***Appendix 3***

*No. OF THE TENDER: 2020/124*

*DATE: 18 March 2020*

*SUBJECT: Exchange of oil products*

**INSTRUCTIONS TO TENDERERS FOR THE PREPARATION OF TENDERS AND THE OBLIGATORY CONTENT OF TENDERS**

1. **Introduction**

In accordance with the Public Procurement Act (ZJN-3) and other regulations listed in the preamble of the Tender Documentation, Public Economic Institute for Commodity Reserves (hereinafter referred to as: the Contracting Authority) has published the Tender Notice for the exchange of the petroleum products on the public procurement portal and in Supplement to the Official Journal of the European Union. For that purpose and in accordance with the aforementioned laws, the Contracting Authority has prepared these Instructions to Tenderers for the preparation and submission of tenders.

1. **Subject-matter of the public procurement**

The subject-matter of the public procurement is the replacement (exchange) of the petroleum products as set forth below :

* The sale of app. 9,258 cbm of unleaded gasoline, in the excise storage facility operated by the Petrol, d.d., Dunajska cesta 50, 1000 Ljubljana and stocked at the location SND Rače, Turnerjeva ulica 24, 2313 Fram
* The purchase of app. 9,258 of diesel fuel, to the excise storage facility operated by the Petrol, d.d., Dunajska cesta 50, 1000 Ljubljana, location SND Rače, Turnerjeva ulica 24, 2313 Fram.

1. **Language of tenders**

Tenders must be drawn up in the Slovenian or in the English language.

1. **Time limit and the form and manner for the submission of tenders**

Tenderers have to submit their tenders by logging into the e-JN electronic submission functionality system on the website <https://ejn.gov.si/eJN2>, in accordance with point 3 of the document titled: “The instructions for the use of the system of electronic services for simpler and faster implementation of public procurement procedures e-JN: TENDERERS” (hereinafter: the Instructions for the use of the e-JN electronic public procurement system) published on the same website.

Before submitting their tenders, tenderers have to register in the e-JN electronic public procurement system on the above website in accordance with the Instructions for the use of the e-JN electronic public procurement system. In case that the tenderer has already registered in the e-JN electronic public procurement system, he shall login to the application at the same web address.

The user (statutory representative/authorised officer of the tenderer) registered in the e-JN online electronic public procurement contract awarding system duly authorised to submit a tender can submit a tender by clicking the button »Oddaj/Submit Tender«. Upon the submission of a tender, the e-JN system will automatically log the user’s basic data and the on the date and time of submission of a tender. By submitting a tender, the user demonstrates and declares the intention to submit a binding offer on the tenderer’s behalf (Obligations Code, Article 18). Submission of a tender shall be binding on the tenderer for the period stated in the tender, unless the tenderer’s user withdraws or changes it within the deadline for submission of tenders.

A tender shall be considered to have been submitted within the time limit set for tender receipt, if the Contracting Authority receives the tender through the e-JN electronic public procurement system no later than on **24 April 2020 at 10:00 CET**. The tender with the status displaying »ODDANO/SUBMITTED« in the e-JN electronic public procurement system shall be considered to have been received.

A tenderer may withdraw or modify his tender until the time limit for the submission of tenders. Should a tenderer withdraw his tender already submitted into the e-JN electronic public procurement system, it shall be considered that no tender has been submitted and the Contracting Authority will not see that tender in the e-JN electronic public procurement system. Should a tenderer modify/amend his tender in the e-JN electronic public procurement system, the Contracting Authority will only be able to access and open the last submitted version of the tender.

After the expiry of the time limit for the receipt of tenders, it will not be possible to submit any more tenders.

For access to the link for the submission of an electronic tender under this public procurement procedure go to:

<https://ejn.gov.si/ponudba/pages/aktualno/aktualno_javno_narocilo_podrobno.xhtml?zadevaId=17084>

1. https://ejn.gov.si/ponudba/pages/aktualno/aktualno\_javno\_narocilo\_podrobno.xhtml?zadevaId=17084**Time and place for the opening of tenders**

The opening of tenders will be performed automatically in the e-JN electronic public procurement system on **24 April 2020** and it will commence **at** **10:10 CET** on the web address <https://ejn.gov.si/eJN2>.

