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al. Krasińskiego 11a

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**Procedure ref. no.:** **ZZP.261.****10.2023**

**TERMS OF REFERENCE**

 (TOR)

**BASIC MODE WITHOUT NEGOTIATION**

**conducted in accordance with the provisions of the Law of September 11, 2019, Public Procurement Law (unified text Journal of Laws of 2022, item 1710, as amended)**

**for deliveries entitled:**

**"Successive purchase of sheet music publications from foreign publishers"**

This specification includes:

|  |  |  |  |
| --- | --- | --- | --- |
| **No.** | **Part Designation** | **Part Name** | **Number of pages** |
|  | Part I | Instructions for Contractors (IfC) with appendices; | 33 |
|  | Part II | Draft contract provisions (model contract); | 9 |
|  | Part III | Description of the subject matter of the order (DSMO) | 3 |

Kraków, 13.06.2023

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|  |  |
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| **Part Designation** | **Part Name** |
| **Part I** | **Instructions for Contractors (IfC) with appendices**  |

**PART I - INSTRUCTIONS FOR CONTRACTORS (IfC)**

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# PART I - INSTRUCTIONS FOR CONTRACTORS

### Name and address of the Contracting Authority.

**Polskie Wydawnictwo Muzyczne**

**al. Krasińskiego 11a**

**31-111 Kraków**

Procurement Team

Telephone no.: (+48) 12 422 70 44

Fax no.: (+48) 12 422 01 74

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**website:** www.pwm com.pl

### Website address of the proceedings, mode of awarding the contract, information on negotiations;

**2.1. Website address of the proceedings:**

E-mail address: zamowienia\_publiczne@pwm.com.pl

**Website of the ongoing proceedings**: <https://platformazakupowa.pl/pn/pwm>

Amendments and clarifications to the content of the ToR and other contract documents directly related to the contract award procedure will be made available on the website of the conducted proceedings <https://platformazakupowa.pl/pn/pwm> (hereinafter referred to as the "Platform").

Detailed information on the method of communication adopted in the proceedings can be found in Chapter 13 of the IfC.

**2.2. Contract award mode:**

The proceedings are conducted under the basic no negotiations procedure in accordance with the provisions of the Public Procurement Law of September 11, 2019 (unified text Journal of Laws of 2022, item 1710, as amended), hereinafter referred to as the **PPL Act**, for contracts with an estimated value below EUR 215,000, which is the equivalent of PLN 957,524.

In matters not regulated by this ToR or in a situation of discrepancy between the provisions of the ToR and the PPL Act or executive acts issued on its basis, the provisions of the Act or executive acts shall be applicable and prevail.

The Contracting Authority **does not provide for** a selection of the most advantageous bid with the possibility of negotiation.

### Description of the subject matter of the contract, equivalence, employment.

#### 31Description of the subject matter of the contract

The subject matter of the contract is successive purchase of foreign music-themed sheet music publications for a period of 30 and 36 months, hereinafter referred to as "the order". A detailed description of the order is contained in Part III of the ToR- Description of the Subject Matter of the Order (hereinafter also DSMO). The quantities or values provided in the ToR and in the appendices to the ToR constitute the Contracting Authority's estimated needs during the term of the contract, and do not constitute an obligation for the Contracting Authority to fulfill it in full, nor do they constitute grounds for the Contractor to claim compensation for failure to fulfill the entire subject matter of the contract.

Place of order execution - **place** **of delivery of** publications covered by the scope of individual partial deliveries - the registered office of Polskie Wydawnictwo Muzyczne at al. Krasińskiego 11a, 31-111 Kraków.

The subject matter of the contract is divided into 2 parts, i.e.:

**Part 1 of the Order - Task 1 entitled: *"Music-themed sheet music publications"***

The subject matter of the contract, this part of the contract, is foreign music-themed sheet music publications.
With the proviso that the bid submitted for this part of the contract must include at least sheet music publications of the following publishing houses (publishers):

1. Willis Music
2. Unión Musical Ediciones
3. Wise Publications
4. Music Sales
5. Hal Leonard
6. Oxford University Press
7. Ricordi
8. ABRSM
9. Alfred Publishing
10. Alphose Leduc
11. Durand
12. Max Eschig
13. Salabert

**Part 2 of the Order - Task 2 entitled: *"Sheet music publications of Baerenreiter Publishing House"***

The subject matter of this part of the contract is publications published by Baerenreiter Publishing House.

#### 3.1.1. CPV Common Procurement Vocabulary:

[**22110000-4**](https://www.portalzp.pl/kody-cpv/szczegoly/drukowane-ksiazki-1287) Printed books

#### 3.2 Equivalence.

The requirement to indicate the publication of specific publications stems from the current and justified needs of the Contracting Authority i.e. the need to ensure a full commercial and promotional offer of Polskie Wydawnictwo Muzyczne, which includes offering a comprehensive range of sheet music of classical, film and pop music, as well as to meet the current needs of the Contracting Authority in the scope of its commercial activities. In addition, sheet music publications are cultural creations belonging to the creator and characterized by inalienable, non-transferable and also unique attributes, such as knowledge, experience, compositional skills . These attributes testify to the quality of the publication and its suitability for educational and artistic purposes. For this reason, the Contracting Authority attaches importance to the choice of not only the subject matter but also the authorship of the publication.

#### 3.3 Contractor's obligation of personal performance of the order.

The Contracting Authority does not reserve the obligation of the Contractor to personally perform the tasks within the scope of the contract.

### Partial bids.

The Contracting Authority allows submission of partial bids. The Contracting Authority informs that it allows bids to be submitted for one or two parts of the contract, as indicated in paragraph **3.1 above**.

The Contracting Authority **does not limit** the number of parts of the contract for which a contractor may submit a bid.

### Variant bids.

The Contracting Authority does not allow for a submission of variant bids.

### Contract completion date.

The contract for the successive supply of publications will be concluded for a period of **30 months** (task 1) and **36 months** (task 2). The Contractor shall perform individual partial deliveries (hereinafter referred to as **deliveries**) within a maximum period of **14 days** from the date of placing by the Contracting Authority an order for a publication (sheet music items) offered by the publishers included in the Contractor's bid.

The Contractor **may offer a shorter** delivery period, subject to scoring in accordance with the bid evaluation criteria indicated in paragraph 18 of this IfC.

### Draft contract provisions.

The draft provisions of the public procurement contract, which will be introduced into the procurement contract, are contained in the model constituting part II of the ToR.

### Grounds for exclusion.

The Contracting Authority will exclude from the proceedings contractors with respect to whom there are grounds for exclusion referred to in Articles 108 (1) and 109 (1) (4) of the PPL Act and Article 7 (1) of the Act of April 13, 2022 on special solutions to prevent support for aggression against Ukraine and to protect national security (Journal of Laws of 2023, item 129, as amended), hereinafter referred to as **the "Sanction Law."**

A Contractor may be excluded by the Contracting Authority at any stage of the procurement process.

#### 8.1 Grounds for exclusion referred to in Article 108 (1) of the PPL.

According to Article 108 (1) of the PPL Law:

*The Contractor shall be excluded from the procurement proceedings for:*

*1) being a natural person who has been validly convicted of a crime:*

*(a) participation in an organized criminal group or association aimed at committing a crime or fiscal crime referred to in* [*article 258 of the*](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytonrsgm3diltqmfyc4nrtg43dqobrge) *Penal Code,*

*(b) human trafficking as referred to in* [*article 189a of the*](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytonrsgm3diltqmfyc4nrtg43dqnjrgy) *Penal Code,*

*(c) being referred to in* [*articles 228-230a*](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytonrsgm3diltqmfyc4nrtg43dqnrxg4)*,* [*article 250a*](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytonrsgm3diltqmfyc4nrtg43dqnzyga) *Criminal Code, in* [*articles 46-48*](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytoobqgq3deltqmfyc4nruguzdcmjtgi) *of the Law of June 25, 2010 on sports (Journal of Laws of 2020.* [*item 1133*](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytoobqgq3deltqmfyc4nruguzdanzqgm) *and of 2021.* [*item 2054*](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytmobtheztsltqmfyc4nrrga2tqnjxge) *and* [*2142*](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytmobyga4taltqmfyc4nrrge4dqmbvgy)*) or in* [*article 54 paragraphs 1-4*](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytomrxha3doltqmfyc4nrsguztsnzug4) *act of May 12, 2011 on reimbursement of medicines, foodstuffs for special nutritional purposes and medical devices (Journal of Laws of 2022* [*item 463*](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytomrxha3doltqmfyc4nrsguztqobxgy)*,* [*583*](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytomzthaztgltqmfyc4nrsg42tonjwhe) *i* [*974*](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytonjwge2tsltqmfyc4nrtguztenjugu)*),*

*(d) financing of a terrorist crime referred to in* [*article 165a*](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytonrsgm3diltqmfyc4nrtg43dqnbsgm) *Penal Code, or the crime of thwarting or hindering the establishment of the criminal origin of money or concealing its origin, as referred to in* [*article 299*](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytonrsgm3diltqmfyc4nrtg43dqojzgi) *Penal Code,*

