

**TERMS AND CONDITIONS OF THE BIDDING PROCESS
FOR THE SELECTION OF A CONTRACTOR FOR THE IMPLEMENTATION OF THE INVESTMENT TASK TITLED.**

Purchase of dipotassium phosphate

As part of the project " *Development of innovative vegan instant products using alternative emulsifiers, including plant proteins, enriched with a fiber preparation from starch with prebiotic properties*" implemented by Maspex Food. Ltd. within the framework of the 1st competition of the Government Program NUTRITECH - nutrition in light of the challenges of improving the well-being of society and climate change.

**CHAPTER I.
GENERAL PART**

§ 1

The regulations set out the rules of the bidding procedure for the selection of a contractor for the implementation of the investment task titled *Purchase of dipotassium phosphate*

§ 2

1. The Employer, in announcing the bidding procedure for the selection of a contractor for the implementation of the investment task titled *Purchase of dipotassium phosphate*, is not required to apply the Act of September 11, 2019. Public Procurement Law (i.e. Journal of Laws of 2023, item 1605, as amended).
2. The proceeding is conducted by means of a request for quotation in accordance with the terms and conditions set forth in the Regulations.
3. Whenever reference is made in the provisions of the Regulations to:
 - a) "**Purchaser**" - should be understood as Maspex Food sp. z o.o., seated in Wadowice, represented in accordance with applicable regulations;
 - b) "**Commission**" - shall mean the Commission established in accordance with the provisions of the Regulations;
 - c) "**Investment**" - should be understood as the implementation of the investment task titled *Purchase of dipotassium phosphate* implemented under the NUTRITECH program
 - d) "**Offer**" - it shall be understood as an offer with price and other requirements, submitted by the Contractor on the basis of the Request for Proposal;
 - e) "**Contractor**" - shall mean a natural person, a legal person or an organizational unit without legal personality that has applied for the award of a contract, submitted a tender, or entered into a contract agreement;
 - f) "**Regulations**" - shall mean these Regulations of the Bidding Procedure;
 - g) "**Proceedings**" - it shall be understood as the proceedings conducted in the form of a request for quotation to select the most favorable offer for the implementation of the Project,
 - h) "**Announcement**" - it shall be understood as the announcement of the conduct of the Proceedings.

§ 3

The proceedings shall be conducted taking into account the following principles and rules of conduct:

1. **Equal treatment of Contractors**, which means that all Contractors have the same access to information relating to the contract in question, and no Contractor may be privileged over another.

2. **The principle of transparency**, which means that the Procedure is conducted in a transparent manner for Contractors.
3. **Fair competition**, which means that the conditions for participation in the Procurement Proceedings shall be determined in a manner proportionate to and related to the subject matter of the contract, without unreasonably narrowing competition by establishing requirements that exceed the needs necessary to achieve the objectives of the project and leading to discrimination against Contractors.
4. **Polish language**, which means that the Proceedings shall be conducted in the Polish language, unless the request for proposals provides otherwise.

CHAPTER II. DESCRIPTION OF THE BIDDING PROCESS

§ 4

1. Proceedings shall be initiated by posting a request for quotation on the Contracting Authority's website and sending a request for quotation to at least three potential contractors. .
2. If the content of the request for quotation is changed, the Contracting Authority shall extend the deadline for submission of tenders by the time necessary to introduce changes in the tenders, if necessary, in particular if the change concerns the definition of the subject matter of the contract, the size or scope of the contract, the criteria for evaluation of tenders, the conditions for participation in the procedure. The Procuring Entity in the tender request published in accordance with para. 1 above, the request for proposals will include information about the change. This information will include at least: the date of publication of the amended request for quotation and a description of the changes made.

§ 5

1. The following are excluded from the Proceedings:
 - a) Contractor who failed to demonstrate the fulfillment of the conditions for participation in the Procedure or failed to demonstrate the absence of grounds for exclusion;
 - b) Contractor with personal or capital ties to the Contracting Authority as defined in the Announcement;
 - c) A contractor that is a natural person who has been validly convicted of a crime:
 - I. referred to in Article 165a, Article 181-188, Article 189a, Article 218-221, Article 228-230a, Article 250a, Article 258 or Article 270-309 of the Act of June 6, 1997. - Penal Code (Journal of Laws of 2021, item 2345, as amended), or Articles 46 - 48 of the Act of June 25, 2010 on Sports (Journal of Laws of 2020, item 1133) , or Article 54 (1-4) of the Act of May 12, 2011 on reimbursement of medicines, foodstuffs for special nutritional purposes and medical devices (Journal of Laws of 2022, item 463)
 - II. of a terrorist nature, as referred to in Article 115 § 20 of the Act of June 6, 1997. - Criminal Code,
 - III. Treasury,
 - IV. referred to in Article 9 or Article 10 of the Act of June 15, 2012 on the consequences of entrusting work to foreigners residing on the territory of the Republic of Poland in violation of the law (Journal of Laws of 2021, item 1745, as amended);
 - d) Contractor, if an incumbent member of its management or supervisory body, a partner in a general or partnership company or a general partner in a limited partnership or a limited joint-stock partnership, or a proxy has been validly convicted of a crime referred to in point c) above;
 - e) A contractor against whom there has been a final court judgment or a final administrative decision on overdue payment of taxes, fees or contributions to social or health insurance, unless the contractor has paid the due taxes, fees or contributions to social or health insurance together with interest or fines or has entered into a binding agreement on the repayment of these receivables;
 - f) A contractor who, as a result of deliberate action or gross negligence, misled the Contracting Authority in presenting information that he is not subject to exclusion, meets the conditions for