The opening of tenders takes place by the e-JN electronic public procurement system displaying automatically at the specified time the information on the tenderer, the variants if requested, i.e. allowed, and allowing access to the .pdf document, which the tenderer has uploaded into the e-JN system under the tab »Predračun/Priced bill of quantities«. The public disclosure is automatically terminated after 60 minutes. The tenderers, which have submitted their tenders, can access the information in the e-JN system in the section »Zapisnik o odpiranju ponudb/Minutes of the tender-opening session«.

1. **Access to the tender documentation**

Tenderers have access to the tender/procurement documentation on the Contracting Authority’s website <http://www.dbr.si>.

1. **Additional clarifications**

Tenderers can send their requests for additional clarifications with regard to the content of the Tender Documentation in writing to the Public Procurement Portal.

The time line for a Tenderer to request additional clarifications with regard to the Tender Documentation is ten days prior to the deadline for the submission of tenders.

The contact person will reply to all questions received by the deadline referred to in the previous paragraph not later than within six days prior to the expiry of the deadline for the submission of tenders. The answers will be published on the public procurement portal.

1. **Modifications and amendments to the Tender Documentation**

The Contracting Authority may by the final date for the receipt of tenders, modify and amend the Tender Documentation. The Contracting Authority will publish on the EU public procurement on his home page any and all modifications and amendments to the Tender Documentation. Should that prove necessary, the Contracting Authority will extend the deadline for the submission of tenders and in that event the Contracting Authority’s rights and obligations shall be rescheduled to reflect the new time line made after the extension of the deadline for the submission of tenders.

1. **Amendment, modification and withdrawal of a tender:**

The tenderer may withdraw or modify his tender until the expiry of the time limit set for the submission of tenders. Should the tenderer withdraw his tender in the public procurement system e-JN, it shall be deemed that no tender has been submitted and the Contracting Authority will not see that tender in the e-JN system. Should the tenderer modify/amend his tender in the e-JN system, the Contracting Authority will see the most recent tender submitted into the e-JN system. After the expiry of the time limit set for the submission of tenders, it will not be possible to submit any tender.

1. **Terms and conditions for the recognition of aptitude (eligibility)**

The tenderer has to meet all the selection criteria laid down below.

In accordance with the provisions of Article 79 of the Public Procurement Act (ZJN-3), the contracting authority will accept at the time of the submission of a tender instead of the certificates issued by public authorities or third parties the ***European Single Procurement Document*** - ESPD, an updated self-declaration as preliminary evidence of the fulfilment of the conditions referred to in points 1 A. to 1 D. and points 2 A . and 2 C. of the Instructions.

The tenderer has to provide in the ESPD all the information required to obtain proof, certificates and information and, above all, the web address at which the database containing documents, identification data is accessible if necessary, as well as the tenderer’s approval to the Contracting Authority to obtain evidence.

Insofar as such verification would not be possible, before awarding the public procurement contract, the Contracting Authority will demand from the tenderer to which he has decided to award the contract, to submit supporting documents (certificates, statements, copies of authorisations/permits) as documentary evidence of no grounds for exclusion referred to in points 1 A. – 1 D. and evidence of the fulfilment of the conditions required in order to participate in a public procurement procedure referred to in points 2 A. in 2 C.

An economic operator may submit evidence of the absence of grounds for exclusion referred to in points 1 A. to 1 D. and evidence of the fulfilment of the conditions to participate in a public procurement procedure referred to in points 2 A. and 2 C. of these Instructions also on his own initiative by uploading such evidence in the e-JN information system in the session »Druge priloge/Other attachments«. The contracting authority reserves the right to verify the veracity of the submitted documentary evidence by contacting their issuer, as well as to demand that additional statements and/or certificates be provided.

