

RULES FOR CONDUCTING THE MARKET TESTING
for the PPP Project of “Construction of the Outer Port in the Port of Gdynia”

§ 1.

Definitions

Whenever these rules refer to:

1. **Market Testing** – it means a form of consultations with entities potentially interested in implementing the Project
2. **Confidential Information** – it means the confidential information referred to in § 6.8
3. **Notice** – it means the Market Testing notice posted on the Contracting Authority’s website
4. **Procedure** – it means a planned procedure in which the Contracting Authority selects a private partner with which a contract to implement the Project will be concluded
5. **Project** – it means an undertaking planned by the Contracting Authority entitled “Construction of an Outer Port in the Port of Gdynia in the PPP scheme ”
6. **PPL** – it means the Public Procurement Law of 29 January 2004 (consolidated text Journal of Laws of 2019, item 1843)
7. **Rules** – it means these rules for the Market Testing
8. **Participant** – it means an entity taking part in the Market Testing
9. **PPP Act** – it means the Public-Private Partnerships Act of 19 December 2008 (consolidated text Journal of Laws of 2017, item 1834 as amended)
10. **Concessions Act** – it means the Act on Concessions for Works or Services of 21 October 2016 (consolidated text Journal of Laws of 2019, item 1528 as amended)
11. **Contractor** – it means any natural or legal person, or unincorporated organisational unit that may compete to conclude a contract with the Contracting Authority in the Procedure
12. **Contracting Authority** – it means Zarząd Morskiego Portu Gdynia Spółka Akcyjna with its registered office in Gdynia
13. **Contract** – it means a contract concluded between the Contracting Authority and the Contractor selected in the Procedure to implement the Project.

§ 2.

Scope of Rules

1. The Rules lay down the principles on which the Contracting Authority will conduct the Market Testing preceding the Procedure.
2. The Contract will be concluded with the Contractor selected in a separate Procedure conducted pursuant to the PPL, the PPP Act or the Concessions Act.
3. The Market Testing is conducted pursuant to and in accordance with art. 31(a)-(c) of the PPL.
4. The Market Testing is conducted in a way that ensures transparency, fair competition and equal treatment of Participants and the solutions they offer.

§ 3.

Aim of Market Testing

1. The aim of the Market Testing is to compile information to be used to draft the documentation for the Procedure, particularly:
 - 1) technical, technological, legal, implementation, organisational, commercial, financial, economic and logistics issues related to the implementation of the Project in accordance with the needs of the Contracting Authority;
 - 2) estimation of Project value.

§ 4.

Notice

1. The Contracting Authority posts the Market Testing Notice and its subject-matter on its website. The Contracting Authority may also publish the Notice in another manner.
2. The Contracting Authority may also, irrespective of the Notice being posted on its website, inform entities of its choice of its intention to conduct the Market Testing.

§ 5.

Organisation of Market Testing

1. The Contracting Authority will invite to the Market Testing Participants that submit applications to participate in the Market Testing and possibly additional documents that the Contracting Authority requests in the Notice, within the time limit and in the manner indicated therein.
2. The Notice may provide for the Contracting Authority's right to restrict the number of Participants in the Market Testing and to select them in the manner and on the principles set out by the Contracting Authority in the Notice.
3. Participants invited to participate in the Market Testing will be informed thereof by the Contracting Authority and will receive from the Contracting Authority additional information and questions about the Project.

§ 6.

Market Testing activities

1. The Market Testing is conducted in Polish or English.
2. The Market Testing may be conducted in any form or forms at the discretion of the Contracting Authority, including in the form of:
 - 1) exchange of electronic correspondence;
 - 2) individual meetings with Participants;
 - 3) group meetings with Participants;
 - 4) video- or teleconference;on subjects specified by the Contracting Authority and on dates specified by the Contracting Authority. For the avoidance of doubt, the Contracting Authority reserves the right to hold meetings only with selected Participants.
3. The Contracting Authority may at any time withdraw from conducting the Market Testing

with a selected Participant.