participation in the procedure or the selection criteria, or who concealed this information or is unable to provide the required documents;

- g) Contractor who, as a result of recklessness or negligence, has presented information that is misleading to the Contracting Authority, which may have a significant impact on the decisions made by the Contracting Authority in the procurement procedure;
 - h) Contractor who unlawfully influenced or attempted to influence the actions of the Contracting Authority or to obtain confidential information that could give him an advantage in the procurement procedure;
 - i) A contractor who participated in the preparation of the procurement procedure or whose employee, as well as a person performing work on the basis of a contract of mandate, contract for specific work, agency contract or other contract for the provision of services, participated in the preparation of such procedure, unless the resulting distortion of competition can be eliminated otherwise than by excluding the contractor from participation in the procedure;
 - j) A contractor who, with other contractors, has entered into an agreement to distort competition between contractors in the procurement procedure, which the contracting authority is able to demonstrate by appropriate means of evidence;
 - k) A contractor who is a collective entity, against whom the court has ruled a ban on applying for public contracts on the basis of the Act of October 28, 2002 on the responsibility of collective entities for acts prohibited under penalty (Journal of Laws of 2020, item 358, as amended);
 - l) A contractor who has been banned from competing for public contracts as a preventive measure;
 - m) A contractor with respect to whom liquidation has been opened, in the arrangement approved by the court in the restructuring proceedings is provided for the satisfaction of creditors by liquidation of his assets, or the court ordered liquidation of his assets in accordance with Article 332 (1) of the Act of May 15, 2015. - Restructuring Law or whose bankruptcy has been declared, except for a contractor who, after the declaration of bankruptcy, has entered into an arrangement approved by a final court decision, if the arrangement does not provide for the satisfaction of creditors by liquidation of the bankrupt's assets, unless the court has ordered liquidation of his assets pursuant to Article 366 (1) of the Act of February 28, 2003. - Bankruptcy Law;
 - n) Pursuant to Article 7 of the Law of April 13, 2022 on special solutions to prevent support for aggression against Ukraine and to protect national security (Journal of Laws of 2022, item 835), the following are excluded from the proceedings:
 - I. contractor and 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 of exclusion from public procurement procedures;
 - II. a contractor and a participant in a competition whose beneficial owner within the meaning of the Law of March 1, 2018 on the prevention of money laundering and terrorist financing is 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 or she has been listed on the basis of a decision on listing that resolves the measure of exclusion from public procurement procedures;
 - III. a contractor and a participant in a competition whose parent entity within the meaning of Article 3(1)(37) of the Accounting Act of September 29, 1994 is 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 listing decision resolving the measure of exclusion from public procurement procedures.
2. The Contracting Authority may specify conditions for participation in the Proceedings concerning, among other things:
- a) Have the authority to carry out certain activities or actions, if the law requires them;
 - b) having the necessary knowledge and experience;
 - c) having the appropriate technical potential;
 - d) economic and/or financial situation.

3. The bid of the excluded Contractor shall be deemed rejected.

§ 6

1. In the Proceedings, the Contracting Authority may call on Contractors to submit statements or documents necessary for the conduct of the Proceedings.
2. The Contracting Authority may require from the Economic Operator appropriate statements or documents confirming that the Economic Operator meets the conditions for participation in the Procedure or is not subject to exclusion.
3. The Contracting Authority may call, within the time limit set by it, for clarification of statements or documents required in the Procedure.
4. The Contracting Authority may call upon Economic Operators who have not submitted statements or documents required by the Contracting Authority by the specified date, or who have not submitted powers of attorney, or who have submitted required statements and documents containing errors or who have submitted defective powers of attorney, to submit them by the specified date, unless the bid is rejected, the Procedure is invalid or the bid contains a price that exceeds the amount that the Contracting Authority may allocate for the execution of the subject matter of the contract.
5. The authorization of the persons signing the bid, statements or documents to sign them must result directly from the documents attached to the bid. This means that if such authorization does not arise directly from the document stating the legal status of the Contractor (extract from the appropriate register), the bid must be accompanied by a power of attorney issued by persons authorized to do so

§ 7

1. A Contractor may submit only one bid in the Procedure.
2. Before the deadline for submission of tenders, the Contractor may change or withdraw the tender.
3. The contracting authority may not review the contents of the bids before the deadline for their opening.
4. The opening of bids is open to the public and takes place at the place indicated in the request for bids.
5. During the opening of the bids, the names (companies) and addresses of the Contractors shall be announced, as well as the price information.
6. A bid submitted after the deadline shall not be evaluated and shall be returned immediately to the Contractor.

