Contract notice

Supplies

Provision of patent attorney services for Łukasiewicz – PORT within the Virtual Research Institute

SECTION I - CONTRACTING AUTHORITY

1.1.) The role of the Contracting Authority

The procedure shall be conducted independently by the Contracting Authority

1.2.) Name of the Contracting Authority: Sieć Badawcza Łukasiewicz – PORT Polski Ośrodek Rozwoju Technologii (Łukasiewicz Research Network – PORT Polish Centre for Technology Development)

1.4) National Identification Number: REGON 020671635

1.5) Contracting Authority’s address

1.5.1.) Street: Stabłowicka 147

1.5.2.) Locality: Wrocław

1.5.3.) Postal Code: 54-066

1.5.4.) Region (Voivodship): Dolnośląskie

1.5.5.) Country: Poland

1.5.6.) NUTS 3 location: PL514 - City of Wrocław

1.5.9.) Email address: joanna.oczkowicz@port.lukasiewicz.gov.pl

1.5.10.) Website address of the Contracting Authority <https://www.port.org.pl/pl/>

1.6.) Type of the Contracting Authority Public Contracting Authority - legal person referred to in Article 4(3) of the Act (public law entity)

1.7.) Contracting Authority's scope of business activity: Other activity

Research and development

SECTION II – BASIC INFORMATION

2.1.) The notice concerns:

Public Procurement

2.2.) The notice concerns social and other specific services: Yes

2.3.) Name of the contract or of the Framework Contract:

Provision of patent attorney services for Łukasiewicz – PORT within the Virtual Research Institute

2.4.) Procedure ID: ocds-148610-3ad1cb77-c978-11ee-875e-a22221c84ba7

2.5.) Notice number: 2024/BZP 00211421

2.6.) Contract notice version: 01

2.7.) Date of the contract notice: 2024-02-20

2.8.) The contract or the Framework Contract have been included in the proceedings plan: No

2.11.) Only the Economic Operators referred to in Article 94 of the Act may apply for the award of the contract: No

2.14.) Does the contract or Framework Contract concern a project or programme co-financed by the European Union: No

2.16.) Procedure for awarding the contract and its legal basis

The contract is awarded under the basic procedure pursuant to: Article 275(2) of the Act

SECTION III – SHARING OF CONTRACT DOCUMENTS AND COMMUNICATION

3.1.) Website address of the conducted procedure

https://platformazakupowa.pl/pn/port

3.2.) The Contracting Authority reserves access to the contract documents: No

3.4.) Economic operators shall submit tenders, requests to participate, statements and other documents only by electronic means: Yes

3.5.) Information on the electronic means of communication to be used by the Contracting Authority to communicate with Economic Operators - website address: https://platformazakupowa.pl/pn/port

3.6.) Technical and organisational requirements for electronic correspondence: 1. Communication in the procurement procedure, including submission of tenders, exchange of information and transfer of documents or statements between the Contracting Authority and the Economic Operator, subject to the exceptions provided for in the PPL, shall be carried out via electronic communication means. Electronic communication means shall be understood as electronic communication means defined in the Act of 18 July 2002 on the provision of services by electronic means.

2. The tender, statements referred to in Article 125(1) of the PPL, the qualitative evidence, powers of attorney shall be prepared in an electronic form, in generally available data formats, in particular in .txt, .rtf, .pdf, .doc, .docx, .odt formats. The tender, as well as the statements referred to in section 7.1 of the ToR shall be submitted, under pain of invalidity, in an electronic form or in an electronic format bearing a trusted signature or a personal electronic signature.

3 Qualified signatures used by Economic Operators to sign any files must comply with the Regulation (EU) no. 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market (eIDAS).

4. If the XAdES external signature format is used, the Contracting Authority requires the inclusion of the appropriate number of files, i.e. signed data files and signature files in XAdES format.

5. Communication between the Economic Operator and the Contracting Authority as well as transfer of information, statements, requests, notices and documents shall take place via electronic communication means. Communication between the Contracting Authority and Economic Operators, including all statements, requests, notices and information shall be transmitted electronically via the Platform and the ‘Send a message’ form available at https://platformazakupowa.pl/pn/port or by e-mail of the Contracting Authority indicated in section 10.6 of the ToR.

6. Person authorised by the Contracting Authority to contact Economic Operators: Joanna Oczkowicz: joanna.oczkowicz@port.lukasiewicz.gov.pl

7. The Economic Operator, as a professional entity, is obliged to check messages and communications sent by the Contracting Authority directly on https://platformazakupowa.pl, because the notification system may fail or the notification may end up in the SPAM folder.