In the case in which the tenderer cannot obtain the documents to be submitted due to the fact that the country in which the tenderer does have a registered office does not issue such documents, a sworn statement given before a judiciary or administrative body, notary or a competent professional or trade organization in the home country can be submitted.

The Contracting Authority cautions the tenderers on the most recent practice followed by the National Review Commission [Državna revizijska komisija] (see Decision/Odločba 018-135/2018) under which only a certificate bearing the date as of which the deadline for the submission of tends expires shall be considered compliant, unless otherwise provided by law.

Before awarding the public procurement contract, the Contracting Authority will ask the tenderer selected to get the concerned order to submit a written authority/power of attorney to obtain data referred to in points 1 A. – 1 D.

Insofar as it is an institution registered in another EU Member State and there is no access to a certain certificate referred to in this point by gaining a direct access to the national database of the respective Member State (such as a national public procurement register, electronic company register, electronic document filing system or a prequalification system) or in the case where it is an institution registered in a country, which is not an EU Member State, the economic operator will have to submit required certificates and evidences by himself instead of the aforementioned a written authority/power of attorney at the request of the Contracting Authority.

**PLEASE NOTE: The English version of the ESPD is for informational purposes only. The tenderer must complete and sign the Slovene version of the ESPD.**

**Exclusion grounds:**

The contracting authority shall exclude a tenderer/economic operator from participation in the procurement procedure if:

1. **Grounds relating to criminal convictions**

* The economic operator or a person who is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control therein has been the subject of a conviction by a final judgment containing elements of the criminal offences laid down in paragraph 1 of Article 75 of the Public Procurement Act (ZJN-3) and Article 57(1) of Directive 2014/24/EU:
  + terrorism (Article 108 of the Criminal Code - KZ-1),
  + financing of terrorist activities (Article 109 of the Criminal Code - KZ-1),
  + incitement and public glorification of terrorist activities (Article 110 of the Criminal Code - KZ-1),
  + conscripting and training for terrorist activities (Article 111 of the Criminal Code - KZ-1),
  + enslavement (Article 112 of the Criminal Code - KZ-1),
  + trafficking in human beings (Article 113 of the Criminal Code - KZ-1),
  + acceptance of bribe during the election or ballot (Article 157 of the Criminal Code - KZ-1),
  + violation of fundamental rights of employees (Article 196 of the Criminal Code - KZ-1),
  + fraud (Article 211 of the Criminal Code - KZ-1),
  + unlawful restriction of competition (Article 225 of the Criminal Code - KZ-1),
  + causing bankruptcy by fraud or careless operations (Article 226 of the Criminal Code - KZ-1),
  + defrauding creditors (Article 227 of the Criminal Code - KZ-1),
  + business fraud (Article 228 of the Criminal Code - KZ-1),
  + fraud to the detriment of the European Union (Article 229 of the Criminal Code - KZ-1),
  + loan and benefit fraud (Article 230 of the Criminal Code - KZ-1),
  + fraud in securities trading (Article 231 of the Criminal Code - KZ-1),
  + deception of purchasers (Article 232 of the Criminal Code - KZ-1),
  + unauthorised use of another’s mark or model (Article 233 of the Criminal Code - KZ-1),
  + unauthorised use of another’s patent or topography (Article 234 of the Criminal Code - KZ-1),
  + forgery or destruction of business documents (Article 235 of the Criminal Code - KZ-1),
  + disclosure and unauthorised acquisition of trade secrets (Article 236 of the Criminal Code - KZ-1),
  + information system abuse (Article 237 of the Criminal Code - KZ-1),
  + abuse of insider information (Article 238 of the Criminal Code - KZ-1),
  + abuse of financial instruments market (Article 239 of the Criminal Code - KZ-1),
  + abuse of position or trust in business activity (Article 240 of the Criminal Code - KZ-1),
  + unauthorised acceptance of gifts (Article 241 of the Criminal Code - KZ-1),
  + unauthorised giving of gifts (Article 242 of the Criminal Code - KZ-1),
  + counterfeiting money (Article 243 of the Criminal Code - KZ-1),
  + fabrication and use of counterfeit stamps of value or securities (Article 244 of the Criminal Code - KZ-1),
  + money laundering (Article 245 of the Criminal Code - KZ-1),
  + abuse of non-cash means of payment (Article 246 of the Criminal Code - KZ-1),
  + use of a counterfeit non-cash means of payment (Article 247 of the Criminal Code - KZ-1),
  + fabrication, acquisition and disposal of instruments of forgery (Article 248 of the Criminal Code - KZ-1),
  + tax evasion (Article 249 of the Criminal Code - KZ-1),
  + smuggling (Article 250 of the Criminal Code - KZ-1),
  + abuse of office or official duties (Article 257 of the Criminal Code - KZ-1),
  + causing damage to public funds (Article 257.a of the Criminal Code - KZ-1),
  + disclosure of classified information (Article 260 of the Criminal Code - KZ-1),
  + acceptance of bribes (Article 261 of the Criminal Code - KZ-1),
  + giving bribe (Article 262 of the Criminal Code - KZ-1),
  + accepting benefits for illegal intermediation (Article 263 of the Criminal Code - KZ-1),
  + giving of gifts for illegal intervention (Article 264 of the Criminal Code - KZ-1),
  + Criminal association (Article 294 of the Criminal Code - KZ-1),

