

Material Provisions of the Contract

§1 Contract matter

1. The subject of the contract is a new dynamic braking station with equipment dedicated for research and development also for approval measures for testing and simulating Middle Duty and Heavy Duty internal combustion engines fueled by gasoline, diesel, LPG, CNG, synthetic fuels and biofuels with a maximum power rating 560 kW. In addition, station has to enable hybrid power train tests with electric motor power 250Kw. Tested engines will be operated in states as follows: steady, transient and dynamic.
2. Detailed description of the subject of the contract is set out in the ToR, which together with the Contractor offer will constitute an integral part of the contract.
3. The Contractor is obliged to execute the subject of the agreement not later than **by June 30th, 2021**.
4. The Contractor shall be obliged to provide with the equipment complete documentation in Polish or English (electronic version, certificates in paper version), including at least:
 - a. technical drawings of the entire system (configuration diagram);
 - b. diagrams of all gas, pneumatic and hydraulic devices and installations;
 - c. diagrams of all electrical components and their connections including usage codes;
 - d. instructions for use, repair and maintenance together with a complete description of measurement procedures, description of calibration procedures, in the part necessary from the point of view of Directive 2006/42/WE, should be provided with translation into Polish;
 - e. description of functioning of the system devices and their software;
 - f. list of spare parts;
 - g. a list of spare parts that BOSMAL should have in stock in order to minimize downtimes in case of system failure;
 - h. reports on procedures for checking equipment after the equipment start-up phase (at the Contractor);
 - i. information and warning signs in the form of pictograms should be placed on the device, and if they are in descriptive form, they should be in Polish;
 - j. all control elements should be described in Polish, also applies to electronic control panels (e.g. touch screen);
 - k. CE marking;
 - l. declaration of compliance with UN ECE and US EPA regulations;
 - m. declarations of conformity to the following safety standards:
 - 2006/42/WE- Machinery
 - 2014/35/EU - Low Voltage
 - 2014/30/EU - Electromagnetic compatibility
5. The Contractor undertakes to provide detailed installation conditions in Polish **within 4 (four) weeks** from the conclusion of the contract.
6. Permissible changes in the contract after its conclusion, as provided in §2.

§2 Amendments to the Contract

1. Pursuant to Article 144(1) of the PPL, the Contracting Authority provides for the possibility to amend the provisions of the concluded Contract in relation to the content of the offer. An amendment is possible if at least one of the circumstances listed in this paragraph occurs.
2. The deadline for the execution of the subject matter of the agreement may be changed in case:
 - a. changes in atmospheric, geological, archaeological conditions in the event of force majeure understood as the occurrence of an extraordinary, external, unforeseeable and preventable event, which could not have been avoided even with the utmost care, and which prevents the Contractor from performing its obligation in whole or in part (they need to be documented and proved to have an impact on the contract completion date, requires the acceptance of the Contracting Authority). In the event of force majeure, the Parties are obliged to make every effort to minimize the delay in the performance of their contractual obligations, resulting from force majeure,
 - b. documented changes resulting from the operation of administrative bodies or changes in legal regulations having a direct impact on the contract term,
 - c. circumstances of the place where the subject of the contract is to be performed that are different from the conditions accepted in the documentation. In case of occurrence of such deviations (they require documenting and demonstrating the impact on the contract execution date) from the assumed ones, the contract execution date will be extended,
 - d. delays in obtaining the necessary permits, approvals, opinions necessary for the execution of the subject of the contract (they need to be documented and proved to have an impact on the date of execution of the contract) arising from reasons not attributable to the Contractor. The deadline shall be extended by the time that was actually necessary to obtain the aforementioned documents,
 - e. suspension of work by the authorized bodies of Contracting Authority (they need to be documented and demonstrated for reasons not attributable to the Parties),
 - f. due to actions of third parties preventing the execution of the subject matter of the agreement, which are not a consequence of the fault of either of the Parties (they need to be documented and proved to influence the date of execution of the agreement),
 - g. a change in the deadline, when the legitimacy of such a change has been established as a result of a change in the rules of financing the task resulting from contracts signed by the Contracting Authority, or provided for the signing or annexation of contracts with external institutions (they need to be documented and shown to have an impact on the deadline for contract execution),
 - h. changes in the dates of payment amounts which could not be predicted at the date of concluding the contract, in particular if such a change will enable the Contracting Authority to obtain external funds for the execution of the task and/or timely settlement of the completion of the Investment before external institutions, or result from a significant (more than 10%) rapid completion of the subject matter of the contract than indicated by the contractual deadlines (they need to be documented and proved to have an impact on the contract completion date),
 - i. changes in the event of unpredictable at the date of the Contract signing work that requires replacement or additional work (which must be documented and shown to have an impact on the contract completion date).
3. In the event of occurrence of any of the circumstances listed in section 2 above, the term of performance of the Contract may be appropriately extended by the time necessary for proper completion of the work, but not longer than by the duration of those circumstances. The condition for the extension of the deadline for the execution of the order is to present and document the documents and statements documented by the party indicating the fact of the occurrence of a given circumstance, to demonstrate the impact of the occurrence of a given case on the deadline for the execution of the agreement, and to justify that each day of the extension of the deadline was not due to the fault of the Contractor or subcontractors - subcontractors participating in the execution of the contract.
4. In the case of the circumstances referred to in item 2 point b), the Contracting Authority may suspend the works for up to 3 months, and the Contractor may not claim reimbursement of the costs incurred during this period. If the period of suspension of work proves to be longer than 3 months, the Contracting Authority shall allow for reimbursement of documented fixed costs incurred by the Contractor. The costs shall be reimbursed on the basis of a written and justified agreement between the Parties.

