

Open Competition

Pursuant to the Act No. 343/2015 Coll. on Public Procurement and on amending and supplementing some acts in wording of later regulations

Registration number of procurement event: 22-0050-VS

Supply of Ball Valves DN 200 – DN 1400

Tender Documents

Note: This is English translation of original Tender Documents in Slovak. The binding wording of this document is in Slovak language that prevails over this English translation. The Contracting Entity does not warrant nor guarantee the accuracy of this translation.

CONTENTS

CONTENTS	2
1. GENERAL INFORMATION	4
1.1. Identification of the Contracting Entity	4
1.2. Manner of Procurement	4
1.3. Basic steps in the Competition.....	4
1.4. Resources for financing the Contract.....	4
1.5. Communication in the Competition	4
1.6. Registration and Authentication into the JOSEPHINE System	5
1.7. Language of the Competition.....	6
1.8. Clarification and supplementing of the Tender Documents	6
1.9. Group of suppliers	7
2. SUBJECT-MATTER OF THE CONTRACT	7
2.1. Designation of the Subject-Matter of the Contract	7
2.2. Kind of the Subject-Matter of the Contract.....	7
2.3. Description of the Contract Subject-Matter	7
2.4. Place of delivery of the Contract Subject-Matter	9
2.5. Deadline of the Contract Subject-Matter fulfilment.....	9
2.6. Contract	9
3. PARTICIPATION CONDITIONS	9
3.1. Personal status	9
3.2. Financial and economic status.....	9
3.3. Technical and professional competences pursuant to Article 34 of the PPA....	9
3.4. Submitting the documents proving compliance with participation conditions..	10
3.5. Assessment of the compliance with participation conditions	11
4. CONTENTS, PREPARATION AND SUBMISSION OF TENDERS	12
4.1. Contents of tenders	12
4.1.3. Cover letter of tender	12
4.1.4. Documents proving compliance with participation conditions	12
4.1.5. Technical document of a tender	13
4.1.6. Commercial documents of a tender	13
4.1.7. Other documents	13
4.2. Instructions for preparation of a tender	14
4.3. Manner of determining the price in a tender	14
4.4. Confidentiality	15
4.5. Submission of tenders	15
4.6. Requirements for submission of electronic documents.....	16
5. EVALUATION OF TENDERS.....	18
5.1. Opening of tenders	18
5.2. Rules for evaluation of tenders	18
5.3. Criteria for evaluation of tenders and rules of their application	19
5.4. Information on result of tender evaluation.....	20
6. ELECTRONIC AUCTION	20
6.1. General information	20
6.2. The course of e-Auction.....	21
6.3. Information related to the electronic equipment, conditions and specifications of technical connection	22
6.4. Other information	22
7. CONCLUSION OF THE CONTRACT	23
8. OTHER CONDITIONS OF THE COMPETITION	24

8.1. Tender binding period	24
8.2. Variant solution	24
8.3. Conditions of Competition Cancellation	24
8.4. Bid bond	24
9. FURTHER INFORMATION	24
9.1. Costs of tenderers for participation in the Competition	24
9.2. Relevant Law and Other Legal Information	24
10. LIST OF ANNEXES HEREOF	25

1. GENERAL INFORMATION

1.1. Identification of the Contracting Entity

Business Name: **eustream, a.s.**
Registered Office: Votrubova 11/A, 821 09 Bratislava, Slovak Republic
Legal Form: Joint Stock Company incorporated in the Commercial Register of the District Court Bratislava I, Section: Sa, Entry No.: 3480/B
Company ID: 35 910 712
Tax ID: 2021931175
VAT ID: SK2021931175
Web Site: www.eustream.sk
Contact Person: Ing. Martin Mikula, Procurement Expert
Phone: +421 (0)2 6250 7161
Mobile: +421 (0) 905 962 107
E-mail: martin.mikula@eustream.sk

(hereinafter referred to as the "Contracting Entity")

1.2. Manner of Procurement

- 1.2.1. This Contract is awarded by means of a public procurement procedure pursuant to the Act No. 343/2015 Coll. on Public procurement and on amending and supplementing some acts in wording applicable as of the date of this contract award procedure (hereinafter referred to as the "PPA"). This Contract award proceeding is governed by relevant provision of the PPA and other legal regulations of the Slovak Republic.
- 1.2.2. This Contract is awarded by a procedure pursuant to Article 91 of the PPA – Open Competition (hereinafter referred to as the "Competition").