*(e) being of a terrorist nature, as referred to in* [*article 115 § 20*](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytonrsgm3diltqmfyc4nrtg43dqmjxhe) *Penal Code, or aimed at committing this crime,*

*(f) entrusting work to a foreign minor referred to in* [*article 9 paragraph 2*](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytmnrxhezdiltqmfyc4nrqgqydsmjrge) *of the Act of June 15, 2012 on the consequences of entrusting work to foreigners residing in the territory of the Republic of Poland in violation of regulations (Journal of Laws of 2021.* [*item 1745*](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytmnrxhezdiltqmfyc4nrqgqydsmbxgq)*),*

*(g) being against economic turnover, referred to in* [*articles 296-307*](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytonrsgm3diltqmfyc4nrtg43dqojxga) *Criminal Code, the crime of fraud referred to in* [*article 286*](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytonrsgm3diltqmfyc4nrtg43dqojtge) *Penal Code, crime against the credibility of documents, as referred to in* [*articles 270-277d*](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytonrsgm3diltqmfyc4nrtg43dqobxgm) *Penal Code, or a fiscal offense,*

*(h) being referred to in* [*article 9 paragraphs 1 and 3*](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytmnrxhezdiltqmfyc4nrqgqydsmjrga) *or* [*article 10*](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytmnrxhezdiltqmfyc4nrqgqydsmjrgm) *of the Act of June 15, 2012 on the consequences of entrusting work to foreigners unlawfully residing on the territory of the Republic of Poland*

*- or for a corresponding criminal act under foreign law;*

*2) if an incumbent member of its management or supervisory body, a partner in a general partnership or partnership, or a general partner in a limited partnership or limited joint-stock partnership, or a proxy has been validly convicted of a crime referred to in item 1;*

*3) against whom a final court decision or a final administrative decision has been issued on the default of payment of taxes, fees or contributions for social or health insurance, unless the contractor, respectively, before the deadline for submission of requests to participate in the proceedings or before the deadline for submission of tenders, has made payments of taxes, fees or contributions for social or health insurance due, together with interest or fines, or has entered into a binding agreement on the repayment of these receivables;*

*4) who has been validly banned from competing for public contracts;*

*5) if the contracting authority can establish, on the basis of reliable grounds, that the contractor has entered into an agreement with other contractors to distort competition, in particular if they belong to the same capital group within the meaning of the Act on Competition and Consumer Protection of February 16, 2007, and have submitted separate tenders, partial tenders or requests to participate in the procedure, unless they show that they prepared these tenders or requests independently of each other;*

*6) if, in the cases referred to in* [*article 85 paragraph 1*](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytimjzhe4tiltqmfyc4njrga4damzygm)*, there has been a distortion of competition resulting from prior involvement of that contractor or an entity that belongs with the contractor to the same group of companies within the meaning of the Act of February 16, 2007 on competition and consumer protection, unless the resulting distortion of competition can be eliminated otherwise than by excluding the contractor from participation in the procurement procedure.*

#### 8.2 Grounds for exclusion referred to in Article 109 (1) of the PPL.

The Contracting Authority provides for exclusion of the Contractor from participation in the procedure in the situation provided for in Article 109 (1) (4). According to Article 109 (1) (4) of the PPL Law:

*The Contracting Authority may exclude a contractor from the procurement procedure: (...)*

1. *in respect of which liquidation has been opened, bankruptcy has been declared, whose assets are managed by a liquidator or a court, has entered into an arrangement with creditors, whose business activities are suspended, or is in any other such situation arising from a similar procedure provided for in the laws of the place where the procedure is initiated;*

In the cases referred to in Article 109(1)(1)-(5) or (7) of the PPL Act [ including the ground for exclusion under Article 109(1)(4) of the PPL Act indicated above], the Contracting Authority may not exclude the contractor if exclusion would be manifestly disproportionate, in particular if the amount of overdue taxes or social security contributions is small, or the economic or financial situation of the contractor referred to in Article 109(1)(4) is sufficient to perform the contract.

#### 8.3 Grounds for exclusion referred to in Article 7 (1) of the Sanctions Law:

According to Article 7(1) of the Sanctions Law:

The following are excluded from the public procurement proceedings or competition conducted under the Law of September 11, 2019. - The Public Procurement Law excludes:

*1) a contractor and a contestant listed in the lists set forth in Regulation 765/2006 and Regulation 269/2014, or included in the list on the basis of a decision on inclusion in the list resolving the measure referred to in Article 1, item 3;*

*2) a contractor and a contest participant whose beneficial owner, as defined in the Act of March 1, 2018 on the prevention of money laundering and terrorist financing (Journal of Laws of 2022, item 593 and 655) shall be a person listed in the lists set forth in Regulation 765/2006 and Regulation 269/2014, or listed or being such a beneficial owner as of February 24, 2022, provided that he has been listed on the basis of the decision on listing resolving the measure referred to in Article 1, item 3;*

*3) a contractor and a participant in the competition whose parent company within the meaning of Article 3 (1) (37) of the Accounting Act of September 29, 1994 (Journal of Laws of 2021, item 217, 2105 and 2106) shall be an entity listed in the lists set forth in Regulation 765/2006 and Regulation 269/2014, or listed or being such a parent entity as of February 24, 2022, provided that it has been listed on the basis of a decision on listing resolving the measure referred to in Article 1, item 3.*

According to Article 7(2) of the Sanctions Law: Exclusion shall be for the duration of the circumstances specified in paragraph 1.

#### 8.4 Self-laundering.

The Contracting Authority notes that in accordance with Article 110(2) of the PPL Act:

*A contractor is not subject to exclusion under the circumstances specified in Article 108 (1) (1), (2) and (5) or Article 109 (1) (2) to (5) and (7) to (10), if he proves to the contracting authority that he has fulfilled all of the following conditions:*

*1) repaired or undertook to repair the damage caused by the crime, misdemeanor or his wrongful conduct, including through monetary compensation;*

*2) has fully explained the facts and circumstances of the crime, misconduct or his wrongful conduct and the damage caused by it, actively cooperating with the competent authorities, including law enforcement authorities, or the contracting authority, as appropriate;*

*3) took specific technical, organizational and human resources measures appropriate to prevent further crimes, offenses or improper conduct, in particular:*

*(a) severed all ties with persons or entities responsible for the contractor's misconduct,*

*(b) reorganized the staff,*

*(c) implemented a reporting and control system,*

*(d) established internal audit structures to monitor compliance with laws, internal regulations or standards,*

*(e) has put in place internal regulations on liability and compensation for non-compliance with laws, internal regulations or standards.*

The contracting authority shall assess whether the actions taken by the contractor, as referred to in Article 110(2) of the PPL Act, are sufficient to demonstrate the contractor's reliability, taking into account the gravity and special circumstances of the contractor's act. If the actions taken by the contractor referred to in paragraph 2 are not sufficient to demonstrate its reliability, the contracting authority shall exclude the contractor.

### Information on the conditions for participation in the proceedings.

#### 9.1 Conditions for participation in the proceedings;

Contractors may apply for the award of this contract who are not subject to exclusion and meet the specified conditions of participation in the proceedings in accordance with Article 112 of the Public Procurement Law:

1. **ability to act in business -** The Contracting Authority **does not specify** any requirements in this regard, the fulfillment of which the Contractor is required to demonstrate in a special way;
2. **the power to conduct a specific business or professional activity, if it results from separate regulations -** The Contracting Authority **does not specify** any requirements in this regard, the fulfillment of which the Contractor is required to demonstrate in a special way;
3. **economic or financial situation -** The Contracting Authority **does not specify** any requirements in this regard, the fulfillment of which the Contractor is required to demonstrate in a special way;
4. technical or professional capacity - The contracting authority **does not specify** any requirements in this regard, the fulfillment of which the Contractor is obliged to demonstrate in a special way.

#### 9.2 Contractors jointly bidding for the contract;

In the case of joint bidding of two or more Contractors for the award of this contract, the condition relating to technical or professional capacity or economic or financial capacity will be evaluated jointly (if applicable). The contracting authority does not specify detailed conditions for participation in the tender, so there is no need to demonstrate their fulfillment in detail.

Lack of grounds for exclusion shall be demonstrated by each of the contractors jointly applying for the contract since none of the Contractors jointly applying for this contract may be subject to exclusion.

#### 9.3 Resource sharing.

The Contracting Authority does not specify detailed conditions for participation in the proceeding , and therefore the Contractor does not have to rely on the technical or professional skills or financial or economic situation of the entities providing resources in order to confirm the fulfillment of the conditions for participation in the proceeding, in appropriate situations and for a specific contract or part thereof, regardless of the legal nature of the relationship between them.