PROOF: A filled out **ESPD form**.

***The contracting authority shall invite the tenderer/economic operator to submit a certificate issued by the competent authority based on the criminal records for natural and legal persons. In the case that the tenderer/economic operator does not have such a certificate, the signed declarations authorising the provision of data (Annex 8 and 9) shall be filled in and signed in order to speed up the contract award procedure.***

1. **Grounds relating to the payment of taxes**

* The economic operator has not complied with its obligations relating to the payment of compulsory charges or other pecuniary non-tax liabilities under the law governing financial administration, collected by the tax authority in accordance with the regulations of the country in which it is established or with the regulations of the country of the contracting authority, where those unpaid overdue liabilities total EUR 50 or more as at the date of the submission of the tender or request. An economic operator shall also be considered not to comply with its obligations as referred to in the preceding sentence if, by the date of the submission of the tender or request, it has not submitted all the withholding tax returns for income from the employment relationship for the period of five years preceding the date of the submission of the tender or request.

PROOF: A filled out **ESPD form**.

***The contracting authority shall invite the tenderer/economic operator to submit a certificate issued by the Financial Administration of the Republic of Slovenia (for Slovenian companies) or other competent authority. In the case that the tenderer/economic operator does not have such a certificate, the signed declarations authorising the provision of data (Annex 8) shall be filled in and signed in order to speed up the contract award procedure.***

**C: Grounds relating to insolvency, conflicts or interests or professional misconduct**

* The tenderer/economic operator is the subject of insolvency or compulsory winding-up proceedings under the law governing insolvency and compulsory winding-up proceedings or of liquidation proceedings under the law governing companies, where its assets or operations are being administered by a liquidator or by the court, where its business activities are suspended, or where, in accordance with the regulations of another country, it is the subject of proceedings or is in an analogous situation having the same legal effect.

PROOF: A filled out **ESPD form**.

***The contracting authority shall invite the tenderer/economic operator to submit a certificate issued by the District Court (for Slovenian companies) or other competent authority. In the case that the tenderer/economic operator does not have such a certificate, the signed declarations authorising the provision of data (Annex 8) shall be filled in and signed in order to speed up the contract award procedure.***

* The economic operator has breached its obligations in the field of environmental, social and labour law (Art. 3 of the Public Procurement Act (ZJN-3)
* The contracting authority can demonstrate by appropriate means that the economic operator is guilty of grave professional misconduct, which renders its integrity questionable
* The tenderer/economic operator has been guilty of serious misrepresentation in supplying the information required for the verification of the existence of grounds for exclusion or of the fulfilment of the selection criteria, has withheld such information, or is not able to submit the supporting documents required pursuant to the provisions of the Public Procurement Act (ZJN-3).