1.3. Basic steps in the Competition

- a) Notification of the Competition by publishing appropriate notification on public procurement procedure in the Official Journal of the European Union and in the Public Procurement Journal;
- b) Provision of Tender Documents and clarifications upon request of candidates or economic subjects;
- c) Submission of tenders along with documents proving compliance with participation conditions thereof;
- d) Assessment of compliance with participation conditions;
- e) Evaluation of tenders prior to electronic auction of tenderers who comply with participation conditions;
- f) Online electronic auction;
- g) Announcement of tender evaluation result;
- h) Conclusion of the Contract;

Detailed information on individual aforementioned steps in the Competition is presented in further sections of these Tender Documents.

1.4. Resources for financing the Contract

The Contracting Entity intends to finance the Contract upon its own resources.

1.5. Communication in the Competition

- 1.5.1. The communication and information exchange in the Competition, including submission of documents proving compliance with participation conditions, tenders, requests for clarification of Competition conditions and Tender Documents, provision of clarifications, appeals for explanations of documents or tenders, submission of such explanations or supplementing documents, explanations of tenders and other communication between the Contracting Entity and candidates or tenderers (hereinafter referred to as the "communication"), shall be carried out pursuant to Article 20 of the PPA in writing by electronic means in the language or languages specified in paragraph 1.7 hereof.

- 1.5.2. The communications shall be carried out by means of communication interface of the system JOSEPHINE (hereinafter referred to as the “JOSEPHINE”).
- 1.5.3. For the purposes of this public procurement procedure, JOSEPHINE is a software dedicated to electronic awarding of public contracts registered in the List of electronic means pursuant to Article 158a of the PPA. JOSEPHINE is a web application at the domain <https://josephine.proebiz.com>.
- 1.5.4. Link to the Competition: <https://josephine.proebiz.com/sk/tender/35978/summary>
- 1.5.5. For problem free using the system JOSEPHINE it is necessary to use one of the supported Internet browsers:
- Mozilla Firefox version 13.0 or higher;
 - Google Chrome;
 - Microsoft Edge;
- 1.5.6. The security level of registration and authentication of users (i.e. Competition participants) into the JOSEPHINE system that provides for security of the communication between the Contracting Entity and candidates and tenderers, gives the security level required for electronic means of communication in course of this Competition.
- 1.5.7. Rules for delivery – a message deems delivered to a candidate / tenderer, if an addressee thereof will have objective opportunity to familiar with content of the message, i.e. immediately as the message is in disposal of a candidate / tenderer. In the JOSEPHINE system, the moment of message delivery deems the moment of its sending or publishing respectively in the JOSEPHINE system in accordance with the appropriate functionality of the system.
- 1.5.8. If the Contracting Entity is the sender of a message then a notification of new message related to the Competition shall be sent immediately to e-mail(s) specified by candidate / tenderer. The candidate / tenderer can log in to the system and the message will be displayed in the communication interface of the Competition. A candidate / tenderer can display the entire history of the communication with the Contracting Entity in communication interface of the Competition.
- 1.5.9. If a candidate / tenderer is the sender of a message then, after logging in to the system and this Competition, can send messages by means of the communication interfaces as well as attachments thereof to the Contracting Entity. Such message deems delivered to the Contracting Entity at the moment of its sending within the JOSEPHINE system in accordance with the appropriate functionality of the system.
- 1.5.10. The Contracting Entity recommends to candidates, who wish to be informed on eventual updates related to this Competition by means of notification e-mails, to click on the button “INTERESTED” within the Competition (in the right upper part of the screen). Notification mails are delivered also to candidates who are registered in electronic list of candidates within the Competition.
- 1.5.11. The Contracting Entity provides for unlimited and direct access by electronic means to the Tender Documents including all attachments thereof as well as all eventual clarifications or supplements of the Tender Documents or participation conditions and other documents being a part of the Tender Documents within the respective Contract in the JOSEPHINE system.
- 1.5.12. Appeals and/or documents associated to exercising revision proceedings are delivered between the Contracting Entity and candidates / tenderers also in an electronic way by means of the communication interface of the JOSEPHINE system. Delivering the objection and withdrawal therefrom in relation to the Office for Public Procurement is in accordance with Article 170 paragraph 9 b) of the PPA.

