

**Regulations of open written tender with negotiations  
for lease of the City Stadium in Białystok  
in the season 2016/2017**

**§ 1.**

**Definitions**

Any reference in the Regulations to:

- 1) **Organizer** – means the Organizer of the proceedings – “Stadion Miejski” Sp. z o.o. company in Białystok;
- 2) **company** - means „Stadion Miejski” Sp. z o.o. in Białystok;
- 3) **Tenderer** – means an individual, legal person or an unincorporated organizational unit that tenders on a lease contract of the City Stadium in Białystok, has submitted notice of participation in the proceedings for the contract or made a tender in the proceedings;
- 4) **proceedings for conclusion of contract** – means the sequence of activities undertaken by the Organizer to select the lessee of the City Stadium in Białystok;
- 5) **website** – means the [www.stadion.bialystok.pl](http://www.stadion.bialystok.pl) site;
- 6) **Committee** – the committee appointed by the Board of the Company to carry out the proceedings;
- 7) **valid tender** – means a non-rejectable tender.

**§ 2.**

**General provisions**

1. Regulations of open written tender with negotiations for lease of the City Stadium in Białystok in the season 2016/2017 (hereinafter referred to as “the Regulations”) determines the procedure of selecting the lessee of the full-sized football pitch with heated natural playing surface, together with the infrastructural facilities, stands with 22 202 available seats, including 23 seats for the disabled with helpers, and the area of the City Stadium in Białystok to play association football matches, in particular within:

- 1) domestic league – season 2016/2017,
- 2) country cup – season 2016/2017,
- 3) european competitions – season 2016/2017,
- 4) friendly and international matches.

2. Proceedings named in section 1 is being organized by “Stadion Miejski” Sp. z o.o. company with its seat in Białystok, ul. Słoneczna 1.

3. Proceedings named in section 1 is carried out under the provisions of the Regulations herein, respecting the principles of:

- 1) written form,
- 2) openness (with exceptions named in the Regulations),
- 3) fair competition,
- 4) equal treatment of Tenderers.

4. Tenderer has right to append the business secret clause to the documents or information submitted in the course of proceedings within the meaning of the Act dated 16<sup>th</sup> April 1993 on Combating Unfair Competition (Journal of Laws of 2003 No. 153, item 1503, as amended).

### **§ 3.**

#### **Subject matter of the proceedings**

1. The subject matter of the proceedings is the City Stadium in Białystok facility, located in No. 1 Słoneczna Street, which satisfies the infrastructure criteria for all levels of domestic, european and international competitions for the season 2016/2017, together with the appliances, installations, premises and equipment located within its area, excluding the following:

- 1) football pitch with artificial football turf and its infrastructure facilities;
- 2) office and administration rooms and conference halls located in the office and administration area;
- 3) SkyBox premises and intended for them and related infrastructure facilities, including stands, covered parking C and parking D, dressing rooms, elevators, public circulation areas;
- 4) catering areas;
- 5) commercial areas;
- 6) advertisement areas used by the catering operator, naming rights sponsor and official partners of the Organizer.

2. The lease contract shall be concluded for the period from 1<sup>st</sup> July 2016 to 30<sup>th</sup> June 2017, with the reservation that the facility will be made available to the lessee on individual days during the term of the contract.

3. The proceeding is carried out as an open written tender with negotiations.

4. The proceeding comprises three stages:

- 1) Stage 1 – Submission of notice of participation – comprising submission of notice of participation in the proceedings by entities meeting the conditions of participation in the proceedings named in § 6 section 4;
- 2) Stage 2 – Negotiations – comprising in particular specification of the range and terms of the lease contract;
- 3) Stage 3 – Submission of Tenders – aimed at ending negotiations, selection of the offer most favourable for the Organizer and conclusion of the lease contract.

5. During stages I and II, and in particular during the negotiations, the organizer has the right to freely modify the scope of the premises and tender evaluation criteria in order to obtain an optimal solution for the organizer, taking into account the proposals made by individual tenderers during the negotiations, while maintaining the principles of fair competition and equal treatment of tenderers.

