

TERMS AND CONDITIONS OF TENDER PROCEDURE

Procedure No. SAULE-FB-2/02/2021 of 24th February, 2021

Saule S.A. based in Warsaw, invites you to take part in the Tender procedure for **performing the deposition of layers on polymer substrates using magnetron sputtering and ALD** (further: Procedure).

Project: Research and development on transparent, flexible electrode with barrier properties for applications in optoelectronics

Funding: Smart Growth Operational Programme 2014-2020 (further: SG OP)

Project purpose: The strategic goal of the project is to obtain a barrier film together with a conducting electrode.

Procedure No.: SAULE-FB-2/02/2021

Type of contract: Services

CPV: 73111000-3 Research laboratory services

Procedure: Request for competitive quotation

Place of execution of the contract: performance of the service in the place indicated by the Contractor

Date of execution of the contract: within the period indicated by the contractor in the Tender, but not longer than **150 days** from signing the contract with the Contractor.

§ 1 GENERAL PROVISIONS

1. These Terms and Conditions specify the manner of preparation and conduct of the Procedure for **performing the deposition of layers on polymer substrates using magnetron sputtering and ALD**.
2. Whenever the Terms and Conditions refer to:
 - a) **Saule or the Contracting Authority** - it should be understood as Saule S.A., based in Warsaw, 14b Postępu Street, 02-676 Warsaw, Tax Identification Number (NIP) 522-301-09-43, Industry Identification Number (REGON) 146985340, registered under Court Register Number (KRS) 0000811142 in District Court for Capital City of Warsaw, 13 Commercial Department, e-mail: office@sauletech.com, www.sauletech.com,
 - b) **Subject of the Contract / Service** - it should be understood as **performing the deposition of layers on polymer substrates using magnetron sputtering and ALD**,
 - c) **Contract** - it should be understood as a contract to be concluded by Saule with the Contractor as a result of conducting the Procedure,
 - d) **Tenderer** - it should be understood as an entity (a person, a legal person or an organizational unit without legal personality) applying for the conclusion of the Contract,

- e) **Contractor** - it should be understood as the Tenderer with whom the Contract was concluded.
- f) **Tender** - it should be understood both as the Initial Tender and the Final Tender.

§ 2 GENERAL RULES OF THE PROCEDURE

1. The Competition consists of three Stages:

- a. Stage I - submission of Initial Tender,
- b. Stage II - assessment of compliance with the conditions for participation in the Procedure,
- c. Stage III - signing, with the Contractor, who was positively verified in Stage II, the NDA agreement (on confidentiality), a model of which constitutes **Appendix 6** to the Procedure, providing a full description of the subject of the contract and submitting the Final Tenders.

The division of the Competition into three Stages is justified by the need to protect business secrets. In accordance with item 6.5.2. sub-point 6 of **the Guidelines on the eligibility of expenditure** of December 21, 2020¹, due to the need to protect business secrets, it is allowed to limit the scope of the description of the subject of the contract, and it is required to provide a supplement to the excluded description of the subject of the contract to a potential contractor who has undertaken to maintain confidentiality in relation to the information provided, within the time limit enabling the preparation and submission of the Tender (Final Tender).

2. After submitting the Initial Tender (Stage I of the Competition), SAULE:

- a. open Initial Tenders and assess whether they meet the conditions for participation in the Procedure,
- b. invite Tenderers who meet the conditions for participation in the Procedure (Stage II), after signing an NDA agreement with them, to submit their Final Tenders (Stage III of the Competition).

3. Any entity engaged in an economic activity, regardless of its legal form, place of residence or ownership structure, which meets the conditions set out in this Procedure and submits all necessary documents, may take part in the Procedure.

4. The following **are excluded** from applying for participation in the Procedure:

- a) entities in respect of which insolvency proceedings have been opened or bankruptcy announced,
- b) entities that are in arrears with the payment of taxes, fees and social security contributions,
- c) persons who have been legally convicted of a crime of paid protection, an offense against economic turnover or other crime committed for financial gain, and in the case of

¹ Link: https://www.funduszeuropejskie.gov.pl/media/97405/wytyczne_w_zakresie_kwalifikowalnosci_wydatkow_21_12_2020_1.pdf

- entrepreneurs other than persons, when the above-mentioned circumstances occurred in relation to the members of their management boards,
- d) Tenderers who have submitted incomplete, incorrectly prepared (not meeting the requirements contained in the Procedure) Tenders,
 - e) Tenderers who do not meet the conditions for participation specified in this Procedure.
 - f) Tenderers who are in an economic and financial situation that does not ensure timely and compliant execution of the contract or do not have necessary technical knowledge and experience, as well as people capable of executing the Contract.
5. Saule requires the Tenderers to submit statements, the models of which constitute **Appendix 1 and 2** to this Procedure. The submission of a false statement excludes from participation in the Procedure, and after the conclusion of the Contract is a gross violation of it and constitutes the basis for termination of the Contract with immediate effect due to the fault of the Tenderer.
6. The Procedure is not public. Public tenders are not expected to be opened in public and access to the report on the Procedure is restricted, except as described in point 7.
7. At the request of the Tenderer who submitted the Tender, the Contracting Authority made available the report on the Procedure at the **headquarters of Saule in Warsaw**, excluding some of the tenders constituting the trade secret.