1.6. Registration and Authentication into the JOSEPHINE System

- 1.6.1. **Participation of a candidate in this Competition is not possible without its proper authentication according to this paragraph 1.6 hereof!**
- 1.6.2. For the purpose of tender submission in this Competition, it is necessary that every candidate registers with the JOSEPHINE system otherwise the candidate will be granted with no access to this Competition within the JOSEPHINE system and thus shall be able to submit neither tender nor any other documents within the Competition. A candidate has an option to register with the JOSEPHINE system by means a

password or also personal card equipped with an electronic chip and security personal code (eID).

- 1.6.3. Submission of tenders is allowed only to authenticated candidates. The authentication can be done in the following ways:
- a) In the JOSEPHINE system by registration and logging in by means of personal card equipped with an electronic chip and security personal code (eID). The company, which candidate's statutory officer registers by means of eID, is registered. The JOSEPHINE system provider performs the authentication within business days within the time 8:00 – 16:00 hours. The candidate is notified of the authentication completion by an e-mail.
 - b) By uploading the qualified electronic signature (e.g. eID signature) of the candidate's statutory officer to the user's card after the registration and logging in to the JOSEPHINE system. The JOSEPHINE system provider performs the authentication within business days within the time 8:00 – 16:00 hours. The candidate is notified of the authentication completion by an e-mail.
 - c) By uploading a document proving the person of candidate's statutory officer to the user's card after the registration, which is signed by an electronic signature of the candidate's statutory officer or was created upon qualified conversion thereof. The JOSEPHINE system provider performs the authentication within business days within the time 8:00 – 16:00 hours. The candidate is notified of the authentication completion by an e-mail.
 - d) By uploading a power of attorney to the user's card after the registration, which is signed by an electronic signature of the candidate's statutory officer or was created upon qualified conversion thereof. The JOSEPHINE system provider performs the authentication within business days within the time 8:00 – 16:00 hours. The candidate is notified of the authentication completion by an e-mail.
- 1.6.4. An authenticated candidate can, after opening the JOSEPHINE system, choose a tendering procedure in the list presented therein, log in using logging information acquired within the authentication process and then it can upload its tender into the form dedicated to tender receiving, which can find in the card "Bids and requests".
- 1.6.5. Further information on registration and authentication into the JOSEPHINE system are presented on the web site <https://josephine.proebiz.com/>, link "Library of Manuals and Links", which is located in right on upper screen bar of the JOSEPHINE basic screen and left from language selection icon.

1.7. Language of the Competition

- 1.7.1. The communication language in this Competition is the Slovak and/or Czech and/or English language(s).
- 1.7.2. Tenders, proposals and other documents in public procurement are submitted in the state (i.e. Slovak) language and can be submitted also in the Czech language as well. The Contracting Entity allows submission of tenders also in the English language whereas in such case no translation thereof into the state (Slovak) language is required.
- 1.7.3. A document submitted within a tender in other than Slovak, Czech and/or English language(s) must be submitted along with its official translation into the state (Slovak) language.
- 1.7.4. The Contracting Entity reserves right not to take into account documents submitted in a language other than Slovak, Czech and/or English language(s), not concurrently translated into the state (Slovak) language.