8. The Contracting Authority, in accordance with the Regulation of the Prime Minister of 31 December 2020 on the method of preparing and submitting information and technical requirements for electronic documents and means of electronic communication in a public procurement procedure or competition (Journal of Laws of 2020, item 2452), specifies the necessary hardware and application requirements to work on platformazakupowa.pl, i.e:

1) permanent access to the Internet with a guaranteed bandwidth of not less than 512 kb/s;

2) PC or MAC computer with the following configuration: min. 2 GB Ram, processor Intel IV 2 GHZ or its newer version, one of the operating systems – MS Windows 7, Mac Os x 10 4, Linux, or their newer versions,

3) any web browser installed, in the case of Internet Explorer at least version 10.0,

4) JavaScript enabled;

5) Adobe Acrobat Reader or other software supporting .pdf file format installed.

6) Encryption at https://platformazakupowa.pl is using TLS 1.3 protocol.

7) Indication of data reception time by the purchasing platform is the date and the exact time (hh:mm:ss) generated according to the local time of the server synchronised with the clock of the Central Office of Measures.

3.8.) The Contracting Authority requires that tenders be drawn up and submitted using electronic construction data modelling tools or any similar tools which are not generally available: No

3.12.) Tender - electronic catalogue: n/a

3.14.) Languages in which documents submitted in the proceedings may be drawn up:

Polish

English

3.15.) GDPR (Information Obligation): According to the ToR

SECTION IV – SUBJECT-MATTER OF THE CONTRACT

4.1.) General information relating to the subject-matter of the contract.

4.1.1.) A market consultation has been carried out prior to the launch of the procedure: No

4.1.2.) Reference number: DZ.271.11.2024

4.1.3.) Contract type: Services

4.1.4.) The Contracting Authority shall award the contract in lots, each of which shall be the subject of a separate procedure: No

4.1.8.) Tenders for lots are allowed: No

4.1.13.) The Contracting Authority shall take into account social, environmental or labelling considerations in the description of the subject matter of the contract:: No

4.2. Specific information relating to the subject-matter of the contract:

4.2.2.) Brief description of the subject-matter of the contract

The subject of the contract is the provision of legal services in the field of intellectual property protection management, in particular obtaining patent protection and know-how protection, as well as the provision of strategic consultancy services in the field of intellectual property protection in domestic and foreign markets for the Virtual Research Institute managed by the Contracting Authority – Sieć Badawcza Łukasiewicz – PORT Polski Ośrodek Rozwoju Technologii (Łukasiewicz Research Network – PORT Polish Centre for Technology Development in the field of Medical Biotechnology with particular emphasis on mRNA technology.

The Contracting Authority has a demand for the Subject of the Agreement on the basis of the contract for the management of the Virtual Research Institute of 16 October 2020, as it acts as a managing entity within the meaning of the Act of 4 April 2019 on support for scientific activity from the Polish Science Fund (Fundusz Polskiej Nauki), acting on behalf of the State Treasury – the Minister of Science and Higher Education.

A detailed description of the subject of the contract, along with the Contracting Authority's requirements regarding the subject of the contract, have been specified in Appendix 2 to the ToR – Description of the Subject of the Contract, in Appendix 10 to the ToR – Quotation Form and in Appendix 3 to the ToR – Model Agreement.

4.2.6.) Main CPV code: 79120000-1 – patent and copyright consultancy services

4.2.8.) The contract includes options: Yes

4.2.9.) Type and maximum value of the option and circumstances of using the option: The Contracting Authority stipulates that the estimated maximum quantities of the Subject of the Contract are specified in Appendix 10 to the ToR – Quotation Form. The estimated values are maximum values and the Contracting Authority has the possibility to adjust the number of orders within the above-mentioned categories to its current needs, taking into account the provisions of the model agreement on the basis of orders placed. The Contracting Authority reserves the right to increase the number of hours/pieces under the given items on the quotation form, subject to the maximum contract value not being exceeded when placing orders.