### **§ 4.**

#### **Enquiries about the Regulations**

1. A Tenderer may request the Organizer for clarification of:

- 1) the content of the Regulations – 5 working days before the opening of tenders date at the latest;
- 2) terms of the lease contract and requirements concerning the tender, tender bond or performance deposit, determined in the calls for tenders – 3 working days before the opening of tenders date at the latest.

2. The running of the period set for providing the answer starts on the next working day after receipt of the question or request for clarification by the Organizer and ends on the working day preceding the deadline for the submission of tenders.

3. The content of the clarification is placed by the Organizer on the website and delivered to all the tenders known, without revealing the source of the request.

4. In justified cases the Organizer may, at any time before the deadline for submission of tenders, modify the content of the Regulations, which it publishes on the website and immediately passes on to all the Tenderers known and it shall be binding on them.

5. A change in the content of the Regulations cannot concern the criteria of tender evaluation.

6. The Organizer prolongs the deadline for submission and opening of tenders, if as a result of the change in the Regulations additional time is necessary for making changes in the content of tenders.

7. Person authorized to provide clarifications and information concerning the proceedings is the person authorised by the Management Board of the company.

## **§ 5. Committee**

1. The proceedings are conducted by the Committee appointed by the Company Board, composed of the Chairperson and two Members.

2. The panel of the Committee cannot include any persons that:

- 1) apply to use the property which is the subject of the proceedings;
- 2) are spouses of the Tenders or their relatives or relatives by affinity in the direct line, or their relatives or relatives by affinity up to the second collateral degree, or related to a Tenderer by an adoptive or guardianship relationship or custody, or as authorised representative or member of managing organs or supervisory organs of a Tenderer;
- 3) remain in such legal or factual relationship to a Tenderer that could raise justified concerns as to impartiality and absence of effect on the result of the proceedings;
- 4) have been finally sentenced for an offence committed in relation to public procurement procedure, bribery, offence against money and securities trading or other offence committed for the purpose of unlawful gain.

3. If evaluation of the tenders or other activities in the proceedings requires special knowledge, then an advisor may be appointed to the Committee, possessing such knowledge, who from the day of appointment will take part in the work of the Committee in an advisory capacity.

4. Members of the Committee and persons participating in its works in an advisory capacity submit a written declaration from which a presence or absence of the circumstances named in section 2 can be concluded.

5. The activities in the proceedings, undertaken by a person subjected to exclusion after learning of the circumstances named in section 2, shall be repeated, with exception of tender opening and other factual acts that do not influence the result of the proceedings.

6. The fundamental task of the Committee is detailed analysis and assessment of tenders, and next motioning for selection of the most favourable one, on the basis of principles and criteria determined herein exclusively.

7. A report is drawn up on the activities performed and signed by the members of the Committee participating in the activities.

8. The proceedings are deemed closed upon the acceptance of the minutes of tender selection by the Company Board.

## **§ 6.**

### Notice of participation in the proceedings (stage 1)

1. Notice of participation in the proceedings for lease of the City Stadium shall be submitted in the seat of the Organizer in No. 1 Słoneczna Street **by 10<sup>th</sup> May 2016 by 2:00 p.m.** Submission of notice of participation in the proceedings is understood as actual (personal) submission of notice of participation in the proceedings or sending it up by mail or courier before the end of the time limit named in the previous sentence, while the deciding is the date of receipt at the seat of the Organizer.

2. Notice of participation in the proceedings together with the documents required shall be submitted in a sealed envelope, secured against opening, with the following information on it:

1) the subject of the proceedings: **„Najem Stadionu Miejskiego w Białymstoku na sezon rozgrywkowy 2016/2017”**

(Lease of the City Stadium in Białystok for the football season 2016/2017);

2) full name and address of the Tenderer with contact information;

3) marked: **“Nie otwierać przed dniem 10 maja 2016 r. przed godziną 14:30.”**

(Do not open before 2.30 p.m. on 10<sup>th</sup> May 2016)

3. Notice of participation in the proceedings must include:

1) First and last name or name of the Tenderer, address of residence or address of the seat of the Tenderer, mailing address, if different from the address of residence or seat, email address and contact phone number;

2) signature of the Tenderer or person authorised to make binding declarations of will on behalf of the Tenderer and the date of drawing up the notice of participation in the procedure.