PROOF: A filled out **ESPD form**.

**D: Purely national exclusion grounds**

* On the date of the expiry of the time limit for the submission of tenders or applications, the tenderer/economic operator is excluded from contract award procedure due to its inclusion in the register of economic operators with negative references.
* If, in the three years preceding the expiry of the time limit for the submission of tenders, the economic operator was fined twice, by way of a final decision of the competent authority of the Republic of Slovenia or another Member State or a third country, for a minor offence relating to remuneration for work, working hours, rest time, performing work on the basis of contracts governed by civil law despite the existence of the elements of employment relationship or pertaining to undeclared work.

PROOF: A filled out **ESPD form**.

***The contracting authority shall invite the tenderer/economic operator to submit a certificate issued by the Ministry of Justice (for Slovenian companies) or other competent authority based on the records of final court sentences, i.e. decisions on misdemeanours of legal persons. In the case that the tenderer/economic operator does not have such a certificate, the signed declarations authorising the provision of data (Annex 8 shall be filled in and signed in order to speed up the contract award procedure.***

**Selection criteria**

1. **Suitability:**

That the Tenderer has been duly enrolled in trade registers kept in the Member State of its establishment in accordance with regulations.

PROOF: A filled out **ESPD form**.

1. **Economic and financial standing:**

The eligible tenderer must have the credit rating requested by the contracting authority as the condition for recognising the tenderer’s economic and financial ability to perform the contract which the subject matter of this Call for Tenders.

The sufficient tenderer’s credit rating shall be determined on the basis of the BASEL II system up to BBB. The contracting authority will accept credit ratings awarded by credit rating institutions in accordance with the BASEL II system and will be equivalent scores such as score from: AJPES – up to and including SB7, Moody's – up to including Baa3, S&P – up to and including BBB-, Fitch – up to and including BBB- . Tenderers shall supply  adequate evidence, i.e. credit rating.

PROOF: A filled out **ESPD form**.

In case where a joint tender is submitted, the lead economic operator and all other economic operators must meet the credit rating requirement. The requirement to supply the credit rating does not apply to subcontractors.

**C: Approval by the competent authority:**

In case the »replacement quantities of diesel fuel« will be stored outside the territory of the Republic of Slovenia on basis of bilateral agreements with the Federal Republic of GErmany, Hungary or the Netherlands, the tenderer shall submit, upon submission of the tender, the approval of the competent authority of the foreign country where the goods will be stored, insofar as the agreement provides for such approval. If the tenderer fails to submit the tender, the tender will be rejected.

**Other conditions**

1. The tenderer has not been subject of a conviction by final judgement for a minor offence referred to in Article 22 of the Commodity Reserves Act (Official Gazette of the Republic of Slovenia, Nos. 96-2009 – UPB2 and 83/2012).

PROOF: A filled out **ESPD form** (in »Del/Part VI: Zaključek/Concluding statements reading »Podpisani uradno izjavljam(o)/The undersigned formally declare that«) for all economic operators in the tender.

1. The tenderer does not have any outstanding liabilities vis-à-vis the Contracting Authority past due for 30 days or more (2nd paragraph of Article 18 of the Commodity Reserves Act, Official Gazette of the Republic of Slovenia, No. 96-2009 – UPB2 and 83/2012).

PROOF: A filled out ESPD form (in »Del/Part VI: Zaključek/Concluding statements reading »Podpisani uradno izjavljam(o)/The undersigned formally declare that«) for all economic operators in the tender.

1. The tenderer has not been included in the list of entities subject to restrictions of operation referred to in Article 35 of the Integrity and Prevention of Corruption Act (Official Gazette of the Republic of Slovenia, No. 69/11-UPB2) and is not subject to any prohibition on doing business with the Contracting Authority pursuant to that article.