The Contracting Authority stipulates that the guaranteed value that the Contracting Authority will use during the term of the Agreement is 20 % of the gross remuneration of the Agreement. The subject of the Agreement will be performed on the basis of orders placed by e-mail by the authorised person in accordance with the Agreement. The remaining 80 per cent of the gross remuneration under the Agreement may be used as required by the Contracting Authority under the option clause, many times, according to the Contracting Authority's needs. The right of option shall be exercised on the basis of a declaration of intent by the Contracting Authority (in writing, by e-mail or in electronic form bearing a qualified electronic signature) executed by the Contracting Authority no later than by the end of the 46th month of the term of the Agreement and the Economic Operator shall be obliged to undertake its exercise under the Agreement. After the expiry of the period referred to in the preceding sentence, the option clause shall expire. The option shall be exercised on the basis of the unit prices (rates) specified in the Quotation Form (Appendix 10 to the ToR) and in the Agreement and on the terms and conditions specified in the Agreement. Failure to exercise the right of option by the Contracting Authority shall not give rise to any claim on the part of the Economic Operator against the Contracting Authority.

4.2.10.) Execution period of the contract or of the Framework Contract: 48 months

4.2.11.) The Contracting Authority envisages renewals: No

4.3.) Tender evaluation criteria:

4.3.2.) A manner of determining the weighting of the criteria for evaluation of tenders: Scoring

4.3.3.) Applicable tender evaluation criteria: Price criterion and quality criteria

Criterion 1

4.3.5.) Criterion name: Price

4.3.6.) Weight: 50

Criterion 2

4.3.4.) Type of criterion: organization, professional qualifications and experience of persons appointed to carry out the contract

4.3.5.) Criterion name: Professional qualifications and experience of persons appointed to perform the contract

4.3.6.) Weight: 50

4.3.10.) The Contracting Authority specifies the social, environmental or innovation aspects, requests labels or uses life-cycle costing in relation to the tender evaluation criteria: No

4.2.13.) The Contracting Authority envisages awarding contracts for similar services or works to the actual Economic Operator: No

SECTION V - QUALIFICATION OF ECONOMIC OPERATORS

5.1.) The Contracting Authority provides for optional grounds for exclusion: No

5.3.) Conditions for participation in the procedure: Yes

5.4.) Name and description of the conditions for participation in the proceedings.

Conditions for technical or professional capacity:

1. The Contracting Authority requires that the Economic Operator has, within the last 3 years prior to the time limit for submission of tenders, and if the period of operation is shorter, within this period, the following experience:

a) has performed at least 4 services for the development of intellectual property protection strategies in the field of Medical Biotechnology with a particular focus on mRNA technology. By developing an Intellectual Property Protection Strategy, the Contracting Authority understands the development of a plan of actions aimed at obtaining the broadest possible protection of Intellectual Property Rights and know-how and their enforcement, and it is important that the Economic Operator takes into account geographical and technological aspects and cooperates with the Contracting Authority on an ongoing basis in order to deliberately obtain the broadest possible protection of Intellectual Property Rights, and that the Strategy specifies, inter alia, the analysis of possible protection methods, identification of optimal solutions, estimation of costs, determination of jurisdiction, etc.

b) has performed at least 1 Intellectual Property Protection service for at least one company in the biotechnology or pharmaceutical industry with International Standards-reported revenue\* of at least USD 500 million in one of the last five years or the company has raised at least USD 100 million in investment from Venture Capital.

\*By the method of verifying either revenue or capital raising, the Contracting Authority means what follows:

* The entity has published financial reports in accordance with International Financial Reporting Standards (IFRS) or US Generally Accepted Accounting Principles (US GAAP),
* The entity regularly had its financial statements audited annually by a reputable audit firm and published them in accordance with the applicable regulations,
* The entity has been listed on a stock exchange and published its financial results in accordance with the requirements of the relevant regulated market,
* The entity has regularly reported and made available to the public its financial results, which were independently audited in accordance with generally accepted accounting standards,
* The entity has published audited financial statements, allowing verification of the revenue generated;

c) has performed at least 4 FTO analysis services for inventions in the area of Medical Biotechnology, of which at least 1 analysis service for mRNA-based technology;

d) has represented customers running business in the area of Medical Biotechnology, of which at least two entrepreneurs before a competent court, in at least 2 Intellectual Property Protection litigations (e.g. patent invalidation or infringement, conducted in countries such as USA or China or Japan or Germany or UK or France or Italy);

e) has performed at least 3 state of the art research reports in the field of Medical Biotechnology, including at least 2 on mRNA technology;

f) has conducted at least 5 proceedings in an international procedure under the Patent Cooperation Treaty (PCT) in the field of Medical Biotechnology on behalf of entrepreneurs, excluding the provision of services to universities and research institutes;

g) has conducted proceedings before the United States Patent and Trademark Office (USPTO) resulting in the grant of a patent for at least five business applications, excluding applications for universities and research institutes;

h) has conducted proceedings before the Patent Office of the People's Republic of China (SIPO) resulting in the granting of patents for at least 5 business applications, excluding applications for universities and research institutes;

i) has performed at least 4 patent application services before the EPO, resulting in the granting of a patent for at least 3 applications to entrepreneurs, excluding the provision of services to universities and research institutes;