§ 3 CONDITIONS FOR PARTICIPATION IN THE PROCEDURE

1. The conditions for participation in the Procedure are:
- a) submission of the **Initial Tender (Appendix 3)** to this Procedure with all required appendices,
 - b) submission of a **statement**, the model of which constitutes **Appendix 1** to this Procedure,
 - c) submission of a copy of the current extract from appropriate business activity register (KRS or CEIDG), generated no earlier than 3 months before the deadline for submission of the Tender or an equivalent registration document in the case of a foreign entity,
 - d) submission of a **power of attorney** (or a copy thereof) granted to sign the Tender, submit the Tender, conclude the Contract or other actions undertaken on behalf of the Tenderer - if the persons undertaking the above-mentioned activities on behalf of the Tenderer are not listed in the register as persons authorized to represent the Tenderer. Copies must be confirmed as a true copy by the person / persons authorized to represent the Tenderer,
 - e) submission of a **statement** that the Tenderer is not related to the Contracting Authority by equity and person, the model of which constitutes **Appendix 2** to this Procedure; **equity or personal relations** are understood as mutual relations between Contracting Authority or persons authorized to making commitments on behalf of Contracting Authority or persons acting on behalf of Contracting Authority in the process of preparation and carrying out the Procedure and Contractor, particularly consisting in:
 - involvement in company as a partner in a civil law partnership or partnership;
 - holding minimum 10% of stocks or shares;

- performing functions of a member of supervisory or managing body, a procurer, attorney;
 - being married, having direct/lineal or collateral/secondary affinity up to the second degree, remaining in adoption-like relationship, being under guardianship or custody.
- f) submission, in order to ensure the performance of the contract by the Contractor giving a guarantee of its proper performance, a **statement** regarding the fulfillment of the conditions for participation in the procedure specified below in point 2,
- g) signing **NDA agreement**, the model of which constitutes **Appendix 6** to this Procedure,
- h) submission of the **Final Tender (Appendix 4)** to this Procedure).
2. Tenderers may apply for the award of the contract, who have the necessary **equipment** at their disposal to perform the **magnetron sputtering and ALD** process on polymer substrates. Assessment of the fulfillment of the above requirement will be made on the basis of the Tenderer's statement on the disposal of the above-mentioned equipment to perform:
- 1) magnetron sputtering on polymer substrates in the roll-to-roll process (width: 60 cm) and sheet-to-sheet process (dimensions: 20x20 cm²) and,
 - 2) ALD on polymer substrates in the sheet-to-sheet process (dimensions: 20x20 cm²).
3. Saule reserves the right to cancel or change the terms of this Procedure, as well as cancel the Procedure without giving reasons, and may do so at any time without liability to Tenderers who submitted Tenders.
4. By taking part in the Procedure, the Tenderer accepts the provisions of this Procedure and the provisions of the Contract proposal set out in **Appendix 5** to the Procedure. The Tenderer may propose changes to the provisions of the Contract, but may not make the validity of his Tender conditional on their acceptance by SAULE. If the Tenderer makes the validity of his Tender dependent on SAULE's acceptance of any proposed amendment to the provisions of the Contract, this shall constitute grounds for rejecting the Tender.

§ 4 CONTRACT SUBJECT AND EXPLANATIONS

1. The subject of this procedure is **performing the deposition of layers** using:
- 1) **magnetron sputtering** on polymer substrates in the roll-to-roll process (width: 60 cm) and sheet-to-sheet (dimensions: 20x20 cm²) and,
 - 2) **ALD** on polymer substrates in the sheet-to-sheet process (dimensions: 20x20 cm²) at temperatures **up to 120°C**.

The contracting authority will provide the substrate for certain (some but not all) processes and send them to the Contractor at his own expense. A detailed description of the subject of the contract, constituting **Appendix 7** to this Procedure, will be made available after signing the **NDA agreement** at Stage III of the Procedure. The contract with the Contractor will be concluded for the period indicated by the Contractor in the Final Tender.