#### 9.4 Contractors jointly bidding for the contract.

1. Contractors jointly applying for the award of this contract (each of these Contractors hereinafter referred to as "Partner") should jointly meet the conditions for participation in the proceedings and submit documents confirming the fulfillment of these conditions (if applicable).
2. The economic or financial situation and technical or professional capacity of the Partners will be evaluated jointly, for this purpose, the documents are to be submitted by that or those of the Contractors who, on behalf of all of them, will demonstrate the fulfillment of the conditions for participation in the proceedings in this regard (if applicable).
3. None of the Contractors jointly bidding for this contract shall be subject to exclusion.
4. In addition, the Partners shall appoint a Plenipotentiary to represent them in these proceedings or represent them in the proceedings and conclude a public procurement contract. It is recommended that the Plenipotentiary be one of the Partners (Contractors jointly bidding for the contract).
5. The document establishing the power of attorney should be attached to the Bid. Each Partner should provide a power of attorney.
6. The bid should be signed by the appointed Plenipotentiary and will bind all Partners.
7. All correspondence will be conducted exclusively with the Plenipotentiary.
8. Contractors jointly applying for this contract, whose bid will be selected as the most advantageous, before signing the contract for the execution of this contract, are obliged to conclude a contract governing the cooperation of these Contractors and submit it to the Contracting Authority. Such a contract should include in its content at least the following provisions regarding:
9. Defining the purpose and subject matter of the contract;
10. Designating the duration of the contract governing the cooperation of Contractors jointly executing the contract covering the period of execution of the subject of the contract in this procedure;
11. Establishing the leader of the Contractors jointly executing the contract (it is recommended that it be the Plenipotentiary indicated in the bid of the Contractors bidding jointly for the award of this contract established to represent them in this procedure) and his/her authority to incur obligations on behalf of all the Partners together and each of them individually;
12. To determine the joint and several liability of the Partners to the Contracting Authority with respect to the subject matter of the contract in this proceeding;
13. Determining the scope of the subject matter of the contract, carried out by each Contractor jointly executing the contract;

### Statements as well as subjective and objective evidence.

#### 10.1 Documents submitted with the bid:

Documents submitted under Article 273 to demonstrate lack of grounds for exclusion from participation in the procurement procedure, Contractors are required to submit along with the bid the following documents current as of the date of bid submission:

* + 1. **statement on not being subject to exclusion and meeting the conditions for participation in the proceedings** - prepared in accordance with the model constituting **Appendix no. 2** to this IfC;
		2. **statement of contractors jointly applying for the award of the contract -** prepared according to the model constituting **Appendix no. 3** to this IfC;
		3. **List of publications - Appendix 1A;**

Statement on not being subject to exclusion and meeting the conditions for participation in the procedure constitutes evidence confirming the absence of grounds for exclusion and the fulfillment of the conditions for participation in the procedure, as of the date of submission of tenders, temporarily replacing the required subjective means of proof.

Comment 1: In the case of **joint bidding** by contractors, the statement referred to in subsection 1) shall be submitted by each of the contractors. These statements shall confirm the absence of grounds for exclusion and the fulfillment of the conditions for participation in the proceedings to the extent that each contractor demonstrates the fulfillment of the conditions for participation in the proceedings or selection criteria. Contractors acting as part of a partnership shall be treated as contractors jointly bidding for the contract.

Comment 2: The contractor, in the case of relying on the capabilities or situation of entities providing resources, shall present, together with the statement referred to above, also a statement of the entity providing resources, confirming that there are no grounds for exclusion of this entity and, respectively, the fulfillment of the conditions for participation in the proceedings, to the extent to which the contractor relies on its resources (if applicable).

**Comment 3:** The contracting authority informs that it **will not examine** whether there are no grounds for exclusion against a subcontractor that is not a resource provider.

#### 10.2 Documents submitted upon request - subjective evidence - regarding not being subject to exclusion;

Pursuant to Article 274(1) of the PPL Act, the Contracting Authority shall call upon the contractor whose bid was the highest evaluated to submit, within a specified period, **not shorter than 5 days** from the date of the call, subjective evidence, valid as of the date of submission of the subjective evidence.

1. **Statement of the Contractor on the validity of the information** contained in the statement on not being subject to exclusion and meeting the conditions for participation in the proceedings submitted with the bid, regarding the grounds for exclusion from the proceedings-according to the template constituting **Appendix no. 4** to this IfC**;**

Comment 1: in the case of joint application for the award of this contract by two or more Contractors, the above-mentioned documents confirming the absence of grounds for exclusion shall be submitted by each of the Contractors jointly applying for the contract.

**Comment 2:** If there are reasonable grounds to believe that the previously submitted subjective evidence is no longer valid, the Contracting Authority may at any time call on the contractor or contractors to submit all or some of the subjective evidence current as of the date of submission.

#### 10.3 Documents submitted upon request - subjective evidence - in terms of demonstrating the fulfillment of the conditions for participation in the proceedings;

The Contracting Authority **does not specify** any requirements in this regard, the fulfillment of which the Contractor is required to demonstrate in a special way;

#### 10.4 The objective evidence:

The contracting authority **requires** the submission of the objective evidence. The objective evidence is Appendix 1 A **List of publications** in which the Contractor indicates the publications available in its commercial offer as of the date of submission of the offer, i.e. the required publications that must be covered by the Contractor's bid (applies to all parts of the order) and additional publications scored in the criterion of availability of catalogs of individual publishers, in accordance with point 18 of this IfC **(applies to order part No. 1**).

#### 10.5 Supplementing the objective evidence:

**Concerning order part no. 1** - Due to the scope of the information required in Appendix No. 1A - List of publications, and in particular the information for scoring the bids, the Contracting Authority **does not allow** **supplementing** Appendix No. 1A for this part of the contract.

**Concerning order part no. 2** - the Contracting Authority **allows the supplementation of** Annex No. 1A for this part of the contract.

#### 10.6 Form:

1. Subjective evidence, objective evidence, or documents confirming the authority to represent the contractor, contractors jointly applying for public procurement, the entity providing the Act's resources, respectively (hereinafter referred to as documents confirming the authority), or other documents or statements, submitted in the public procurement procedure, shall be submitted in electronic form, in electronic form bearing a trusted signature or personal signature.
2. If the objective evidence, subjective evidence, other documents or documents confirming the authority to represent, respectively, the contractor, contractors jointly applying for public procurement, the entity providing resources under the terms of [article 118](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytimjzhe4tiltqmfyc4njrga4danrwgy) of the PPL Act or a subcontractor who is not the entity providing resources on such terms, hereinafter referred to as "documents confirming the authorization to represent", have been issued by authorized entities other than the contractor, the contractor jointly applying for the award of the contract, the entity providing resources or the subcontractor, hereinafter referred to as "authorized entities", as an electronic document shall be transmitted.
3. If the subjective evidence, objective evidence, other documents or documents confirming the power of representation were issued by authorized entities as a paper document, a digital reproduction of this document bearing a qualified electronic signature, and in the case of proceedings or competitions with a value lower than the EU thresholds, a qualified electronic signature, a trusted signature or a personal signature shall be provided, certifying the conformity of the digital reproduction with the paper document. Certification of the compatibility of the digital reproduction with the document in paper form, makes in the case of:

- subjective evidence and documents confirming the power of representation - the contractor, the contractor jointly applying for the award of the contract, the entity providing the resources or the subcontractor, respectively, to the extent of the subjective means of proof or documents confirming the power of representation that apply to each of them;

- objective evidence - the contractor or the contractor jointly applying for the contract, respectively;

- other documents, - the contractor or the contractor jointly applying for the award of the contract, respectively, to the extent of the documents that concern each of them.

Certification of the compatibility of the digital reproduction with the document in paper form, can also be done by a notary.

Digital reproduction should be understood as an electronic document that is an electronic copy of the content recorded in paper form, making it possible to read and understand this content without direct access to the original.

1. Subjective evidence, including the statement referred to in [article 117(4)](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytimjzhe4tiltqmfyc4njrga4danrwgq) of the PPL Act [statement of contractors jointly applying for the award of the contract], and the commitment of the entity providing the resources, the subject evidence, not issued by authorized entities, and the power of attorney shall be transmitted in electronic form and bear a qualified electronic signature, trusted signature or personal signature.
2. Where subjective evidence, including the statement referred to in [article 117(4)](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytimjzhe4tiltqmfyc4njrga4danrwgq) of the PPL Act [statement of contractors jointly applying for the award of the contract], and the commitment of the entity providing the resources, the objective evidence, not issued by the authorized entities or the power of attorney, was prepared as a document in paper form and bearing a handwritten signature, a digital reproduction of this document bearing a qualified electronic signature, a trusted signature or a personal signature certifying the conformity of the digital reproduction with the document in paper form shall be provided.

Certification of the conformity of the digital reproduction with the document in paper form, is carried out respectively;

- subjective evidence - the contractor, the contractor jointly applying for the award of the contract, the entity providing resources or the subcontractor, respectively, to the extent of the subjective means of proof that apply to each of them;

- objective evidence, the statement referred to in [article 117 paragraph 4](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytimjzhe4tiltqmfyc4njrga4danrwgq) of the PPL Act [statement of contractors jointly applying for the award of the contract], or the commitment of the entity providing resources - the contractor or the contractor jointly applying for the award of the contract, respectively;

- power of attorney - the principal.

