of data related to administrative and organizational support of the contract (e.g., changes in bank account number),
    - changes in contact details,
    - change in the applicable VAT rate.

#### **XIV. ADDITIONAL INFORMATION**

1. Information on the outcome of the proceedings will be posted on the competitive database <https://bazakonkurencyjnosci.funduszeuropejskie.gov.pl/>.

2. If the Bidder, whose bid was selected, evades the conclusion of the contract, the Ordering Party may select the most advantageous bid from among the remaining bids, without re-evaluating them.
3. Bidders are not entitled to legal remedies (protest, appeal, complaint) from the conducted proceedings, as defined in the provisions of the Public Procurement Law, respectively.
4. The Ordering Party reserves the right to cancel or amend the provisions of the bidding procedure at any time.

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*signature*

Annex No. 1 - Description of the subject of the contract - confidential document;

Annex No. 2 - Template of the Offer and Price Form;

Annex No. 2a - Specification Form - confidential document;

Annex No. 3 - Declaration of no personal and capital relations;

Annex 4 - Declaration of confidentiality;

Annex No. 5 - List of technical potential, personnel, knowledge and experience of the Bidder;