2. The Contracting Authority requires that the Economic Operator has at its disposal the following persons appointed to perform the contract: at least 3 persons who will have the following professional qualifications, education and experience, although one person may have several of the following:

a) At least 1 person who has performed Intellectual Property Rights protection services for entrepreneurs in the biotechnology or pharmaceutical industry who are listed on a stock exchange and whose revenue is/was at least USD 500 million in the calendar year in which the services are/were provided;

b) At least 1 person who has carried out the process of filing at least 2 patent applications for entrepreneurs in an international procedure in accordance with the Patent Cooperation Treaty (PCT) in the field of medical biotechnology;

c) At least 1 person who has conducted a patent application process for entrepreneurs completed with at least 4 patents before the USPTO or SIPO or EPO;

d) At least 1 person who has led the process of filing mRNA-based technology patent applications resulting in at least 2 entrepreneurial patents before the USPTO or SIPO or EPO;

e) At least 1 person with experience in a minimum of 2 Intellectual Property Rights litigations (e.g. patent invalidation or infringement) before competent courts in countries such as the United States or China or Japan or Germany or France or the United Kingdom or Italy;

f) at least 2 persons qualified as European patent attorneys (i.e. who have passed the European Qualification Examination EQE), of which at least one person with a minimum of two years' experience as a patent attorney;

g) At least 2 persons with a biotechnology background (upper second degree, Master's degree or equivalent);

h) At least 1 post-doctoral fellow in the area of medical biotechnology (3rd level university degree, PhD or equivalent);

3 A specific, objectively justifiable way in which Economic Operators competing jointly for the contract:

NOTE: In relation to Economic Operators competing jointly for the contract, with regard to the condition regarding technical or professional capacity in terms of experience (paragraph 5.2.4.1 above) the Contracting Authority does not allow for the condition to be fulfilled by Economic Operators jointly, i.e. at least one of the Economic Operators should fulfil the condition of technical or professional capacity to the full extent (it does not apply to the disposal of persons fulfilling the specified conditions), with the proviso that it concerns the given condition specified in points (a)-(i). Each item (points (a) to (i)) is treated as a separate condition. With regard to a specific condition, Economic Operators competing jointly for a contract may rely on the abilities of the one of the Economic Operators who will perform the services for the performance of which those abilities are required (Article 117(3) of the PPL).

5.5.) The Contracting Authority requires the submission of the statement referred to in Article 125(1) of the Act: Yes

5.6.) List of qualitative evidence to confirm the non-exclusion: Statement of the Economic Operator, within the scope of Article 108(1)(5) of the PPL, on not being a member of the same capital group within the meaning of the Act of 16 February 2007 on competition and consumer protection with another economic operator who has submitted a separate tender or a statement of belonging to the same capital group together with documents or information confirming preparation of a tender independently of another economic operator belonging to the same capital group in accordance with the contents set out in Appendix 5 to the ToR.

5.7.) List of personal means of evidence to confirm that the conditions for participation in the proceedings are met: 1) a list of services rendered over the last 3 years before the time limit for the submission of tenders, and if the period of operation is shorter in this period, with indication of their value, object, dates of completion and entities for which the services were performed, as well as enclosing evidence stating whether the services were performed properly, with the evidence being references or other documents prepared by the entity for which the services were performed, and if the Economic Operator, for reasons beyond its control, is not able to obtain such documents – a statement by the Economic Operator. It is to be evident from the list of services that the condition referred to in point 5.2.4.1 has been fulfilled (the model list of services is attached as Appendix 8 to the ToR).

2) list of persons appointed by the Economic Operator to carry out the contract, in particular those responsible for providing the service, quality control, together with information on their qualifications, experience and education necessary to carry out the contract, as well as the scope of activities carried out by them and information on the basis for having such persons at their disposal. It is to be evident from the list of persons that the condition referred to in point 5.2.4.2 of the ToR has been fulfilled (the model list of services is attached as Appendix 9 to the ToR).

SECTION VI - TERMS OF THE CONTRACT

6.1.) The Contracting Authority requires or allows variant tenders: No

6.3.) The Contracting Authority envisages an electronic auction: No

6.4.) The Contracting Authority requires a tender deposit: No

6.5.) The Contracting Authority requires a security on due performance of the contract: No

6.6.) Requirements concerning submitting a tender by Economic Operators jointly competing for the award of the contract:

1. Economic Operators may jointly compete for the contract. In such a case Economic Operators shall appoint a proxy to represent them in the proceedings or to represent them and conclude the public procurement contract. The power of attorney shall be attached to the tender.