A notary public may also certify that a digital reproduction is consistent with a paper document.

1. In the case of submitting an electronic document in a procedure or competition in a format that compresses data, attaching a qualified electronic signature to the file containing the compressed documents, and in the case of procedures or competitions with a value lower than the EU thresholds, a qualified electronic signature, a trusted signature or a personal signature is equivalent to attaching a qualified electronic signature, a trusted signature or a personal signature to all documents contained in the file, respectively.
2. Information on the requirements for documents transmitted via the Platform is further described in paragraphs 13, 14 and 16 of this IfC.

### Security deposit

The contracting authority **does not require** a deposit.

### Bid validity

The contractor remains bound by the submitted bid until **27.07.2023**

The first day of being bound by the bid is the day on which the deadline for submission of bids expires.

In the event that the selection of the most advantageous bid does not take place before the expiration of the bid validity period specified in the contract documents, the Contracting Authority, before the expiration of the bid validity period shall ask the contractors once to agree to extend the deadline by the period indicated by him, not exceeding 30 days.

Extension of the term of the bid validity period referred to above requires the contractor to submit a written statement of consent to the extension of the bid validity period .

### Information on the means of electronic communication by which the contracting authority will communicate with contractors, information on the technical and organizational requirements for preparing, sending and receiving electronic correspondence;

#### 13.1 Means of communication and method of communication;

1. The proceedings are conducted electronically through the Procurement Platform [platformazakupowa.pl](https://platformazakupowa.pl/) (hereinafter referred to as the "Platform") at: <https://platformazakupowa.pl/pn/pwm> The procurement awarding procedure is conducted in Polish, therefore submission of documents and communication in Polish is required, however, due to the number of entities to which the procedure is addressed, along with the ToR prepared in Polish, the ToR prepared in English is also published on the website of the conducted procedure, with the reservation that the Polish version is the binding language version, while the English version is only supplementary and is intended to enable a wide range of potential contractors to familiarize themselves with the requirements of the Contracting Authority;
2. at the choice of the Contractor, the bid and documents submitted in the proceeding may be submitted in Polish based on the attachments made available by the Contracting Authority together with this ToR on the proceedings website, or submitted in English with translation into Polish, while for the bid document the Contracting Authority requires a sworn translation, the other documents may be translated independently by the Contractor;
3. Communication between the Contracting Authority and the Contractors, including all statements, requests, notifications and information, shall be transmitted electronically via the Platform and the form shall be provided via the [platformazakupowa.pl](http://platformazakupowa.pl) and the "Send a message to the Contracting Authority" form.  The date of transmission (receipt) of declarations, applications, notifications and information shall be the date of their transmission via the [platformazakupowa.pl](http://platformazakupowa.pl) by clicking the "Send message to the contracting authority" button, after which a message will appear that the message has been sent to the contracting authority.
4. The contracting authority will provide contractors with information in electronic form via the [platformazakupowa.pl](http://platformazakupowa.pl). Information regarding answers to questions, changes to specifications, changes to the deadline for submission and opening of bids will be posted by the Contracting Authority on the platform in the "Announcements" section. Correspondence addressed to a specific contractor in accordance with applicable regulations will be transmitted electronically via the [platformazakupowa.pl](http://platformazakupowa.pl) to a specific contractor.
5. The Contractor, as a professional entity, is required to check messages and messages directly on platformazakupowa.pl sent by the Contracting Authority as the notification system may fail or the notification may end up in the SPAM folder.
6. The Contracting Authority, in accordance with the Regulation of the President of the Council of Ministers of December 31, 2020 on the manner of preparation and transmission of 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 for working on the [platformazakupowa.pl](https://platformazakupowa.pl/), i.e.:
	1. permanent access to the Internet with a guaranteed bandwidth of not less than 512 kbps,
	2. PC or MAC computer with the following configuration: memory min. 2 GB Ram, Intel IV 2 GHZ processor 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 minimum version 10.0,
	4. javaScript enabled,
	5. Adobe Acrobat Reader or other program that supports .pdf file format installed,
	6. Encryption on platformazakupowa.pl is done using TLS 1.3 protocol.
	7. The indication of the time of receipt of data by the procurement platform is the date and the exact time (hh:mm:ss) generated according to the local time of the server synchronized with the clock of the Central Measures Office.
7. The Contractor, entering into this public procurement procedure:
8. accepts the terms of use of [platformazakupowa.pl](https://platformazakupowa.pl/) specified in the Terms and Conditions placed on the website [at the link](https://platformazakupowa.pl/strona/1-regulamin)  under the "Terms and Conditions" tab and recognizes them as binding,
9. has familiarized himself with and complies with the Instructions for Submission of Bids/Applications available [at the link](https://drive.google.com/file/d/1Kd1DttbBeiNWt4q4slS4t76lZVKPbkyD/view).
10. The Contracting Authority shall not be liable for submitting a bid in a manner inconsistent with the Instructions for Use of the [platformazakupowa.pl](http://platformazakupowa.pl), in particular for the situation when the Contracting Authority becomes aware of the contents of the offer before the deadline for submission of offers (e.g., submission of an offer in the "Send a message to the Contracting Authority" tab). Such a bid will be considered by the Contracting Authority as a commercial offer and will not be considered in the present proceeding because the obligation imposed by Article 221 of the Public Procurement Law has not been fulfilled.
11. The Contracting Authority informs that the instructions for use of [platformazakupowa.pl](http://platformazakupowa.pl) concerning, in particular, logging in, submitting requests for clarification of the content of the SWZ, submitting bids and other activities undertaken in this procedure using the [platformazakupowa.pl](http://platformazakupowa.pl) are located in the "Instructions for Bidders" tab on the website at: <https://platformazakupowa.pl/strona/45-instrukcje>

#### 13.2 Persons authorized to contact Contractors. .

The Contracting Authority designates the following persons to contact Contractors:

- to provide information on public procurement:

Public Procurement Team - Polskie Wydawnictwo Muzyczne, e-mail: zamowienia\_publiczne@pwm.com.pl

### Description of bid preparation.

#### 14.1 Basic requirements, bid form;

1. The bid and the documents required with the bid submitted electronically, must be signed with **an electronic qualified signature** or **trusted** signature or **personal** signature under pain of invalidity. In the process of submitting a bid, an application including the evidence in question on the platform, **a qualified electronic signature** or **trusted** signature or **personal** signature is applied by the Contractor directly on the document, which is then uploaded to the system.
2. The bid should be:
	1. prepared on the basis of the appendices of this ToR in Polish,
	2. submitted by means of electronic communication, i.e., via the [platformazakupowa.pl](https://platformazakupowa.pl/),
	3. signed with a qualified electronic signature or trusted signature or personal signature by authorized person(s),
3. Qualified signatures used by contractors to sign any files must comply with the "Regulation of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market (eIDAS) (EU) No. 910/2014 - as of July 1, 2016."
4. When using the XAdES external signature format. The Contracting Authority requires the inclusion of a sufficient number of files, i.e. signed data files and XAdES format signature files.
5. Pursuant to Article 18 (3) of the PPL Act, information that constitutes a business secret, as defined in the regulations on combating unfair competition, shall not be disclosed. If the contractor, no later than on the deadline for submission of bids, reserved beyond doubt that they can not be made available and demonstrated, attaching appropriate explanations, that the reserved information is a business secret. **On the platform in the bid submission form, there is a space designated for attaching the parts of the bid that constitute company secrets.** The Contractor shall, along with the submission of this information, demonstrate compliance with the prerequisites set forth in Article 11(2) of the Law on Combating Unfair Competition. It is recommended that the justification for reserving information as a business secret be formulated in such a way as to make it accessible. Reservation of business secrets by the Contractor without justification shall be treated as ineffective due to the Contractor's failure to take the necessary measures to maintain the confidentiality of the information covered by the clause in accordance with the provisions of Article 18 (3) of the PPL.
6. The Contractor, through [platformazakupowa.pl](https://platformazakupowa.pl/) may, before the deadline for submission of tenders, change or withdraw a bid. The method for amending or withdrawing a bid is included in the instructions posted on the website at: <https://platformazakupowa.pl/strona/45-instrukcje>
7. Each contractor may submit only one bid. Submitting more than one bid or a bid containing variant proposals will result in the bid being subject to rejection.
8. Documents and statements submitted by the contractor should be in Polish, unless otherwise allowed in the ToR. If documents prepared in a language other than the permitted one are enclosed, the contractor is obliged to include a translation into Polish.
9. The maximum size of one file sent via dedicated forms for: submission, amendment, withdrawal of a bid is 150 MB while for communication the file size is a maximum of 500 MB.
10. The contractor shall bear all costs associated with the preparation and submission of the bid, taking into account the contents of article 261 of the PPL Act.
11. Subjective evidence, and other documents or statements, prepared in a foreign language shall be submitted with a translation into Polish.