§ 8

1. The Contracting Authority may correct in the text of the bid obvious clerical errors and calculation errors in the calculation of the price, after agreeing on the correction with the Contractor.
2. The contracting authority rejects the bid:
 - a) if its content does not correspond to the content of the request for quotation;
 - b) its submission constitutes an act of unfair competition within the meaning of the provisions on combating unfair competition;
 - c) includes a price that the Contracting Authority cannot pay;
 - d) Is invalid under separate regulations.

§ 9

1. During the course of the Procedure, statements, requests, notices and information shall be provided by the Contracting Authority and Contractors, at the choice of the Contracting Authority, in the manner specified in the request for proposals addressed to the Contractor: in writing or electronically. Written form is always acceptable.
2. If the Contracting Authority or the Contractor transmits statements, requests, notices or information by electronic means, each party shall, at the request of the other, immediately confirm the fact of their receipt.

§ 10

1. The Contracting Authority shall select the most advantageous offer from among the offers submitted by Contractors who are not subject to exclusion, based on the evaluation criteria established in the request for proposals.
2. In case of additional questions or doubts about the bids, the Contracting Authority may address additional inquiries to all or selected Contractors to clarify the bid or request clarification of its content.
3. The selection of a bid is documented by a protocol of contractor selection drawn up by the Commission.

§ 11

Information on the outcome of the proceedings shall be made public in the same manner as the request for proposals was made public, i.e. by posting this information in the manner described in § 4 item. 1 of the Regulations.

§ 12

1. The Proceedings are followed by the signing of a contract with the Contractor who submitted the most favorable bid.
2. If the Contractor withdraws from signing the contract with the Contracting Authority, it is possible to sign the contract with the next Contractor who obtained the next highest number of points in the Procedure.

§ 13

Written form is required to document the conclusion of the contract with the Contractor and the preparation of a protocol for the selection of the Contractor.

§ 14

1. At a minimum, the protocol of the procurement proceedings shall include:
 - a) indication of the Employer,
 - b) definition of the subject of the contract,
 - c) information on the mode of awarding the contract,
 - d) information on how to publicize the request for quotation,
 - e) a list of bids received by the Employer in response to the request for quotation, together with an indication of the date on which the bid was received by the Employer,
 - f) information on compliance by Contractors with the condition concerning the prohibition on awarding contracts to related parties,
 - g) information on the fulfillment of the conditions for participation in the Procedure by Contractors (if applicable),
 - h) information about the point and percentage weights assigned to each evaluation criterion and how the scores were awarded to individual Contractors for meeting the criterion,
 - i) Indication of the selected offer with the reasons for selection,
 - j) the date of preparation of the protocol and the signature of the Employer,
2. The bids and other documentation of the Proceedings are attached to the Minutes.

CHAPTER III. Commission

§ 15

1. In order to prepare or conduct the Proceedings, the Contracting Authority will appoint a Commission.
2. The commission consists of at least three people.
3. The tasks of the commission include evaluation of the fulfillment of the conditions for participation in the procedure by Contractors or the absence of grounds for exclusion, as well as the examination and evaluation of bids submitted and selection of the most advantageous bid.

4. The Commission performs the activities specified in paragraph 3 above in closed sessions.

CHAPTER IV. FINAL PROVISIONS

§ 16

1. The Employer, from the moment the conditions for participation in the proceedings are made available, and the Contractor from the moment the bid is submitted in accordance with the request for proposals addressed to Contractors, are obliged to act in accordance with the Regulations.
2. The Procuring Entity may cancel or close the Procedure at any stage of the Procedure, without giving any reason.
3. The Contracting Authority shall simultaneously notify all Economic Operators of the cancellation or closure of the Procedure, additionally posting information in this regard on the website where the request for proposal was posted.
4. In the event of cancellation or closure of the Proceedings, Contractors shall not be entitled to reimbursement of the costs of participation in the Proceedings.
5. The Contracting Authority may entrust the preparation or conduct of the Proceedings to a third party.
6. In matters not regulated in the Regulations, the provisions of the Act of April 23, 1964 shall apply to the actions taken by the Contracting Authority and the Contractors in the contract award procedure. Civil Code (i.e. Journal of Laws 2023, item 1610, as amended).
7. Any disputes arising from the implementation of the provisions of the Regulations shall be submitted to the jurisdiction of the common court having jurisdiction over the registered office of the Purchaser.