2. The amount of remuneration for the Contractor in the submitted Tender must include **all costs necessary** to perform the contract, including **costs of proper packing and transporting** the samples to the Contracting Authority, which will guarantee no damage to the samples.
3. The Contracting Authority reserves the right to the **participation of the Contracting Authority's representative** during the performance of the service at the Contractor's.
4. The Contracting Authority will pay an advance for the performance of the contract in the amount **up to 50%** of the total value of the subject of the Contract.
5. The Tenderer may ask Saule for any doubts regarding the conditions of the Procedure. Requests for clarifications should be submitted in writing within **3 working days**, counting from the date of the publication of this Procedure. It is allowed to send an inquiry via e-mail and via the Internet portal Competitiveness Base 2021 (Baza Konkurencyjności 2021).
6. The Contracting Authority specifies the following person for communication: Mr. **Maciej Biernacki**, e-mail: maciej.biernacki@sauletech.com.
7. Costs of Tender preparation and submittal shall be borne by Contractor.
8. These Terms and Conditions with its appendices have been posted on appropriate websites as required by the competitiveness principle, including Contracting Authority's website at www.sauletech.com/tenders.
9. The Contracting Authority reserves the possibility to introduce **significant alterations** in the provisions of the signed Contract, resulting from the following specification, under condition that the alterations are prompted by circumstances which may influence proper contract performance, including cases when:
 - existing regulations have changed, if adjusting the provisions of the contract to the current legal status (including existing norms) is required,
 - the necessity of introducing changes results from guideline changes or recommendations by the institution which has provided funds for the contract,
 - tax rates for services being the subject of tender have changed,
 - force majeure events have occurred, which were impossible to externally predict and which could not be avoided,
 - in the cases indicated in **the Guidelines on the eligibility of expenditure** of December 21, 2020².Contract amendments shall be made in writing.

² Link: https://www.funduszeuropejskie.gov.pl/media/97405/wytyczne_w_zakresie_kwalifikowalnosci_wydatkow_21_12_2020_1.pdf

§ 5 INITIAL TENDER, INCLUDING THE DEADLINE FOR SUBMITTING TENDERS

1. The Initial Tender should be prepared on the Tender form (**Appendix 3 to the Procedure**).
2. The Initial Tender should be submitted at the **Saule office in Wroclaw** (Duńska 11 Street, 54-427 Wroclaw) until **10:00 am on 05th March, 2021**.
3. The submission of the Initial Tender at the Saule office in Wroclaw means a physical (personal) submission of the Initial Tender or sending it by courier / registered mail, delivered until **10:00 am on 05th March, 2021**.
4. The Initial Tender should be submitted in a closed, opaque envelope. The envelope should include the following information:
 - a) number and name of the Procedure: „**SAULE-FB-2/02/2021 - Performing the deposition of layers on polymer substrates using magnetron sputtering and ALD**”,
 - b) full name and address of the Tenderer.
5. The date and time of the tender's delivery to the Contracting Authority shall determine the acceptance of the Initial Tender.
6. Initial Tenders that will be submitted after the deadline specified in point 2, will not be evaluated.
7. The Tenderer **may change or withdraw** the Initial Tender previously submitted by it. A change or withdrawal of the Initial Tender may take place by submitting an appropriate written statement to the Saule office in Wroclaw, provided that such a declaration can only be effectively made before the deadline for submitting Initial Tenders set by Saule.
8. It is allowed to submit Initial Tenders **in electronic form**:
 - 1) via the Internet portal Competitiveness Base 2021 (Baza Konkurencyjności 2021) or,
 - 2) to the following address: przetargi@sauletech.com. In this case, the Tenderer must, within the time specified in point 2, send to the e-mail address above the Tender with attachments in files with *.pdf extension, compressed (packed) to a file in *.zip or *.rar format. The file(s) in *.zip or *.rar format should be protected with a password known only to the Tenderer. **Within 5 (five) hours** from the the deadline for submitting Tenders, the Tenderer should send to the e-mail address: przetargi@sauletech.com passwords to compressed (packaged) files. Failure to comply with the obligation set out in the previous sentence results in rejecting the Tender as not meeting the requirements of the Procedure. Provisions of the points 1, 4, 5 and 7 shall apply accordingly.