4. During the Market Testing, the Contracting Authority may use the help of auditors and advisers having the specialist knowledge required to conduct the Market Testing. These persons are bound by a confidentiality obligation on the principles laid down in sections 7-10.
5. The costs of participating in the Market Testing will be borne by the Participants and are non-refundable.
6. The Participant gives its consent to the Contracting Authority using information provided during the Market Testing, including information that is the subject-matter of the Participant's copyrights, for the purpose of preparing and conducting the Procedure, particularly to obtain information enabling the optimal specification of the Project scope, Procedure participation conditions, criteria for evaluating tenders and other elements relevant to the initiation and conduct of the Procedure.
7. Any materials, documents, papers, studies, any ideas, inventions, designs, business plans or other information, particularly commercial, financial, technical, technological, legally protected and other information, including that comprising business secrets within the meaning of art. 11(2) of the Act on Combating Unfair Competition of 16 April 1993 (consolidated text Journal of Laws of 2019, item 1010), disclosed to a Participant in the Market Testing by the Contracting Authority or to the Contracting Authority by a Participant in the Market Testing (apart from the fact that the Participant is participating in the Market Testing) in oral, written or any other form, recorded in any form and on any medium (including presentations, drawings, documentation, studies, films, electronic form) concerning the Contracting Authority or the Participant, any entities controlling the Contracting Authority or the Participant, controlled by the Contracting Authority or the Participant, or otherwise linked to the Contracting Authority or the Participant, directly or indirectly, and also their legal successors or its clients, suppliers, business partners, and also information particularly on services, fee tariffs, employee remuneration, action plans and strategies, that the Contracting Authority or the Participant receives in connection with the conduct of the Market Testing or of which it learns, has access to or finds in its possession in connection with the conduct of the Market Testing is confidential information (“**Confidential Information**”) and the Contracting Authority and the Participant in the Market Testing is obliged to protect it and not disclose it, particularly to take the steps specified in section 8.
8. A Participant applying to participate in the Market Testing from the application date and the Contracting Authority from the date of receipt of the application undertake particularly:
 - 1) to keep Confidential Information confidential,
 - 2) to use Confidential Information solely for the purpose of the Market Testing, subject to the possibility of Confidential Information being used by the Contracting Authority in order to prepare the Procedure,
 - 3) not to provide or disclose Confidential Information to anyone without the prior consent on each occasion of the Contracting Authority or the Participant, subject to sections 9 and 10,
 - 4) not to use or disseminate Confidential Information during its activities, except to the extent necessary to participate in the Market Testing or, in the case of the Contracting Authority, to prepare the Procedure,
 - 5) to take due care to ensure and maintain adequate safeguards to protect Confidential Information from access and unlawful use by unauthorised persons.
9. Confidential Information may be provided only to authorised employees of the Contracting Authority or the Participant, persons employed by the Contracting Authority or the

Participant under civil contracts, entities affiliated to the Contracting Authority or the Participant, and legal, technical, financial or economic advisers to the Contracting Authority or the Participant, provided that these persons and entities are clearly informed beforehand of the nature of the Confidential Information and of the obligations of the Contracting Authority and the Participant in respect of Confidential Information under these rules and undertake in writing to comply with the principles for protecting Confidential Information.

10. Sections 7-9 do not apply where information disclosed to a Participant by the Contracting Authority or to the Contracting Authority by a Participant:
 - 1) is of a public nature after it has been lawfully made available to the public or has become public information after the application was made by the Participant, but without any fault or participation by the Contracting Authority or the Participant that received the information, and in a lawful manner;
 - 2) came into the possession of the Contracting Authority or the Participant before the application was made, in a lawful manner;
 - 3) came into the possession of the Contracting Authority or the Participant, in a lawful manner, via third parties authorised to dispose of and disclose such information.
11. As the personal data controller, the Contracting Authority will inform everyone at the Participant who provides data for the purpose of applying to participate in the Market Testing that:
 - 1) providing data is voluntary but necessary in order to take part in the Market Testing;
 - 2) you have the right to request access to and rectification or erasure of personal data or restriction of processing as well as the right to data portability;
 - 3) you have the right to object to personal data processing;
 - 4) data provided will be processed pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of personal data (OJ L, no. 119 of 4.5.2016, hereinafter the "GDPR"), i.e. pursuant to art. 6(1)(f) of the GDPR [processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject] and generally applicable laws, particularly the Personal Data Protection Act of 10 May 2018 (Journal of Laws of 2018, item 1000) in order to prepare the procedure to select a private partner as part of Project implementation;
 - 5) in this case, the legitimate interests of the controller involve the preparation of the procedure to select a private partner as part of Project implementation;
 - 6) the Contracting Authority's Data Protection Officer may be contacted by e-mail at iod@port.gdynia.pl;
 - 7) personal data will be kept for the period necessary to conduct the marketing sounding and for archiving purposes for at least 10 years, in accordance with the Contracting Authority's internal document storage and archiving standards;
 - 8) a recipient of the personal data may be entities providing advisory services to the Contracting Authority during the sounding and preparation of the Project;
 - 9) you have the right to lodge a complaint with the President of the Competition and Consumer Protection Office if you consider that your data is being processed in breach of data protection regulations.

§ 7.

Closing of Market Testing

1. The Contracting Authority decides when to close the Market Testing but is not obliged to give reasons for its decision.
2. The Contracting Authority will announce the closing of the Market Testing immediately by posting a notice on its website and providing the Participants invited with the relevant information.
2. The Contracting Authority will draw up a report on the Market Testing, containing at least:
 - 1) information on the conduct of the Market Testing;
 - 2) details of the entities that participated in the Market Testing.
3. The report is public, but for the avoidance of doubt it will not contain any Confidential Information.
4. Correspondence, reports, letters, studies, opinions and any other documents provided to the Contracting Authority by a Participant during the Market Testing will not be returned after closing.

§ 8.

No legal remedies

Participants will not have any legal remedies against actions taken by the Contracting Authority in connection with and during the Market Testing.

§ 9.

Entry into force of the Rules

The Rules come into force on the day they are signed.