1.8. Clarification and supplementing of the Tender Documents

- 1.8.1. Requests for clarification have to be delivered to the Contracting Entity via the JOSEPHINE system in Slovak, Czech and/or English language(s), otherwise the Contracting Entity is not obliged to provide for a clarification.
- 1.8.2. The Contracting Entity will provide a clarification pursuant to Article 48 of the PPA to all candidates being interested in participation in the Competition by means of publishing the clarification in the JOSEPHINE system. The Contracting Entity shall provide for clarification without undue delay, however not later than 6 days prior to expiry the period for tender submission provided that such clarification was requested enough in advance. A timely delivered request for clarification deems a request delivered to the

Contracting Entity via the JOSEPHINE system in Slovak, Czech or English language(s) not later than 12 days prior to expiry the period for tender submission. The Contracting Entity is not obliged to provide a clarification upon a later request delivered.

1.9. **Group of suppliers**

- 1.9.1. Also a group of suppliers can be a tenderer in this Competition, if all members of such group demonstrated compliance with participation conditions pursuant to Article 37, paragraph 3 of the PPA (hereinafter referred to as the "Group of Suppliers"). Each member of the Group of Suppliers has to prove that it complies with the participation conditions related to the personal status (not applicable in this Competition), whereas the compliance with conditions related to economic status, technical and professional qualification and quality management system can demonstrate all members of the Group of Suppliers together.
- 1.9.2. In the case, if the Group of Suppliers submits a tender, the Contracting Entity will lead the communication in the Competition with a representative of such group authorized to communication with the Contracting Entity in this Competition.
- 1.9.3. In the case, if a tender submitted by the Group of Suppliers is accepted, the Contracting Entity:
- require that all members of the Group of Suppliers authorize on member thereof to represent the entire group in contact to the Contracting Entity in performing the Contract;
 - require that all members of the Group of Suppliers undertake the commitment to perform the Contract jointly and severally; if this requirement is not met, i.e. all members of the group will not sign the Contract jointly and severally for the purpose of solidarity fulfilment thereof, such tender shall not be accepted;
 - not require the formation of any legal form of entity by this Group of Suppliers, but it will require that the members of the Group of Suppliers appropriately regulate their mutual relations so that they are able to duly perform the Contract; in such case the Contracting Entity will be entitled to ask the Group of Suppliers to prove how their mutual relations are regulated;

2. **SUBJECT-MATTER OF THE CONTRACT**

2.1. **Designation of the Subject-Matter of the Contract**

Designation of the Subject-Matter of the Contract according to CPV:

Main Vocabulary: 42131240-0 Straight (Ball) Valves

2.2. **Kind of the Subject-Matter of the Contract**

Supply of Goods ☒ Provision of Service ☐ Performing Works ☐

2.3. **Description of the Contract Subject-Matter**

- 2.3.1. The Subject-Matter of the Contract comprises of the supply of ball valves along with their accessories, dedicated to high pressure natural gas pipelines of dimensions from DN 200 inclusive up to DN 1400 inclusive, PN 80 (hereinafter referred to as the "Subject-Matter of the Contract").