4. The following tenderers may participate in the proceedings:

1) tenderers that do not fall in arrears with payments to the Organizer;

2) in relations to which no liquidation, bankruptcy or recovery proceedings have been instituted or have not been declared bankrupt;

3) that do not fall in arrears with the payment of taxes, fees, as well as social security, healthcare and accident insurance contributions, with the exception of events when they have obtained legal consent for exemption, postponement, spreading the payment of delayed dues or suspended execution of a decision of the tax organ.

5. Together with the notice of participation in the proceedings the Tenderer is obliged to submit:

1) conditions fulfilment statement – drawn up in accordance to the form attached, constituting Annex 1 to the Regulations;

2) current excerpt from the National Court Register or a print-out from the Business Activity Central Register and Information Record, issued or generated by relevant IT system not earlier that 3 months before the end of the deadline for tender submission;

3) a Power of Attorney granted for submission of notice of participation in the proceedings and tender, to carry out negotiations, conclude a lease contract or other activities undertaken on behalf of the Tenderer in the course of the proceedings – if persons performing such activities on behalf of the Tenderer have not been revealed in the Register or Record as authorised to represent the Tenderer;

4) certificates from relevant Tax Office and branch of Social Insurance Institution stating that the Tenderer does not fall into arrears regarding the payment of taxes, fees and healthcare, social and accident insurance contributions, or obtained a consent for exemption, postponement, spreading the payment of delayed dues or suspended execution of a decision of the tax organ, issued not earlier that 6 weeks before the deadline for tender submission;

5) declaration that the Tenderer is not in liquidation, bankruptcy or recovery proceedings have been instituted or have not been declared bankrupt – drawn up in accordance to the form provided as Annex 2 to the Regulations;

6) declaration stating that in the event of submitting a tender the Tenderer shall be bound by the tender for the period of 30 days from the day of tender opening and that the Tenderer accepts the terms herein.

6. The Organizer may demand, within the time specified by the Organizer, supplementation of documents or clarifications to be made, concerning fulfilment of terms for the participation in the proceedings – under pain of exclusion of the Tenderer from the proceedings;

7. Documents named in section 5 may be presented in the form of originals or photocopies certified by the Tenderer as compliant with the original and dated.

8. In the event a foreign entity participates in the proceedings, the entity is obliged to submit copies of documents constituting the basis of its business activity in a particular country, which correspond with their content or relevance to the documents listed in section 5, translated to Polish by a sworn translator.

9. All the declarations and documents concerning the proceedings, except the tender shall be delivered by email to the following address: [sekretariat@stadion.bialystok.pl](mailto:sekretariat@stadion.bialystok.pl) or to the email provided by the Tenderer in the notice of participation and confirmed by mail or courier without delay.

10. All costs, risk of participation and preparation of tenders are to the charge of the Tenderer.

11. Information concerning names of the Tenderers qualified for the stage 2 will be published on the website and sent to the email address or fax number of the Tenderer indicated in the notice.

## **§ 7.**

### **Negotiations (stage 2)**

1. To stage 2 of the proceedings named in § 3, section 4, point 2, the Organizer will invite the Tenderers who fulfil the terms named in §6, section 4.

2. Negotiations will be conducted in the seat of the Organizer by the Committee named in § 5 of the Regulations.

3. Tenderers qualified in accordance to the Regulations to participate in stage 2 of the proceedings will receive invitations for negotiations at their email address or fax number provided in the notice, and then its confirmation at mailing address provided in the notice.

4. On the date specified for each of the Tenderers separately, the Organizer shall conduct individual negotiations. The aim of the negotiations is enabling the parties to specify the scope and terms of the lease contract, the scope of obligations and rights emerging from the lease contract and the principles of performance of the contract, within the scope as close to the needs of the Organizer and the Tenderer as possible.

5. The persons entitled to participate in the negotiations on behalf of the tenderers are the persons authorized to represent the tenderer or having the appropriate written power of attorney.

6. A report is drawn up on the negotiations, which is public.

## **§ 8.**

### **Submission of tenders (stage 3)**

1. On completion of stage 2, the Organizer shall determine the detailed scope of lease, tender evaluation criteria and the minimal rent for the lease, then the Tenderers participating in the

negotiations that have not been excluded from the proceedings will be called to submit a tender. After submitting such a tender further negotiations will not be conducted.