5. Other types of changes caused by the following circumstances:
 - a. force majeure preventing the performance of the Subject matter of the contract in accordance with the ToR; force majeure shall be considered an external event whose effects cannot be foreseen or prevented. In particular, force majeure shall be considered to be acts of nature such as: hurricane, earthquake, flood and other events such as war, riots, radioactive contamination,
 - b. when another legal, economic or technical circumstance arises that makes it impossible to perform or properly perform the Contract in accordance with the ToR,
 - c. a change in the manner in which the benefit is provided as a result of technological changes caused in particular by the following circumstances: unavailability of materials or equipment on the market due to cessation of production or withdrawal from the market of such materials and equipment or the appearance of materials on the market newer generation materials and equipment allowing to save the costs of execution of the Object of the contract or operating costs of the executed Object of the contract or to obtain better quality of works,
 - d. change or resignation from the Subcontractor whose potential the Contractor relied on when submitting a tender shall be possible, but only on condition that the Contractor proves to the Contracting Authority that the proposed other Subcontractor or the Contractor itself meets the conditions no less than those required during the contract award procedure,
 - e. occurrence of unforeseen circumstances related to the change of law (both domestic and European Union law, regulations and standards or other regulations, or the change of regulations will be published in the Journal of Laws, which will affect the performance of the contract and it will be necessary to introduce changes in the performed contract) and update of design solutions due to technological progress, the Contractor will adjust the subject of the contract to the applicable law. In the situation referred to above, if the introduction of changes as a consequence will affect the critical path of the contract (a sequence of such events that will delay completion of the entire task) - it is possible, in particular, to change the date of performance of the contract by the necessary real time of contract execution. If the Contractor is in delay with the performance of the contract, then the necessary time for making the changes shall be reduced by the time in which the Contractor is in delay on the day when both parties decide to make the change (i.e. sign an annex to the contract within this scope),
 - f. in the event of the need to make changes or prepare analyses other than those specified in the subject of the contract as a result of the requirements of external institutions, if the introduction of changes will affect the critical path of the contract (a sequence of such events that will delay the completion of the entire task) - it is possible, in particular, to change the date of performance of the contract for the necessary real time to make changes.
6. The amendments referred to above (paragraph 5(f)) may occur by written agreement between the Parties. They require documenting the occurrence of a given circumstance and demonstrating the impact on the basis for the change in the contract. The Party proposing an amendment to the contract is required to provide evidence of the basis for the amendment. It must demonstrate that the proposed amendment is the result of circumstances beyond its control. The condition for making the amendment is to present and document documents and statements documented by the party indicating the fact of occurrence of a given circumstance, proving the impact of the occurrence of a given case, and justifying that the amendment is not the fault of the contractor or subcontractor (concluded subcontracting agreements),
7. It is permitted, with the consent of the Contracting Authority, to change the method of execution of individual works while maintaining the parameters, in the case of using replacement materials, other technologies or solutions, if such a change is favorable to the Contracting Authority, will not increase the cost of the Investment or will not affect the delay of the completion of works.
8. The Contracting Authority allows reducing the value and scope of works in the event of the circumstances referred to in item 7 above.
9. A Party applying for an amendment to the provisions of the concluded Contract is obliged to document the occurrence of the circumstances referred to in this statement. A request to amend the provisions of the concluded contract must be made in writing.
10. In order to introduce a change in the remuneration to the contract, each Party may request the other Party to change the amount of the Remuneration due to the Contractor, together with a justification including, in particular, a detailed calculation of the total amount by which the Contractor's remuneration should be changed and indication of the date from