- 2.3.2. The Subject-Matter of the Contract is divided into 3 parts according to ball valves dimensions as follows:

Part 1: Ball valves DN 200 and DN 300, PN 80:

<i>Annex 2 Item no.</i>	<i>DN</i>	<i>Locality</i>	<i>Quantity (pcs)</i>
11	200	RU 02 Plavecký Peter	1
2	300	KS 01 Velké Kapušany	1
3	300	KS 01 Velké Kapušany	1

12	300	KS04 Ivanka pri Nitre	1
13	300	KS04 Ivanka pri Nitre	1

Part 2: Ball valves DN 700 and DN 800, PN 80:

<i>Annex 2 Item no.</i>	<i>DN</i>	<i>Locality</i>	<i>Quantity (pcs)</i>
4	700	KS 02 Jablonov nad Turňou	1
5	700	KS 02 Jablonov nad Turňou	1
6	700	KS 03 Veľké Zlievce	1
7	700	RU 02 Vysoká pri Morave	1
8	700	RU 02 Vysoká pri Morave	1
9	700	RU 02 Vysoká pri Morave	1
10	800	RU 02 Vysoká pri Morave	1

Part 3: Ball valves DN 1400, PN 80:

<i>Annex 2 Item no.</i>	<i>DN</i>	<i>Locality</i>	<i>Quantity (pcs)</i>
1	1400	TU 30 Tehla	1

Detailed specification of the ball valves of all three parts hereof is presented in the Proposal for criteria fulfilment constituting Annex 2 hereto.

In case of some ball valves, the Contracting Entity requests for their delivery along with extension pieces. The length of some such extension pieces is specified in Annex 2 hereof as maximal while the actual length thereof may be modified with regard to the type of the actuator that a tenderer will offer in its tender.

In cases when the Contracting Entity requires extension pieces for overground ball valves, it is required because those ball valves are dedicated to replacement of existing ball valves at which service platforms are installed.

- 2.3.3. Supply of actuators for ball valves that can include for example hydro-pneumatic, electric, electric-pneumatic, hand driven or other kinds of actuators, is also a part of the Subject-Matter of the Contract, as well as supply of optional accessories (e.g. extension pieces, etc.) and associated services, i.e. commissioning of ball valves pursuant to applicable legal regulations and training courses for the Contracting Entity's operational personnel for operation and maintenance of actuators.
- 2.3.4. The ball valves and actuators for the ball valves (including accessories) that the tenderer will offer, must meet requirements of the specification and technical-delivery conditions "Ball Valves for High Pressure Gas Pipelines DN 300 – DN 1400", "Ball Valves for High Pressure Gas Pipelines DN 50 – DN 250" and "Actuators for "Ball Valves for High Pressure Gas Pipelines DN 300 – DN 1400". The technical-delivery conditions constitute annexes no. 2, 3 and 4 to the Commercial and Contractual Terms & Conditions constituting Annex 1 hereof. It is required that also actuators for ball valves DN50 – DN250 comply with the requirements of the technical- delivery conditions "Actuators for "Ball Valves for High Pressure Gas Pipelines DN 300 – DN 1400".
- 2.3.5. A tenderer can submit a tender for any part of the Subject-Matter of the Contract or any combination thereof provided that the tenderer proves its compliance with participation conditions specified in Article 3 hereof for respective part(s) of the Contract Subject-Matter.

2.4. Place of delivery of the Contract Subject-Matter

Places of individual ball valves delivery are localities within the territory of the Slovak Republic, specified in Annex 2 hereof.

2.5. Deadline of the Contract Subject-Matter fulfilment

Deadlines for individual ball valves deliveries are specified in Annex 2 hereof. It is required that tenderers specify in the Proposal for criteria fulfilment binding periods of individual ball valves delivery in weeks from the signature of the Contract.