2. The Organizer will enclose with the call the template of lease contract intended to be concluded with the Tenderer and information concerning the amount of tender deposit and performance deposit.

3. The Organizer will call for tenders by means of fax or email, which shall be confirmed by mail or courier without delay, as well as by placing a call for tenders on the website. In the call the Organizer will set the closing date for submission of tenders, which cannot be shorter than 5 working days.

4. A tender submitted after the deadline the Organizer will return unopened.

5. The Organizer, on its own initiative or at the justified request of the Tenderer, may at any time prolong the closing date for the submission or opening of tenders.

6. The Organizer will place the information of prolonged deadline for submission and opening of tenders on the website and immediately notifies the Tenderers known.

7. The tender shall be typewritten, computer printed or using inerasable ink, signed by the person or persons authorised to make binding declarations of will on behalf of the Tenderer and include:

- 1) name of the Tenderer, address of residence or seat of the Tenderer, mailing address if different from the address of residence or seat, contact phone number;
- 2) naming of the net rent for lease for the whole term of contract;
- 3) signature of the Tenderer of person authorised to make binding declarations of will on behalf of the Tenderer and the date of its issue.

8. § 6 sections 1 and 2 of the Regulations shall apply respectively to submission of tenders.

9. A Tenderer may submit only one tender in the subject of the proceedings.

10. All tenders must be submitted, under penalty of invalidity, in writing in the Polish language.

11. Partial tenders or variant tenders are not permitted.

12. The Tenderer may change or withdraw a tender before the deadline for submission of tenders by filing a written declaration.

13. The condition for participation in stage 3 of the proceedings is payment of tender deposit in the amount determined in the call for tenders.

14. The deposit should be paid in cash by transfer to the bank account of the Organizer, number: PL85 1240 1154 1111 0010 3579 7475.

15. The Tenderer is obliged to submit the proof of deposit payment with the tender.

16. The Organizer returns the tender deposit to the Tenderers immediately if:

- 1) the tender submitted by them has not been selected as the most favourable one;
- 2) the deadline related to the tender has expired;
- 3) the contract has been concluded and the performance deposit has been paid;
- 4) the proceedings have been annulled, with exception of the cases when the proceedings are conducted in a form different from those applied to date.

17. The Organizer returns the tender deposit within three days from the day the written application is filed by the Tenderer, who:

- 1) has withdrawn the tender before the deadline for submission of tenders;
- 2) has been excluded from the proceedings;
- 3) submitted a tender, which has been rejected.

18. The Tenderer, whose tender has been selected loses the tender deposit for the benefit of the Organizer in the event when:

- 1) it refuses to sign the contract on terms set out in the tender;

- 2) has not paid the performance deposit required;
- 3) the contract could not be concluded by the Tenderer's fault;
- 4) presented in the tender untrue information influencing the result of the proceedings.

19. The Organizer shall keep the deposit, if the Tenderer participating in the proceedings has withdrawn from the conclusion after the deadline for submission of tenders expired and before the tender validity period.

## **§ 9.**

### **Opening of tenders**

1. The opening of tenders is open and takes place after the deadline for their submission in the seat of the Organizer. The closing date for submission of tenders is the day of their opening.

2. The detailed date and time of tender opening shall be provided to the Tenderers by the Organizer through fax or email.

3. At the opening of tenders (company) names and Tenderers' addresses are announced, as well as the amount of lease rent constituting the selection criterion of the most favourable offer.

4. Information named in section 3 is placed in the report of opening and immediately passed to the Tenderers who are not present at the opening of tenders, at their written request.

5. In the course of reviewing and evaluation of tenders the Organizer may demand explanations from the Tenderers, concerning the contents of the offers submitted.

6. The Organizer rejects the tender, if:

- 1) it is not in conformity with the Regulations;
- 2) submission of such tender constitutes an unfair competition act within the meaning of the regulations concerning combating unfair competition;
- 3) was submitted by a Tenderer that has been excluded from the proceedings;
- 4) is invalid under separate regulations.