#### 14.2 Bid contents.

* + 1. A complete bid must include:
1. **A Bid Form**, prepared in accordance with the model constituting **Appendix no. 1** to IfC;
2. **List of publications** constituting **Appendix No. 1A** to the IfC;
3. **Statement of not being subject to exclusion and meeting the conditions for participation in the proceedings** - drawn up in accordance with the specimen constituting **Appendix no. 2** to IfC;
4. **Statement of contractors jointly applying for the award of the contract -** prepared according to the model constituting **Appendix no. 3** to IfC (if applicable);
5. **Relevant Power of Attorney(s)** - in case the authorization to sign the bid does not arise directly from the copy of the relevant register submitted with the bid or obtainable free of charge;
6. In the case of Contractors jointly bidding for the contract, **document appointing a Plenipotentiary** to represent them in the procurement proceedings or to represent them in the proceedings and conclude a contract for this public procurement;
	* 1. The Contracting Authority **does not require** submission of the documents that the Contractor will be called upon to submit with the bid, i.e.:
7. **Statement of the Contractor on the validity of the information** contained in the statement on not being subject to exclusion and meeting the conditions for participation in the proceedings submitted with the bid, prepared in accordance with the model constituting the following **Appendix no. 4** to IfC;

### 15. Deadline and method of bid submission.

1. The offer with the required documents should be placed on the [platformazakupowa.pl](http://platformazakupowa.pl) at: at: <https://platformazakupowa.pl/pn/pwm> pursuant to the Act on the website of the conducted proceedings until **28.06.2023 by 10:00 a.m.**
2. The bid must be accompanied by all the documents required in the ToR.
3. After completing the Bid Submission Form and attaching all required attachments, click the "Proceed to Summary" button.
4. A bid submitted electronically must be signed with an electronic qualified signature, trusted signature or personal signature. In the process of submitting an offer via [platformazakupowa.pl](http://platformazakupowa.pl), the contractor should sign directly on the documents sent via the [platformazakupowa.pl](http://platformazakupowa.pl). We recommend using a signature on each attached file separately, in particular those indicated in Article 63(1) and (2) of the PPL, where it is indicated that bids, applications to participate in the proceedings and the statement referred to in Article 125(1) shall be prepared, under pain of invalidity, in electronic form or form and bear a qualified electronic signature or a trusted signature or a personal signature.
5. The date on which the bid is submitted in the system (Platform) in the second step of submitting the bid by clicking the "Submit Bid" button and the message that the bid has been encrypted and submitted is displayed.
6. Detailed instructions for Contractors on how to submit, amend and withdraw a bid can be found on the website at:  <https://platformazakupowa.pl/strona/45-instrukcje>

### 16. Bid opening procedure

1. The opening of bids will take place on **28.06.2023, at 10:05** amvia the Procurement Platform of the Contracting Authority at the Contracting Authority's office.
2. If the opening of bids is carried out using a data communications system, in the event of a malfunction of this system that results in the inability to open bids by the date specified by the contracting authority, the opening of bids shall be carried out immediately after the malfunction is corrected.
3. The contracting authority will announce the change of the bid opening date on the website of the conducted proceedings.
4. The contracting authority shall, no later than before the opening of bids, make available on the website of the conducted proceedings information on the amount it intends to allocate for financing the contract.
5. The contracting authority, immediately after the opening of bids, shall make available on the website of the conducted proceedings information about:

1)the names or first and last names and registered offices or places of business or residence of contractors whose bids were opened;

2) prices or costs included in the bids.

1. The information will be published on the proceedings page on [platformazakupowa.pl](http://platformazakupowa.pl) in the section ,,Announcements" .

### 17. Bid Evaluation Criteria:

1. The contracting authority will evaluate and compare only those bids that:

* 1. will be submitted by Contractors not excluded by the Contracting Authority from this procedure;
	2. will not be rejected by the Contracting Authority under the provision of Article 226 of the PPL;

2. Bids will be evaluated by the Contracting Authority based on the following criteria:

**for Order Part no. 1 - Task 1:**

**Guaranteed discount** - 60% - maximum 60 points

**Availability of catalogs** - 10% - maximum 10 points

**Delivery date** - 30% - maximum 30 points

**for Order Part no. 2 - Task 2:**

**Guaranteed discount** - 60% - maximum 60 points

**Delivery date** - 40% - maximum 40 points

3. Rules for evaluation of offers in the criterion "Guaranteed discount" (C).

The discount to be compared will be the discount that the Contractor undertakes to give on the retail prices for individual publishing catalogs from the Contractor's offer, as indicated in the offer form. For the criterion "Guaranteed discount" the bid will receive the number of points resulting from the operation rounded to two decimal places:

R = (Ri/Rmax) x 60

where:

R - number of points, awarded to the evaluated offer for the criterion "**Guaranteed discount**";

Rmax - the highest guaranteed discount among all valid and unrejected bids;

Ri - bid’s guaranteed discount "i" - the guaranteed discount of the evaluated offer;

The maximum number of points - 60 - will be awarded to the bid with the highest offered guaranteed discount. The score will be calculated to two decimal places.

4. Rules for evaluation of bids in the criterion "**Delivery date":**

Evaluation of bids in this criterion will be done as follows:

for offering the **Delivery date for the** order, understood as the **period of time counted in** **calendar days** from the date of transfer of the delivery order by the Contracting Authority to the Contractor, the offer will receive the following number of points:

**for Order Part No. 1**

for offering Delivery date **up to 5 days**  - 30 points

for offering Delivery date **from 6 - 9 days**  - 20 points

for offering Delivery date **from 10 - 13 days -** 10 points

for offering Delivery date of **14 days or** **above**  - 0 points

**for Order Part No. 2**

for offering Delivery date **up to 5 days**  - 40 points

for offering Delivery date **from 6 - 8 days**  - 30 points

for offering Delivery date **from 9 - 11 days -** 20 points

for offering Delivery date **from 12 - 13 days -** 10 points

for offering Delivery date of **14 days or** **above**  - 0 points

Comment 1: Offering a Delivery date of less than 5 days will not result in the award of additional points;

Comment 2: In case of offering Delivery date in incomplete days e.g. 2.5 days, 3.5 days, the Contracting Authority will round the number of days up to a full day and will evaluate the offer in this criterion on this basis.

Comment 3: The maximum Delivery date is 14 days, if no Delivery date is specified in the bid, it is assumed that the Contractor offers the maximum Delivery date.

5. Rules for evaluation of bids in the criterion "**Availability of catalogs"**:

(this criterion applies **only** to bids submitted for the execution of Procurement Part No. 1)

Availability of catalogs means offering publishers' catalogs above the required minimum. The availability of the catalogs of each publisher shall be marked by the Contractor in accordance with the status as of the date of submission of bids. For indicating the availability of publishers' catalogs, over and above the required minimum (the minimum available and required catalogs for Procurement Part No. 1 are indicated in Section 3.1 of this IfC). The Contractor shall indicate the availability of catalogs in Exhibit 1 A to the bid [List of publications].

The number of available publication catalogs indicated in the Contractor's bid form, derived from the data contained in Exhibit 1A to the bid [List of Publications], will be compared. For the criterion "Availability of catalogs" the bid will receive the number of points resulting from the operation rounded to two decimal places:

D = (Di/Dmax) x 10

where:

D - number of points awarded to the evaluated offer for the criterion "**Availability of catalogs**";

Dmax - the highest number of available catalogs among all valid and unrejected bids;

Di - number of offer catalogs available "i" - the number of available catalogs indicated in the evaluated offer;

The maximum number of points - 10 - will be awarded to the bid with the highest number of available catalogs. The score will be calculated to two decimal places.

6. Final scoring of the Offer.

The scoring of the Offer "i" will be a number rounded to two decimal places resulting from the summation of the number of points received by this Offer for each criterion:

 Pi = Σ Pi (X)

where :

Pi - scoring of Bid "i";

Σ Pi (X) - the sum of the number of points that Offer "i" will receive for each criterion;

The contract will be awarded to the Contractor whose Offer will receive the highest number of points in the final scoring.

### 18. Offer with an abnormally low price.

The Contracting Authority informs that in situations indicated in Article 224 of the PPL Act, the bid price will be examined according to the principles and in the scope indicated in the PPL Act.

The contracting authority stresses that according to Article 224 (5) and (6) of the PPL Act, respectively "*The burden of proving that a bid does not contain an abnormally low price or cost is on the contractor"* and "*Rejected, as a bid with an abnormally low price or cost, is the bid of the contractor who has not provided explanations within the prescribed period, or if the explanations submitted, together with evidence, do not justify the price or cost quoted in the bid."*.

### 19. Completion and clarification of documents.

1. If a contractor has not submitted a statement of non-exclusion, fulfillment of conditions for participation in the procedure, subjective means of proof, other documents or statements submitted in the procedure or they are incomplete or contain errors, the Contracting Authority will call on the contractor to submit, correct or supplement them, respectively, within the specified deadline, unless:

- the contractor's application for admission to the procedure or bid is subject to rejection regardless of its submission, completion or correction, or

- the grounds for cancellation of the proceedings exist.