2. In the case of Economic Operators competing jointly for the contract, the statements referred to in section 7.1 of the ToR shall be submitted by each of them. These statements shall confirm the absence of grounds for exclusion to the extent to which each of the Economic Operators demonstrates compliance with the conditions for participation in the procedure.

3. Economic Operators competing jointly for the contract shall attach to their tender a statement indicating which services will be provided by individual Economic Operators (according to the template in Appendix 6 to the ToR).

6.7.) The Contracting Authority provides for the cancellation of the procedure if the public funds which it intended to allocate for the financing of all or part of the contract have not been awarded: Yes

SECTION VII - PROPOSED PROVISIONS OF THE CONTRACT

7.1.) The Contracting Authority envisages granting advance payments: No

7.3.) The Contracting Authority envisages amendments to the Contract. Yes

7.4.) Type and scope of amendments to the Contract and conditions for introducing them:

20.1. The selected Economic Operator shall be obliged to conclude a public procurement Contract on the terms and conditions specified in the Model Contract constituting Appendix 3 to the ToR.

20.2. The scope of Economic Operator's performance resulting from the Contract shall be identical with the commitment undertaken in the tender.

20.3. The Contracting Authority provides for the possibility of amending the concluded Contract in relation to the content of the selected tender within the scope regulated in Articles 454-455 of the PPL and indicated in the Model Contract constituting Appendix 3 to the ToR.

7.5.) The Contracting Authority has taken into account social, environmental, innovation or labelling aspects in relation to the performance of the contract: No

SECTION VIII – PROCEDURE

8.1.) Time limit for the submission of tenders: 2024-03-01 10:00

8.2.) Place for the submission of tenders: <https://platformazakupowa.pl/pn/port>

8.3.) Time limit for opening of tenders: 2024-03-01 10:30

8.4.) Tender validity period: up to 2024-03-30

8.5.) The Contracting Authority envisages selecting the most advantageous offer with the possibility of negotiations: Yes

8.6.) Maximum number of Economic Operators to be invited to negotiate: 3

8.7) Tender evaluation criteria which the Contracting Authority intends to use to limit the number of Economic Operators:

Should the decision be taken to conduct negotiations, the Contracting Authority, acting pursuant to Article 288(1) of the PPL, shall limit the number of Economic Operators invited to negotiations to three, whose tenders satisfy to the highest extent those criteria, i.e. criterion 1 price, under which negotiations will be conducted with a view to improving the content of the tenders.

SECTION IX – OTHER INFORMATION

The tender shall contain:

1) A completed and signed Tender Form – the model form is attached as Appendix 1 to the ToR.

2) Completed and signed quotation form – Appendix 10 to the ToR;

3) Completed and signed list of additional persons – Appendix 11 to the ToR;

4) Completed and signed statement referred to in section 7.1. of the ToR – a model statement is attached as Appendix 4 to the ToR;

5) Appropriate power of attorney(s) – if the power to sign the tender does not come directly from the appropriate register (if applicable),

6) In the case of Economic Operators jointly competing for the contract, a document appointing a Representative to represent them in the contract award procedure or to represent them in the procedure and to conclude the public contract (if applicable).

7) Statement of the Economic Operators competing jointly for the contract, referred to in section 9.3. of the ToR (if applicable), Appendix 6;

8) A copy or information from the National Court Register, Central Business Activity Register or other relevant register to confirm that the person acting on behalf of the Economic Operator is authorised to represent him.

9) The statement of the third-party providing resources referred to in section 8.3 of the ToR.

The Economic Operator is not obliged to submit the above-mentioned documents if the Contracting Authority can obtain them using free and generally available databases, provided that the economic operator indicates the data enabling access to those documents.

The Economic Operator shall be excluded from the public procurement procedure in the cases referred to in Article 7(1) of the Act of 14 April 2022 on special solutions in the field of counteracting the support of aggression against Ukraine and serving the protection of national security (Journal of Laws 2022, item 1497, as amended). Article 7(3) of the aforementioned Act shall apply to an Economic Operator subject to exclusion in this respect.

The public procurement procedure for social services, conducted in accordance with the basic procedure with the possibility of negotiating in order to improve the content of tenders, with the contract value not exceeding EUR 750,000.00, pursuant to Article 359(2) in conjunction with Article 275(2) of the Act of 11 September 2019 – Public Procurement Law