which the amount of the Contract execution costs justifying the change in the amount of the Remuneration due to the Contractor has been or will be changed.

11. All the above provisions constitute a catalogue of changes to which the Contracting Authority may agree on the basis of the concluded contract (except for the cases indicated in the provisions of the PPL or the Civil Code) and at the same time do not constitute an obligation to give such consent.
12. A party proposing an amendment to the contract based on the catalogue of amendments to the contract presented above, is obliged to prepare and justify the request for such amendment. In order to be valid, any amendments to the contract must be made in writing in the form of an annex to the contract.

§3 Remuneration and settlement of works

1. The Contracting Authority undertakes to pay the selected Contractor remuneration in the amount and currency specified in the tender for duly completed delivery. The price of the contract for completion of the subject matter of the contract shall include all costs incurred by the Contractor and shall not be increased except for the cases provided for in the ToR and the concluded contract and the PPL Act.
2. The settlement of the contract concluded with the selected Contractor shall be based on the invoice in the amount:
 - a. 50% of the contract value, payable after delivery;
 - b. 50% of the contract value, payable after commissioning and signing the final protocol.

The condition for payment of the final invoice with a payment period of 30 days is to install the equipment, its commissioning, conducting training (at least 3 days) at the headquarters of the Contracting Authority, providing the Contractor with the documents required in the contract and signing by the Parties of the final acceptance protocol of the Equipment.

Invoices will be sent electronically to the address: Invoice_Purchase@bosmal.com.pl and will be paid in the currency of the offer.

Pursuant to the Act of 9 November 2018 on electronic invoicing in public procurement, concessions for works or services and public-private partnership (Journal of Laws, item 2191), the Contractor may issue a structured invoice on the Electronic Invoicing Platform at the address: <https://pefexpert.pl/>

3. In the case of defects found during the collection of the subject of the contract of collection, the Contracting Authority has the following rights:
 - a. if the defects can be removed at the Contracting Authorities registered office, the Contracting Authority shall postpone signing the acceptance protocol until the defects are removed, but not more than 30 days from the previously planned date of acceptance,
 - b. if the defects cannot be remedied at the Contracting Authorities registered office or require longer repair time, the Customer may refuse to accept the subject of the order.
4. The parties within 14 days in writing will decide on the possibility of repair or the need for replacement with a new one, free from defects, and will specify a new deadline for receipt of the subject of the contract.
5. The Contracting Authority and the Contractor will indicate in the contract persons authorized to make technical arrangements and sign the final acceptance protocol.