1. The Contractor shall submit the subjective means of proof, at the request of the Contracting Authority as indicated above, current as of the date of their submission.
2. The contracting authority may request clarification from contractors on the content of the statement of non-exclusion, fulfillment of conditions for participation in the procedure, or submitted subjective evidence or other documents or statements submitted in the procedure.
3. If the statement submitted by the contractor on not being excluded, meeting the conditions for participation in the proceeding, or subjective evidence raises doubts in the contracting authority, the contracting authority may ask directly to the entity that is in possession of information or documents relevant in this regard for the assessment of the contractor's fulfillment of the conditions for participation in the proceeding, selection criteria or lack of grounds for exclusion, to present such information or documents.
4. If the contractor has not submitted the evidence in question or the submitted evidence in question is incomplete, the contracting authority shall call for its submission or supplementation within the prescribed time limit, subject to the provisions of section 10.4 of this IfC. The contracting authority may request clarification from contractors on the content of the evidence in question.
5. The summons referred to in point 5) above shall not apply if the evidence in question serves to confirm compliance with the characteristics or criteria specified in the description of the criteria for evaluation of tenders, or, despite the submission of the evidence in question, the tender is rejected or there are grounds for cancellation of the procedure.

### 20. Bid Evaluation Mode.

#### 20.1 Clarification of the content of bids and correction of obvious errors.

In the course of examining and evaluating bids, the contracting authority may request clarifications from contractors regarding the content of submitted tenders and the evidence in question, or other documents or statements submitted. It is inadmissible to conduct negotiations between the contracting authority and the contractor on the tender submitted and, taking into account Article 223(2) and [article 187](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytimjzhe4tiltqmfyc4njrga4dcmbvgq) of the PPL Act, to make any change in its content.

The contracting authority shall correct the following in the bid:

- obvious clerical errors,

- obvious accounting errors, taking into account the accounting consequences of the corrections made,

- other errors consisting in inconsistency of the bid with the order documents, not causing significant changes in the content of the bid immediately notifying the contractor whose bid has been corrected.

#### 20.2 Method of evaluating the compliance of the bid with the content of this ToR.

Evaluation of the compliance of the bid with the content of the ToR will be carried out on the basis of an analysis of the documents or statements that the Bidder has included in his bid, taking into account the documents submitted at the request of the Contracting Authority or documents or information to which the Contracting Authority has access.

### 21. Exclusion of the Contractor

The Contracting Authority will exclude Contractors from the proceedings for award of this contract if they have grounds for exclusion indicated in Article 108 (1) or 109 (1) (4) of the PPL Act. The bid of the excluded Contractor is subject to rejection.

### 22. Bid rejection.

The Contracting Authority will reject the bid in the cases specified in Article 226 (1) of the PPL Act.

### 23. Bid selection

When selecting the most advantageous offer, the Contracting Authority will apply the principles and criteria set forth in the ToR and resulting from the regulations of generally applicable law, including the PPL Act.

Immediately after selecting the most advantageous bid, the Contracting Authority shall simultaneously inform contractors who submitted bids of:

 - selection of the most advantageous bid, stating the name or surname, registered office or place of residence, if it is the place of business of the contractor whose bid was selected, and the names or surnames, registered offices or places of residence, if they are the places of business of the contractors who submitted bids, as well as the score awarded to the bids in each bid evaluation criterion and the total score;

 - contractors whose bids were rejected;

The Contractor, whose bid was selected, a separate letter will indicate the place and date of signing the contract.

### 24. Cancellation of proceedings

The Contracting Authority shall cancel the proceedings for the award of this contract in the situations specified in Article 255 of the Public Procurement Law.

The contracting authority, reserves the right to cancel the contract award procedure if the public funds that the contracting authority intended to allocate to finance all or part of the contract have not been awarded to it.

The contracting authority may cancel the contract award procedure before the deadline for submission of tenders if there are circumstances that make it unreasonable to continue the procedure.

The Contracting Authority shall simultaneously notify the contractors who submitted tenders of the cancellation of the contract award procedure - stating the factual and legal reasons. The contracting authority shall immediately make available information, about the cancellation on the website of the conducted proceedings.

### 25. Legal remedies.

#### 25.1 General Information.

The legal remedies set forth in Section IX of the PPL Act are available to the contractor, competition participant and other entity, if it has or had an interest in obtaining the contract or award in the competition and has suffered or may suffer damage as a result of violation of the Act by the contracting authority.

Organizations included in the list referred to in [article 469 item 15](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytimjzhe4tiltqmfyc4njrga4deojqgm), and the Ombudsman for Small and Medium-sized Enterprises.

1. The legal remedies mentioned above are:
	1. appeal;
	2. complaint to the court;

#### 25.2 Appeal.

The appeal can be lodged on:

1) the contracting authority's action taken in the procedure for the award of a contract, for the conclusion of a framework agreement, a dynamic purchasing system, a system for qualifying contractors or a competition, including on the proposed provision of the contract incompatible with the provisions of the Act;

2) failure to perform an action in the procurement procedure, the conclusion of a framework agreement, a dynamic purchasing system, a system for qualifying contractors or a competition, which the contracting authority was obliged to perform under the Act;

3) failure to conduct a procurement procedure or organize a competition under the Act, despite the fact that the contracting authority was obliged to do so.

Letters in appeal proceedings shall be submitted in writing or in electronic form or in electronic form, except that an appeal and accession to appeal proceedings, submitted in electronic form, shall require a trusted signature. Letters in written form shall be submitted through a postal operator, as defined by the Act of November 23, 2012. - Postal Law, in person, through a messenger, and letters in electronic form shall be submitted by means of electronic communication.

An appeal shall be filed for contracts whose value is less than the EU thresholds, within the deadline:

- 5 days from the date of transmission of information about the contracting authority's action constituting the basis for its filing, if the information was transmitted by means of electronic communication,

- 10 days from the date of transmission of information about the contracting authority's action constituting the basis for its submission, if the information was transmitted in a manner other than that specified in letter a.

The issue of time limits for filing an appeal is regulated by Article 515 of the PPL. Issues relating to appeals are governed in detail by the provisions of Chapter 2 of Section IX of the Public Procurement Law.

#### 25.3 Court action.

The parties and participants in the appeal proceedings have the right to appeal to court against the ruling of the Chamber and the order of the President of the Chamber referred to in [article 519 (1) of the](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytimjzhe4tiltqmfyc4njrga4dgmzqgu) PPL Act. In proceedings pending as a result of the filing of a complaint, the provisions of the Act of November 17, 1964 shall apply accordingly. - Code of Civil Procedure on appeal, unless the provisions of this chapter provide otherwise. Issues relating to complaints to the court are regulated in detail in Chapter 3 of Section IX of the Public Procurement Law.

### 26. General information on formal issues of the contract for this procurement.

1. In accordance with Article 431 et seq. of the PPL, the contract for this procurement:
2. requires, under pain of nullity, written form, unless separate regulations require a special form;
3. the provisions of the Civil Code shall apply to it, unless the provisions of the Act provide otherwise;
4. The contract is concluded for the period indicated in Part II of this ToR;
5. Amendments to the contract shall be made in accordance with the rules indicated in Article 455 of the PPL Act, including the rules and procedures indicated in Part II of this ToR.
6. Contractors jointly bidding for the contract shall be jointly and severally liable for performance of the contract and payment of performance security.
7. Other issues relating to the contract are regulated in Part II of this SWZZ and Section VII of the Public Procurement Law.
8. The contractor whose bid is found to be the most advantageous will be notified by a separate letter about the date and place of signing the contract.
9. With the signing of the contract for the execution of this contract, the Contractor shall submit to the Contracting Authority:

1) the civil law contract referred to in item. 9.4 subsection 8) of this IfC, with respect to Contractors jointly bidding for the contract, whose bid was found to be the most advantageous;

Failure to comply with the above obligations will result in withdrawal of the Contracting Authority from the contracting activity for reasons attributable to the Contractor and recognition that the Contractor is evading the contract.

### 27. Performance bond requirements.

The Contracting Authority does not require establishment of a performance bond.

### 28. Settlements related to the execution of the contract.

All settlements related to the execution of the public procurement covered by this ToR shall be made in Polish zlotys [PLN]. Settlement issues are described in detail in the draft contract provisions (model contract - Part II of the ToR).

### 29. Subcontracting

* + - 1. The Contracting Authority requires the Contractor to indicate all those parts/elements of the scope of the contract, the performance of which he intends to entrust to subcontractors. Indication of this should be made in the Bid Form, along with the names of proposed subcontractors, if already known.
			2. The Contracting Authority **does not reserve** the obligation of the Contractor to personally perform specific parts of the contract.
			3. If the change or resignation of a subcontractor relates to an entity on whose resources the contractor has invoked, under the terms of [article 118 paragraph 1](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtg4ytimjzhe4tiltqmfyc4njrga4danrwg4) of the PPL Act, in order to prove fulfillment of the conditions for participation in the proceedings, the contractor is obliged to prove to the contracting authority that the proposed other subcontractor or the contractor himself fulfills them to a degree not less than that of the subcontractor on whose resources the contractor relied during the procurement procedure.
			4. If the technical or professional capabilities of another subcontractor replacing the subcontractor whose resources the Contractor relied on to demonstrate the fulfillment of the conditions for participation in the proceedings do not confirm the fulfillment of the conditions for participation in the proceedings by the Contractor, or there are grounds for exclusion against that entity, the Contracting Authority shall demand that the Contractor, within the period specified by the Contracting Authority, replace that entity with another entity or entities or demonstrate that it meets the conditions for participation in the proceedings on its own.
			5. Entrusting the execution of parts of the contract to subcontractors does not relieve the contractor of responsibility for the proper performance of the contract.
			6. Detailed guidelines for subcontracting, including requirements for contracts with subcontractors, are set forth in Part II of the ToR- Draft Contract Provisions.