7. The Organizer notifies the Tenderer of rejection of its tender, giving the grounds for the decision made.

## **§ 10.**

### **Selection of the most favourable offer**

1. Tenders shall be assessed on the basis of criteria chosen from the following:

- 1) the amount of net monthly lease rent;
- 2) the amount of monthly commission on Tenderer's revenues from rent.

2. Tender evaluation criteria, their weight and the formula on which the most advantageous tender will be chosen, will be determined in the call to submit tenders.

3. In case the selection of most favourable offer proves impossible due to the fact that tenders have been made of the same amount of lease rent, the Organizer shall call the Tenderers who submitted such tenders to submit additional tenders within the deadline specified.

4. The Tenderers submitting additional tenders cannot, under the penalty of rejection, offer a lease rent lower than in the tenders submitted by them previously.

5. Within 10 days from the selection of most favourable offer the Organizer notifies the Tenderers who submitted tenders of:

- 1) selection of most favourable tender, providing the name and address of the Tenderer, whose tender has been chosen;
- 2) the Tenderers whose tenders have been rejected;

3) the Tenderers who have been excluded from the proceedings.

6. Immediately after the selection of the most favourable tender, the Organizer publishes information listed in section 1, point 1 of this paragraph on the website and in a generally accessible place in its seat.

#### **§ 11.**

##### **Conclusion of contract and modifications and withdrawals from the contract**

1. The Organizer concludes a contract with the Tenderer selected, to which the provisions of the Code of Civil procedure and the Regulations apply, subject to section 2.

2. The contract may be concluded only with a tenderer that has no overdue obligations to the organizer.

3. The Tenderer selected is obliged to sign a lease contract within 10 days from publishing the information of the choice of most favourable offer on the website.

4. The contract shall be made in writing under the penalty of invalidity.

5. In the contract concluded as a result of the proceedings modifications may be made in the occurrence of circumstances that could not be foreseen by the Organizer at the time of its conclusion, and which could expose the Organizer to damage.

6. In case of the occurrence of significant change of circumstances causing that the performance of the contract is not in the best interest of the Organizer, which could not be foreseen at the moment of its conclusion, the Organizer may withdraw from the contract within one month from the time at which it became aware of the circumstances.

#### **§ 12.**

##### **Performance guarantee**

In order to secure any possible claims regarding use of the Organizer's property, the Tenderer whose offers has been selected shall be obliged to:

- 1) pay a performance deposit in the amount and form as determined in the call for tenders;
- 2) declaration in the form of a notarial deed of submission to enforcement under article 777 § 1 point 4 and 5 of the Code of Civil Procedure, about:
  - a) obligation to pay to the Organizer the rent to the amount determined in the call for tenders,
  - b) obligation to issue the subject of the lease at the end of the contract period or its earlier termination under the terms of the contract.

#### **§ 13.**

##### **Changing the terms of the proceedings and its cancellation**

1. The Organizer may at any time change the terms or cancel the proceedings.

2. About change in the conditions of the proceedings or its cancellation, the Organizer publishes the information on the website and simultaneously notifies all tenderers, including those who applied to join the proceedings, in the case of taking these actions before the deadline for submission of tenders.

3. The Tenderers are not entitled to make any claims against the Organizer due to change in the conditions or cancellation of the proceedings .

4. The proceeding shall be deemed terminated with a choice the most advantageous tender, and also in case of not submitting any non-rejected tender.



**§ 14.**

**Complaints procedure**

1. The Tenderer has right to lodge a complaint concerning the proceedings conducted to the Organizer within 3 days from the date of publishing the information of conclusion of the proceedings on the website.
2. A complaint must be lodged in writing and contain reasons.
3. A complaint lodged after the deadline and not meeting the requirements named in section 2 will not be considered.
4. The Organizer informs the Tenderer of examining the complaint in writing.

**§ 15.**

**Final provisions**

1. To all matters not settled by the Regulations herein the relevant provisions of the Civil Code shall apply.
2. These Regulations are available on the website [www.stadion.bialystok.pl](http://www.stadion.bialystok.pl) and at the Organizer's office.
3. These Regulations shall enter into force on 28<sup>th</sup> April 2016.