§4 Performance guarantee

1. The guarantee of proper performance of the contract, which the contractor shall provide before the conclusion of the contract is subject to the requirements of the ToR.
2. The guarantee of proper contract performance (called then: guarantee) which amount is zł/ currency (10% of the total gross price quoted in the Contractor's offer), has been paid for the full period of execution of the Subject of the contract and the warranty for defects, before signing the contract, in full amount, in the form of
3. During the contract execution and during the warranty period, the form of the security lodged may be changed at the request of the Contractor with the prior consent of the Contracting authority (one of the accepted forms: money, bank or insurance guarantees, bank guarantees - according to the requirements specified in the PPL Act), maintaining its continuity and amount. Change of the form of Security does not constitute an amendment to the contract.
4. In case of a change in or failure to meet the contractual end date, the Contractor undertakes to extend the validity of the guarantee in a form other than money accordingly. In the absence of a relevant document, the Contractor agrees to deduct the relevant amount of the guarantee from the first receivable to which it is entitled without a prior call for the guarantee.
5. The guarantee shall be returned to the Contractor in parts and on the following dates:
 - a. 70% of the security - within 30 days from the date of the Final Acceptance,
 - b. 30 % of the security - at the latest on the 15th day after expiry of the warranty period for defects.
6. The guarantee serves to cover claims of the Contracting Authority for non-performance or improper performance of this contract by the Contractor. The value of the guarantee may be used in particular for contractual penalties to which the Contracting Authority is entitled.
7. If the guarantee is provided in bank or insurance guarantees or bank suretyship, the Contractor shall present the relevant guarantee/guarantee to the Contracting Authority in due time before the date of conclusion of the contract in order to accept its contents. The guarantee/guarantee shall include a provision for an irrevocable, unconditional amount payable at each first request of the Contracting Authority up to the amount of the Security. Establishment of the Collateral - Polish language.
8. If due to an extension of the performance time of the Subject matter of the contract, or due to an extension of the warranty period, regardless of the reasons for such extension, the Collateral provided in bank or insurance guarantees or a bank surety would expire before the completion of the performance of the contract or before the expiry of the warranty period, the Contractor shall be obliged to extend the term of validity of the Collateral provided in the form of a guarantee/ bank suretyship 14 business days prior to the expiry of such Collateral and present to the Contracting Authority an appropriate annex or a new guarantee/ assurance for the extended performance time of the contract or the warranty period or pay the appropriate Collateral in cash. If the Contractor does not extend the validity period of the Collateral, the Contracting Authority shall be entitled to set off the amount corresponding to the value of the Collateral against the Contractor's remuneration, even if it is not required. The Contractor shall be obliged to supplement the Collateral within 7 business days from the date of the written request.
9. Contractor who conducts business activity in the form of a limited liability company, if the value of the contract exceeds twice the amount of his share capital, on the day of signing the contract at the latest, is obliged to provide a resolution of the shareholders to give their consent for the management board of the company to carry out activities with a value of twice the amount of the company's share capital, in accordance with the provisions of Article 230 of the Commercial Companies Code, unless the articles of association provide otherwise, then it is obliged to provide a copy of the articles of association, the content of which indicates the authorisation to incur such obligations.
10. The Contractor undertakes to transfer and assign to the Contracting Authority, to the widest extent permitted by law, all rights, including claims, under the guarantee and warranty for defects to which it is entitled in relation to manufacturers, importers and sellers of materials, equipment, devices, etc. used under the Investment. Documents confirming the aforementioned rights, including claims, shall be issued by the Contractor to the Investor upon final acceptance.
11. The Contracting Authority shall be the beneficiary of the performance bond.

12. The costs of the performance bond shall be borne by the Contractor.
13. During the delivery period, the Contractor shall be obliged to notify the Contracting Authority in writing within 7 days about the defects:
 - a. change of company headquarters;
 - b. change of persons representing the Contractor;
 - c. declaration of bankruptcy of the company;
 - d. announcement of liquidation of the Contractor's company.
14. Failure to notify the Contracting authority within 7 days of occurrence of the events listed in item 12 shall result in unused receivables securing proper performance of the contract during the warranty period not being returned.