§ 6 SUBMITTING FINAL TENDERS

1. Tenderers qualified to participate in Stage III of the Procedure, after signing the NDA agreement (on confidentiality), will receive a full description of the subject of the contract and an invitation to submit the Final Offer.
2. Stage III of the Procedure is confidential. Neither party may, without the consent of the other party, disclose technical and commercial information related to Stage III of the Procedure.
3. The Final Offer should be submitted to the **SAULE office in Wrocław** on the Tender form (**Appendix 4** to this Procedure) within the time limit specified in the invitation of the Contracting Authority to submit the Final Offer. The deadline for submitting the Final Offers will be the same for each Contractor.
4. The provisions of § 5 points 3-8 shall apply accordingly to the Final Offers.
5. After submitting Final Offers, SAULE:
 - a) evaluate the Final Offers,
 - b) select the most advantageous offer and conclude the contract with the Tenderer selected in the Procedure.

§ 7 TENDER EVALUATION, INCLUDING CRITERIA

1. Formal evaluation of Tenders will be made by verifying submitted documents in terms of their completeness, consistency and fulfillment of the conditions set out in this Procedure:
 - a) formal evaluation is subject to the Tender;
 - b) the evaluation will be made on the principle „meets” or „does not meet the requirements”
 - c) if the Tender and attached documents do not confirm the fulfillment of the conditions of participation in the Procedure, Saule will be able to set the Tenderer a deadline for submitting explanations or supplementing the required documents. Setting an additional deadline is not an obligation for Saule.
2. All correctly submitted Tenders will be assessed according to the same criteria.
3. Saule shall correct obvious errors in the Tender, including typing errors.
4. Saule shall **reject** the Tender if:
 - a) its content does not correspond to the Procedure, including if it is partial or conditional or variant,
 - b) it was submitted by the Tenderer who is subject to the exclusion from participation in the Procedure,
 - c) it was submitted after the deadline for submission of Tenders.

5. Saule is not obliged to notify the Tenderer whose Tender has been rejected about this fact. At the request of the Tenderer, Saule indicates the justification and the basis for the rejection of the Tender.
6. Saule shall make the evaluation of Tenders based on the following criteria:
 - 1) Contractor's net remuneration, criterion weight - **90%**
 - 2) Time for the completion of the subject of tender, criterion weight - **10%**

Points for particular criteria shall be calculated in accordance with the following formula:

1) Contractor's net remuneration

$P = Cn / Cob \times [90]$ where:

P – number of points awarded to the Contractor for the remuneration offered;

Cn – lowest remuneration offered during the procedure;

Cob – remuneration offered in the examined tender.

2) Time for the completion of the subject of tender

$P = Cnd / Cd \times [10]$ where:

P – number of points awarded to the Contractor for the time offered;

Cnd – shortest time offered in the procedure;

Cd – time offered in the examined tender.

Maximum score equals 100 points. The sum of particular criteria (1+2) constitute the final result of each tenderer. The tender awarded the highest number of points shall be considered optimum.

7. The Contracting Authority informs that the values given in the submitted tenders in **foreign currency** will be calculated into zloty (PLN) according to the average exchange rate announced by National Bank of Poland on the day of the launch of this procedure, i.e. on the day of the publication of the Terms and Conditions of tender submission.
8. As the most advantageous Tender, Saule will select the Final Tender, which is the most advantageous for the Contracting Authority according to the criteria set out in point 6.

§ 8 CONCLUSION OF THE PROCEDURE

1. The Procedure will be concluded by announcing the selection of the Contractor. The Contracting Authority will publish information about the result of the procedure on appropriate websites as required by the competitiveness principle, including Contracting Authority's website at www.sauletech.com/tenders.
2. The selected Tenderer is obliged to sign the Contract within 7 days from the day of receiving from the Contracting Authority an invitation to sign the Contract.

3. If the Tenderer, whose Tender has been selected, avoids concluding the Contract, Saule may choose the most advantageous Tender from among the remaining Tenders, without carrying out their re-evaluation.

§ 9 ANNULMENT OF THE PROCEDURE

1. Saule shall annul the Procedure if:
 - a) no tender has been submitted that is not subject to rejection,
 - b) none of the tenders meets the financial expectations assumed by Saule.
2. Saule shall also terminate the Procedure without selecting any tenders submitted.
3. Saule reserves the right to annul the Procedure in whole or in part, regardless of the stage of the Procedure, without mentioning reasons for such annulment.

§ 10 MEANS OF APPEAL

Saule does not provide participants of the Procedure with means of appeal regarding the Procedure carried out under these Terms and Conditions.

APPENDICES:

- Appendix No. 1 - Contractor's statement 1;
- Appendix No. 2 - Contractor's statement 2;
- Appendix No. 3 - Initial Tender form model;
- Appendix No. 4 - Final Tender form model;
- Appendix No. 5 - Contract proposal (negotiable);
- Appendix No. 6 - NDA;
- Appendix No. 7 - Full description of the subject of the contract.