PROOF: A filled out **ESPD form** (in »Del/Part VI: Zaključek/Concluding statements reading »Podpisani uradno izjavljam(o)/The undersigned formally declare that«) for all economic operators in the tender.

### **The criteria for awarding the public contract and the contract price**

For the purpose of the tender evaluation process, the sole criterion for awarding the public contract to the successful tenderer, that is, to the successful tenderers, shall be the lowest tender price.

The contracting authority will select the most favourable tenders, where the difference between the sale price and the purchase price will be accepted as the most favourable for the contracting authority.

All the prices shall be expressed in EUR/l excl. stockpiling fee, CO2 tax, the supplement for the provision of savings, PZPPE fee, the excise duty and VAT.

The price must include all costs arising from and in connection with the performance of this public contract in accordance with Appendix 4.

The prices must reflect the market conditions.

### **»ESPD« form**

The ESPD form is a formal self-declaration made by an economic operator attesting to the non-existence of the reasons for exclusion and to his meeting the conditions to participate in the procurement procedure and at the same time it provides relevant information requested by the Contracting Authority. The ESPD form also comprises a formal to the effect that the economic operator will be able, upon request and without delay, to provide supporting documents attesting the relevant grounds for exclusion do not apply and that the relevant selection criteria are fulfilled.

The economic operators shall download the ESPD form (XML file) of the Contracting Authority from the website of the public procurement portal Portal javnih naročil / ESPD: <http://www.enarocanje.si/ESPD/>, containing the mandatory data/information and print the completed form.

The tender shall be accompanied by the filled out, printed and duly signed ESPD form for all the economic operators, which participate in the tender in any capacity (tenderer, participating tenderers in case of a joint tender – the economic operators whose qualifications/capacities are referred to by the tenderer and the sub-contractors).

The tenderer shall upload to the e-JN system the ESPD form in the section »ESPD – ponudnik/tenderer«, whereas the ESPD forms of other participants shall be uploaded to the section »ESPD – ostali sodelujoči/other participants«. The tenderer, which files his tender in the e-JN system, shall transmit a duly signed ESPD form in xml. Format or only transmit it and postpones its signing when signing the tender. Also in the case that the tenderer transmits a signed ESPD form in pdf. Format, it will have to be duly signed once again together with signing the tender.

For other participants the tenderer shall upload to the section »ESPD – ostali sodelujoči/other participants« the duly signed ESPD forms in pdf. Format or in electronic form a signed xml.

The English version of the ESPD is for informational purposes only. The tenderer must complete and sign the Slovene version of the ESPD.

### **The form »Predračun/Priced bill of quantities«**

The tenderer has to offer in Predračun/priced Bill of Quantities all items by taking into account the technical specifications, which are an integral part of the tender/procurement documents.

The tenderer shall fill out all items in Predračun/Priced bill of quantities quoted to five decimal places.

Should the tenderer write (0) EUR as the price of an item, it shall be deemed that the item is to be provided free of charge.

The tenderer must not alter the content of the priced bill of quantities.

In the case that the Contracting Authority during the tender examination should identify obvious calculation errors, he will act in accordance with the provisions set out in 7th paragraph of Article 89 of the Public Procurement Act (ZJN-3).

The tenderer shall upload the priced bill of quantities to the e-JN system in the section »Predračun/Priced bill of quantities« in .pdf file.

### **Financial guarantees:**

a/ Tender security (guarantee)

Tenders shall be accompanied by a tender guarantee issued by an investment-grade bank in amount of 20,000 euros. The security, i.e. guarantee must be valid until day on which the successful Tenderer concludes the Contract with the Contracting Authority and submits to the Contracting Authority the tender security/guarantee. However, the tender guarantee validity shall not be shorter than the date of validity of tenders. If the successful Tenderer fails to conclude the Contract with the Contracting Authority, the Contracting Authority will forfeit, i.e. cash the guarantee. Tenderers shall be obliged to submit extension of their tender guarantees should the Contracting Authority so request or they have to submit new tender guarantees, if the Contract is not concluded by the stipulated deadline due to objective reasons.