§5 Obligations of the Contractor

1. The Contractor shall be obliged to participate in consultations which prove necessary to ensure proper performance of the contract.
2. The Contractor shall be obliged to conduct at the headquarters of the Contracting Authority included in the price of the offer - at least **3 days of training** covering the service of the delivered subject of the agreement.
3. The Contractor shall provide the Contracting Authority with a guarantee for proper functioning of the device for the period specified in the offer from the date of final acceptance. It includes periodical inspections, necessary - from the Contractor's point of view - to maintain the guarantee.
4. The Contractor shall provide the service response time, counted from the moment of proceeding to the removal of the revealed defect from the date of receiving the call, not longer than 4 days, except for public holidays. The deadline for the removal of defects cannot be longer than 15 days from the date of reporting the defect, except for public holidays.
5. In the case of a change in or resignation from a subcontractor whose resources have been invoked by the Contractor, according to the rules defined in art. 22a, in order to prove that the conditions for participation in the procedure referred to in art. 22 item 1b (3) are met, the Contractor is obliged to prove to the Contracting Authority that the proposed other subcontractor or the Contractor meets them on its own to the extent not less than required during the procurement procedure. In such a case, the requirements specified in the ToR for such circumstances shall apply for the deadline for amending the contract.
6. All contractors jointly applying for the award of the contract shall be jointly and severally liable for the performance of the contract, pursuant to art. 141 of the Act.
7. The Contractor provides the possibility to purchase spare parts and post-warranty service for a period of at least **10 years from** the date of signing the acceptance protocol.
8. Availability of post-warranty service within **15 days** (except for public holidays) from reporting the defect .
9. The Contractor undertakes to comply with the provisions of trade secrets and confidentiality, regulated in detail in the contract and acquired during its implementation.
10. The Contractor is required to pay a contractual penalty of 10% of the salary specified in the contract in the event of withdrawal from the contract by the customer for reasons attributable to the Contractor.
11. The Contractor is obliged to pay a contractual penalty in the event of failure to perform the subject of the contract within the deadline of 0.2% of the contract value for each week of delay. The amount of the penalty cannot exceed 5% of the contract price.

§6 Contracting Authority obligations

1. The Contracting Authority is obliged to pay a contractual penalty of 10% of the remuneration specified in the contract in the event of withdrawal from the contract by the Contractor for reasons attributable to the Contracting Authority .
2. In the case of late payment, the Contractor has the right to charge interest of 0.2% of the value of delayed performance for each week of delay.
3. The Contracting Authority has the right to withdraw from the contract on a general basis based on Article 145 of the Act.
4. The Contracting Authority shall also have the right to withdraw from the contract within 30 days, without any claims from the Contractor, when:
 - a. The Contractor has not undertaken or has ceased to undertake the obligations set out in this contract within the agreed period,
 - b. The Contractor performs the subject of the contract improperly, in a manner contrary to the contract and has not undertaken any actions aimed at improvement, despite a written request by the Contracting Authority,
 - c. bankruptcy or liquidation proceedings have been initiated with respect to the Contractor.

§7 Final provisions

1. A contract is concluded when it is signed.
2. Any changes to the provisions of the contract will require a written form for its validity in the form of an annex signed by authorised representative of both parties.
3. For withdrawal from the contract is provided in writing under pain of nullity.
4. The agreed contractual penalties do not exclude the possibility of seeking compensation under the general rules contained in the Civil Code.
5. Neither Party shall be liable for non-performance or improper performance of the contract and for any damage caused by the occurrence of force majeure event.
6. Possible disputes arising in connection with the implementation of the contract will be resolved by a common court of law competent for the seat of the Contracting Authority. In case of any doubts concerning the requirements applicable during the performance of the contract, the provisions and requirements introduced into statements, documents, information in Polish shall be resolved. In the absence of such documents/certificates/information, translations into Polish made by a sworn translator based on the applicable regulations and requirements in Poland shall be binding. The costs of translation of such documents shall be borne by the Contractor.
7. In matters not regulated by the contract, the relevant provisions of the Civil Code and the Act together with the executive acts to these acts and the provisions of the Copyright and Related Rights Act shall apply.