### 30. The GDPR information clause

The controller of the personal data of natural persons indicated in the course of the contract award procedure is Polskie Wydawnictwo Muzyczne in Kraków with its registered office at al. Krasińskiego 11a, 31-111. Personal data will be processed for the purpose of awarding a contract and fulfilling archiving obligations. Personal data of the persons indicated shall be processed under Article 6 (1)(c) of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 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 (GDPR). Provision of data is voluntary, but necessary for the procurement procedure. Data subjects have the right to request access to their personal data, rectification, and restriction of processing. In addition, data subjects have the right to lodge a complaint with the President of the Office for Personal Data Protection. Data subjects do not have the right to erasure of personal data pursuant to Article 17(3)(b), (d) or (e) of the GDPR, the right to personal data transfer referred to in Article 20 of the GDPR, the right to object pursuant to Article 21 of the GDPR to the processing of personal data, as the legal basis for the processing of personal data is Article 6(1)(c) of the GDPR. Personal data will be processed for the period related to the conduct of the public procurement proceedings, as well as afterwards, i.e. in connection with the fulfillment of archiving obligations. Recipients of your personal data will be those entities to which we are obliged to provide data under applicable laws, including the Law on Access to Public Information. In case of any questions regarding GDPR, it is possible to contact via email:pwm@pwm.com.pl It is the Contractor's responsibility to obtain the consent of the individual to indicate his/her data in the procurement procedure, including in the bid submitted.

At the same time, it is pointed out that pursuant to Article 19(2) and (3) of the PPL Act; exercising the right to rectification or supplementation referred to in [article 16](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtgm2tsnrrguytsltqmfyc4mzuhaztimzzg4) GDPR, may not have the effect of changing the outcome of the procurement procedure or amending the provisions of the public procurement agreement to an extent inconsistent with the Act. In the procurement procedure, the request for restriction of processing referred to in [article 18(1)](https://sip.legalis.pl/document-view.seam?documentId=mfrxilrtgm2tsnrrguytsltqmfyc4mzuhaztinbrgy) GDPR, does not restrict the processing of personal data until the conclusion of such proceedings.

### 31. List of appendices to these IfC

The following templates are attached to this IfC:

|  |  |  |
| --- | --- | --- |
| **No.** | **Appendix Designation** | **Name of the Appendix** |
| 1 | **Appendix no. 1** | Model Offer Form; |
| 2 | **Appendix 1A** | List of publications; |
| 3 | **Appendix no. 2** | Model statement of non-exclusion and fulfillment of conditions for participation in the proceedings; |
| 4 | **Appendix no. 3**  | Model statement of contractors jointly bidding for the contract; |
| 5 | **Appendix no. 4** | Model statement of the Contractor on the validity of the information contained in the statement of non-exclusion and fulfillment of the conditions for participation in the proceedings submitted with the bid, with regard to the grounds for exclusion from the proceedings; |

The appendices indicated in the table above shall be completed by the Contractor in accordance with the contents of this IfC. The contracting authority shall allow changes in the size of the appendix fields and word varieties resulting from the submission of a joint bid. The changes made must not alter the substantive content of the appendices.

To prepare a bid, it is recommended to use the model forms attached to this ToR.
If the Contractor does not use the template prepared by the Contracting Authority, the content of the bid or the attached statement or list must include all the information required in the templates provided with this ToR.

### Attachment No. 1 - Model Bid Form

**BID FORM**

Basic procedure without negotiation

for deliveries entitled:

**"Successive purchase of sheet music publications from foreign publishers"**

Procedure ref. no.**ZZP.261.10.2023**

1. CONTRACTING AUTHORITY:

Polskie Wydawnictwo Muzyczne

al. Krasińskiego 11a

31-111 Kraków

2. CONTRACTOR:

This bid is submitted by[[1]](#footnote-2):

|  |  |  |
| --- | --- | --- |
| **No.** | **Name(s) of Contractor(s)/ Address(es) of Contractor(s)** | **NCR no./ NIP no.** |
| **1** |  |  |
| **2** |  |  |

**3. AUTHORIZED CONTACT PERSON:**

|  |  |
| --- | --- |
| **Name and last name** |  |
| **Address** |  |
| **Telephone no.** |  |
| **Fax no.** |  |
| **E-mail address:** |  |

4. CONTRACTOR'S DECLARATION;

* 1. The undersigned, being authorized to sign this bid by the above-mentioned Contractor, in response to your announcement of the above-mentioned procurement, I/we declare that I/we have analyzed and fully accept/accept the contents of the documents forming the Terms of Reference (hereinafter referred to as the ToR), including the specified term of contract execution, warranty and payment terms, as well as modifications and clarifications of the ToR, and I/we inform that we have obtained all the necessary information to develop the bid and sign the resulting Contract.
	2. We offer the following conditions for the execution of the contract:

**for Order Part no. 1 - Task 1**

I/We offer **Guaranteed discount** - at **..... %** on the retail prices for individual publishing catalogs indicated in Appendix 1A to the offer [List of publications];

I/We offer **Catalog availability** ..... (Indicate the number of catalogs available) in accordance with Exhibit 1A to the bid [List of Publications]

I/We offer **Delivery date** ..... days

**for Order Part no. 2 - Task 2**

I/We offer **Guaranteed discount** - at **..... %** on the retail prices for individual publishing catalogs indicated in Appendix 1A to the offer [List of publications];

I/We offer **Delivery date** ..... days

**3. [**I/we do not intend to entrust any part of this contract to subcontractors.**] [**I/we present below a list of the elements of supplies/services accompanying the deliveries, the performance of which I/we intend to entrust to subcontractors:**]**[[2]](#footnote-3)**;**

|  |  |  |
| --- | --- | --- |
| No.  | **parts of the contract (scope of supplies or services accompanying supplies) that will be entrusted to subcontractors** | **names of subcontractors,****(if they are already known)** |
| 1 |   |  |
| 2 |   |  |

**4.** I/We are bound by this bid for a period of **30 days, i.e. until 27.07.2023,**
with the proviso that the first day of the period of binding the offer is the day on which the deadline for submission of bids expires.

**5.** I/We undertake and guarantee, without reservation or limitation, the performance of the entire order in accordance with the terms and conditions indicated in the draft contract provisions constituting Part II of the ToR, in particular in accordance with the indicated order completion date and payment terms, and I/We hereby waive any of my/our own conditions for the performance of the order.

**6.** I/We submit this bid in this proceeding **[**on our own behalf**]** / **[**as Contractors

 jointly bidding for the contract**]**[[3]](#footnote-4)

1. We are not participating as a Contractor in any other bid submitted for the award of this contract.
2. Under art. 18 para. 3 of the Law of September 11, 2019. Public Procurement Law (unified text Journal of Journal of Laws of 2022, item 1710, as amended), I indicate: **[**none of the information contained in the bid constitutes a business secret within the meaning of the provisions on combating unfair competition**]** / **[**the information indicated below contained in the bid constitute a business secret within the meaning of the provisions on combating unfair competition and, therefore, cannot be made available, in particular to other participants in the proceedings**]**[[4]](#footnote-5)

|  |  |  |
| --- | --- | --- |
| **No.** | **Determination of the type (name) of the reserved information/ in addition, it must be demonstrated (submit a justification) that the reserved information is a business secret** | **Scope of bid/name of extracted file** |
| **1** |  |  |

1. I/We declare that I/We have fulfilled the information obligations provided for in Article 13 or Article 14 of the GDPR1 towards natural persons from whom I/we have directly or indirectly obtained personal data for the purpose of applying for a contract in this procedure.2"
2. I/we inform that the selection of this offer will be**/**will not[[5]](#footnote-6) lead to tax obligation of the Contracting Authority (art. 225 item 2 of the PPL Act). At the same time, in connection with the emergence of such obligation, I/we indicate:[[6]](#footnote-7)

- the names (type) of goods or services, the supply or provision of which will lead to tax liability: ....................................................................

- the value of the aforementioned goods or services without the amount of tax: ...............................................

- the rate of value added tax that, to the best of my/our knowledge, will apply ..................................................................................................

11. I would like to inform you that we are a micro / small enterprise / large enterprise[[7]](#footnote-8);

SIGNATURE(S):

......................., on ......................