Shall the tenderer submit more tenders for the same tender, one original guarantee may be submitted, which is valid for all the tenders. The guarantee shall be enclosed with one of the tenders.

b/ Performance security (guarantee)

See Appendix 4 – Tender Form i. e. Draft Contract

Should the Tenderer fail to submit these guarantees by deadline determined by the Contracting Authority, the contract shall become null and void and the Contracting Authority is entitled to forfeit, i.e. cash the tender guarantee without delay.

c/ Financial security (guarantee) for the purchased oil product

See Appendix 4 – Draft Contracts

The tender security and performance security have to be issued have to be issued by the first grade bank (bank guarantee), whereas the financial security for the purchased oil product shall be issued by the first grade bank (bank security) or the first grade insurance company (for the suretyship). All submitted financial securities shall be subject to the Uniform Rules for Demand Guarantees (URDG), ICC Publication No. 758. The wording of the guarantees and other financial securities submitted by the tenderer shall not substantially deviate from the wording of sample guarantee forms attached to the Tender Documents.

### **Content and form of tenders**

The tenderer shall submit the following documentation:

* + Information concerning the tenderer – Appendix 1
  + Priced bill of quantities – Appendix 4
  + The tender form serving also as the contract form, filled out, initialled on each page, signed on the last page and featuring a stamp/seal – Appendix 5
  + A copy of tender security – Appendix 6
  + Signed declarations for data/information procurement - Appendix 8 and Appendix 9 (for the tenderer and for all representatives of the tenderer – members of the management board, board of directors or supervisory board of the economic operator or the persons with power of attorney to act represent or decide or supervise the respective body have to fill in the declarations separately for each and every such person)
  + The signed statement concerning the participation of natural persons and legal entities in the ownership of the participating company – Appendix 10
  + The ESPD form – Appendix 11

### **Special terms and conditions, i.e. requirements posed by the Contracting Authority**

* + Provided that a prior agreement with the storage operator is reached, the tenderers may take samples of the petroleum products from the oil tanks and have the analysis performed at their expense before the expiration of the deadline for the submission of their tenders;
  + In the course of the execution of the subject-matter of the contract, the successful tenderer may take the samples of the petroleum product held in the oil tanks and/or road tankers, that is, in the rail tankers;
  + The storage operator will check the quality of the petroleum product released and supplied/delivered petroleum product by taking samples from the road tanker and/or rail tankers;
  + The successful tenderer are required to submit to the contracting authority and to the storage operator all the necessary particulars/information necessary to complete correctly the excise documents at least 5 working days before lifting the product;
  + The successful tenderer are requested to make arrangements with the storage facility operator regarding the regime of the release (withdrawal) of the excisable petroleum product (moving the petroleum product to another excise storage/warehouse, placing on the market…) and any and all duties or levies charged on the excisable goods in such cases;
  + The successful tenderer are required to submit to the contracting authority and to the storage operator the information about the transport (registration numbers of road tank cars, names of drivers of road tank cars, information about the railway transport, schedule ...) at least 3 working days before lifting the product;
  + The wording of the bank guarantees and other financial guarantees submitted by Tenderers must not deviate significantly from the wording of the sample forms enclosed to the Tender Documentation.

### **Period of validity of tenders:**

Tenders shall remain valid 60 days after the opening of tenders.

### **Additional information:**

The tenderers are kindly asked to check the possible obstacles when transporting the petroleum product.