*.....................................................*

*Signature(s) of the person(s) authorized to sign this bid on behalf of the Contractor(s)*

### Appendix No. 1A - List of publications

Basic procedure without negotiation

for deliveries entitled:

**"Successive purchase of sheet music publications"**

Procedure ref. no.**ZZP.261.10.2023**

List of publications

We offer the availability of catalogs from the following publishers

***Part 1 of the Order - Task 1***

***entitled: Music-themed sheet music publications***

|  |  |  |
| --- | --- | --- |
| **No.** | **PUBLISHING HOUSE** | **availability on offer as of the date of submission of bids yes/no** |
| Required scope of the offer  |
| 1 | Willis Music |   |
| 2 |  Hall Leonard |  |
| 3 | Wise Publications |  |
| *Items 1-3 constitute the Required Minimum - unchecking the lack of availability in the Contractor's bid for one or more of these items means non-compliance of the bid with the requirements of the Contracting Authority.*  |
| Additional scope of the bid (scored in the criterion "Availability of catalogs") |
| 1 | Music Sales |   |
| 2 | Unión Musical Edidiones |   |
| 3 | Oxford University Press |   |
| 4 | Ricordi |   |
| 5 | ABRSM |   |
| 6 | Alfred Publishing |   |
| 7 | Alphonse Leduc |   |
| 8 | Durand |   |
| 9 | Max Eschig |   |
| 10 | Salabert |  |
| **total available publications** *(to be transferred to the bid form)*  |  |

***Part 2 of the Order - Task 2***

***entitled:* Part 2 of the Order - Task 2 entitled: *"Sheet music publications of Baerenreiter Publishing House"***

|  |  |  |
| --- | --- | --- |
| **No.** | **PUBLISHING HOUSE** | **availability on offer as of the date of submission of bids yes/no** |
| Required scope of the offer  |
| 1 | Baerenreiter |   |
| *Item 1 is the required minimum - marking the lack of availability in the Contractor's bid of the catalog of this publisher means non-compliance of the bid with the requirements of the Employer.*  |

SIGNATURE(S):

......................., on ......................

*.....................................................*

*Signature(s) of the person(s) authorized to sign this bid on behalf of the Contractor(s)*

### Appendix No. 2 - Model statement on not being excluded and meeting the conditions for participation in the proceedings.

Basic procedure without negotiation

for deliveries entitled:

**"Successive purchase of sheet music publications from foreign publishers"**

Procedure ref. no.**ZZP.261.10.2023**

1. CONTRACTING AUTHORITY:

Polskie Wydawnictwo Muzyczne

al. Krasińskiego 11a

31-111 Kraków

2. CONTRACTOR:

|  |  |  |
| --- | --- | --- |
| **No.** | **Name(s) of Contractor(s)** | **Address(es) of Contractor(s)** |
|  |  |  |
|  |  |  |

CONTRACTOR'S STATEMENT

submitted pursuant to Article 125 paragraph 1 of the act of September 11, 2019.

Public Procurement Law (hereinafter referred to as: the PPL)

STATEMENT

REGARDING GROUNDS FOR EXCLUSION FROM THE PROCEEDINGS

For the purpose of the public procurement proceedings entitled: **"Successive purchase of sheet music publications from foreign publishers"** conducted by the Contracting Authority - Polskie Wydawnictwo Muzyczne I declare that I am not subject to exclusion from the above-mentioned proceeding pursuant to Article 108 (1) and 109 (1) (4) of the PPL Act.

I declare that there are grounds for exclusion of me from the proceedings under Article ................................... of the PPL Act *(state applicable grounds for exclusion from among those listed in Article 108 (1) (1), (2) and (5) of the PPL Act).* At the same time, pursuant to Article 110 (2) of the PPL Act, I declare that in connection with the mentionedcircumstance(s) listed, I have taken the following corrective measures:

................................................................................................................................................................................................................................................................................................................................................

........................................................................................................................................................................

For the purpose of the public procurement proceedings entitled: **"Successive purchase of sheet music publications from foreign publishers"** conducted by the Contracting Authority - Polskie Wydawnictwo Muzyczne

I declare that I am not subject to exclusion from the aforementioned proceeding under Article 7 paragraph 1 of the Sanctions Act.

STATEMENT

CONCERNING FULFILLMENT OF THE CONDITIONS FOR PARTICIPATION IN THE PROCEEDINGS

I declare that I (we) meet the conditions of participation in the proceedings for the award of a public contract entitled: **"Successive purchase of sheet music publications from foreign publishers"** conducted by the Contracting Authority - Polskie Wydawnictwo Muzyczne

specified in Section 9.2 of the Information for Contractors (IfC) constituting Part I of the Order Specification (ToR).

SIGNATURE(S):

......................., on ......................

*.....................................................*

*Signature(s) of the person(s) authorized to sign this bid on behalf of the Contractor(s)*

A STATEMENT REGARDING THE INFORMATION PROVIDED:

I declare that all the information provided in the above statements is up-to-date and truthful, and has been presented with full knowledge of the consequences of misleading the Contracting Authority in presenting the information.

SIGNATURE(S):

......................., on ......................

*.....................................................*

*Signature(s) of the person(s) authorized to sign this bid on behalf of the Contractor(s)*

### Appendix No. 3 - Model statement of contractors jointly bidding for the contract.

Basic procedure without negotiation

for deliveries entitled:

**"Successive purchase of sheet music publications from foreign publishers"**

Procedure ref. no.**ZZP.261.10.2023**

1. CONTRACTING AUTHORITY:

Polskie Wydawnictwo Muzyczne

al. Krasińskiego 11a

31-111 Kraków

2. CONTRACTORS JOINTLY BIDDING FOR THE CONTRACT:

|  |  |  |
| --- | --- | --- |
| **No.** | **Names of Contractors jointly bidding for the contract** | **Addresses of Contractors** |
| **1** |  |  |
| **2** |  |  |

**Statement**

**Contractors jointly bidding for the contract**

submitted pursuant to Article 117 para. 4 of the Act of September 11, 2019.

Public Procurement Law (hereinafter referred to as: the PPL)

In connection with the submission of a bid in the proceedings for the award of a public contract entitled. **"Successive purchase of sheet music publications from foreign publishers"** conducted by the Contracting Authority - Polskie Wydawnictwo Muzyczne

acting for and on behalf of the Contractors jointly bidding for the contract, I declare that the following individual Contractors, jointly bidding for the contract, will perform the following elements of the contract:

|  |  |
| --- | --- |
| Name of the individual contractor jointly bidding for the contract  | Type of deliveries made by this Contractor |
|  |  |
|  |  |

SIGNATURE(S):

......................., on ......................

*.....................................................*

*Signature(s) of the person(s) authorized to sign this bid on behalf of the Contractor(s)*

### Appendix No. 4 - Model statement on the timeliness of the information contained in the statement on not being excluded and meeting the conditions for participation in the proceedings.

Basic procedure without negotiation

for deliveries entitled:

**"Successive purchase of sheet music publications from foreign publishers"**

Procedure ref. no.**ZZP.261.10.2023**

1. CONTRACTING AUTHORITY:

Polskie Wydawnictwo Muzyczne

al. Krasińskiego 11a

31-111 Kraków

2. CONTRACTOR:

|  |  |  |
| --- | --- | --- |
| **No.** | **Name(s) of Contractor(s)** | **Address(es) of Contractor(s)** |
|  |  |  |
|  |  |  |

CONTRACTOR'S STATEMENT

CONCERNING THE VALIDITY OF THE INFORMATION CONTAINED IN THE STATEMENT ON NOT BEING SUBJECT TO EXCLUSION AND MEETING THE CONDITIONS FOR PARTICIPATION IN THE PROCEEDINGS SUBMITTED WITH THE BID

I/we hereby declare that the information contained in the statement of non-exclusion and fulfillment of the conditions for participation in the proceedings, submitted with my/our bid dated ................................., with regard to the grounds for exclusion from the proceedings in terms of Article 108 (1) and 109 (1) (4) and in terms of Article 7 (1) of the Sanction Law, remains valid.

SIGNATURE(S):

......................., on ......................

*.....................................................*

*Signature(s) of the person(s) authorized to sign this bid on behalf of the Contractor(s)*

1. The contractor models the table below according to its composition. [↑](#footnote-ref-2)
2. Contractor deletes/crosses out unnecessary. [↑](#footnote-ref-3)
3. Contractor deletes/crosses out unnecessary. [↑](#footnote-ref-4)
4. Contractor deletes/crosses out unnecessary. [↑](#footnote-ref-5)
5. Contractor deletes/crosses out the unnecessary. [↑](#footnote-ref-6)
6. If a bid has been submitted, the selection of which would lead to the contracting authority's tax liability in accordance with the Law of March 11, 2004 on tax on goods and services (Journal of Laws of 2018, item 2174, as amended 15), for the purpose of applying the price or cost criterion, the contracting authority shall add the amount of value added tax that it would be obliged to settle to the price presented in that bid. [↑](#footnote-ref-7)
7. Contractor deletes/crosses out the unnecessary. [↑](#footnote-ref-8)