### **Technical characteristics of the storage facilities/tank farms**

Contact person: Aleš Petrin, Uroš Zupanič

Tel/e-mail: 0386 2 564 39 56, 00386 31 779 665, [ales.petrin@petrol.si](mailto:ales.petrin@petrol.si), 00386 2 60 96 214, 00386 31 362 427, [uros.zupanic@petrol.si](mailto:uros.zupanic@petrol.si)

Operating hours: Monday – Sunday from 00.00 – 24.00

Discharge of oil product:

Road terminal only:

* + filling capacity simultaneous filling of 1 road tanker

Take-over of oil product:

Rail terminal only:

* + 1-2 trains (app. 16-40 railcar tanks) per week
  + axle weight: 20 tonnes

The Contracting Authority asks the Tenderers that prior to the submission of their tender they should align the technical characteristics and the time schedule with the Storage Operator.

In case that several contractors are selected for the replacement of the stocks of petroleum products, the Agency (ZRSBR) may call a meeting before the contracts start to withdraw the stocks with their representatives and with the storage facility operator in order to agree the terms and conditions for removing the petroleum products from the tanks and for delivering fresh stocks.

In the case that the contractors are unable to reach an agreement, the quantities of the petroleum product to be released, that is, supplied will be determined on the basis of the quantities stipulated in the contract. The tenderer which has offered the lowest tender price will have the benefit of choosing the timing.”

1. **Notice on the decision to award a public procurement contract**

The Contracting Authority will publish the signed decision to award the public procurement contract on the public procurement portal. The decision shall be considered to have been served on the selected tenderer as of the day of its publication on the public procurement portal.

1. **Withdrawal from the performance of a public contract**

In accordance with the provisions of 8th paragraph of Article 90 of the Public Procurement Act (ZJN-3), the Contracting Authority may withdraw from the tender process before signing the contract on the grounds that it no longer needs or has no funds for the subject-matter of procurement or that it has reasonable cause to suspect that the contents of the contract were or could be a result of a criminal offence, or that other extraordinary and unforeseeable circumstances beyond its control have arisen that have rendered the performance of the contract impossible. In the event that the contracting authority withdraws from the tender process, it shall not conclude a contract or a framework agreement with the selected tenderer and shall notify the tenderers or candidates in writing of its decision and the reasons for withdrawing from the tender process.

1. **Conclusion of the Contract**

The Tenderer must sign the Contract not later than within the time line determined by the Contracting Authority. In the event that the Contract has not been duly signed by the stipulated deadline, the Contracting Authority will forefeet, i.e. cash the financial security - tender guarantee.

1. **Review procedure**

Legal protection of the Tenderers participating in the public procurement procedure is provided for by the review of the procedures for the award of contracts under the public procurement procedure in accordance with the act governing the review of public procurement procedures.

The petitioner must pay a fee when filing the request in the bank account opened with the Ministry of Finance in accordance with the cited act.

1. **Obligation to transfer data/information**

The successful tenderer shall be obliged to submit the following data/information as requested by the contracting authority:

* + regarding its founders, owners including silent partners, shareholders, limited partners or other owners with the particulars regarding the shares/stakes held by the aforementioned persons;
  + corporate entities considered to be its related/connected companies in accordance with the provisions of the law governing business enterprises.

The successful tenderer shall submit to the contracting authority the data/information referred to in the previous paragraph within eight days of the receipt of the request.

1. **Final provisions**

Irrespective of the result of the public procurement procedure, Tenderers shall not be eligible to any refunds of costs and expenses arising from and in connection with the preparations of tenders.

Options are not allowed.

The tenderer that has failed to submit all requested documents will be eliminated from further tendering procedure in accordance with the provisions laid down in the Public Procurement Act (ZJN-3).

The tenders submitted by those Tenderers that have been the subject of a judgement which has the force of *res judicata* for committing a violation defined in Article 22 of the Commodity Reserves Act or that have outstanding liabilities to the Contracting Authority for more than thirty days (the second paragraph of Article 18 of the Commodity Reserves Act) will be eliminated from the further procedure.

The tenderer, who has submitted his tender, hereby represents and warrants under criminal responsibility and liability that all data provided in the tender documents are true and that the enclosed supporting documentation is a true copy of the original. Should that not be the case, the tenderer shall be held liable to the Contracting Authority for all loss/damage caused to the Contracting Authority.