The Contracting Entity reserves right to reject a tender in which the period of delivery for any of the ball valves will be specified longer than:

- a) 5 months within the Part 1 – Ball Valves DN 200 and DN 300;
- b) 6 months within the Part 2 – Ball Valves DN 700 and DN 800;
- c) 7 months within the Part 3 – Ball Valves DN 1400;

2.6. Contract

- 2.6.1. Kind of the contract to be concluded for the Contract Subject-Matter: Supply Contract (hereinafter referred as the "Contract").
- 2.6.2. The Contract will be concluded in a paper form.
- 2.6.3. The Contracting Entity assumes to conclude the Contract with several tenderers.
- 2.6.4. The Commercial and contractual terms and conditions constitute Annex 1 hereof, which comprises the entire wording of the Contract including annexes thereof (hereinafter referred to as the "T&C's").
- 2.6.5. As this Contract awards upon a public procurement procedure of the Open Competition pursuant to Article 91 of the PPA, the Contracting Entity shall not negotiate with tenderers on tenders and thus also the T&C's shall not be subject to negotiations. It is required that tenderers accept T&C's without reservations and submit within their tenders a declaration according to paragraph 4.1.6.2 hereof that they accept T&C's without reservations. Any eventual reservations of a tenderer towards the T&C's or proposals to modifications thereof can be a reason for refusing its tender.

3. PARTICIPATION CONDITIONS**3.1. Personal status**

Not applicable in this Competition.

3.2. Financial and economic status

Not applicable in this Competition.

3.3. Technical and professional competences pursuant to Article 34 of the PPA

The Subject-Matter of the Contract is specific and technically demanding while the minimal technical level of the quality is determined by applicable legal regulations and technical standards specified in the Contract Subject-Matter specification. With aim to ensure that the Contract Subject-Matter is fulfilled at satisfactory quality level, the Contracting Entity requires that the tenderers demonstrate they are experienced in the same or likely contracts as the Contract Subject-Matter, and by means of that demonstrate they have sufficient technical and personal capacities for proper fulfilment of the Contract Subject-Matter. For this purpose, it is required for demonstration of the technical and professional competences that a tenderer proves compliance with the participation conditions related to the technical and professional competences to the extent specified herein below:

- 3.3.1. Pursuant to Article 34, paragraph 1, letter a) and paragraph 2 of the PPA, the Contracting Entity requires to submit:

List of supplies of the goods specifying prices, delivery periods and customers, within the last 5 years from

the notification of this public procurement procedure, at least to the extent as follows:

- a) min. 3 pieces of ball valves within the dimensions \geq DN 200 ÷ <DN 700 with electric or hydro-pneumatic actuator (tenderer to specify kind of supplied actuator), PN \geq 80, if submitting the tender for **Part 1 of the Contract Subject-Matter**;
- b) min. 3 pieces of ball valves within the dimensions \geq DN 700 ÷ \leq DN 1000 with electric or hydro-pneumatic actuator (tenderer to specify kind of supplied actuator), PN \geq 80, if submitting the tender for **Part 2 of the Contract Subject-Matter**;
- c) min. 1 piece of ball valve within the dimensions \geq DN 1200 – \leq DN 1400 with electric or hydro-pneumatic actuator (tenderer to specify kind of supplied actuator), PN \geq 80, if submitting the tender for **Part 3 of the Contract Subject-Matter**;

The Contracting Entity requires to submit the list of supplies based on the template constituting Annex 3 hereof.

3.3.2. Pursuant to Article 34, paragraph 1, letter m) of the PPA, the Contracting Entity requires to submit:

- a) Technical description of the ball valves offered including layout and/or technical drawings thereof and also including layout and/or technical drawings of the offered actuators pursuant to Annex 2 hereof, upon which the technical solution and design of the offered ball valves and actuators has to be clear. This participation condition deems met, if such technical solution and design of the offered ball valves and actuators is submitted, which complies with the technical-delivery conditions “Ball Valves for High Pressure Gas Pipelines DN 300 – DN 1400”, “Ball Valves for High Pressure Gas Pipelines DN 50 – DN 250” and “Actuators for “Ball Valves for High Pressure Gas Pipelines DN 300 – DN 1400”.
- b) A copy of valid certificate issued to the manufacturer and proving that the goods offered are manufactured in accordance with the European Directive PED 2014/68/EU on pressure equipment, issued by persons authorized or notified by the European communities that are authorized for assessment of compliance of products. It is required to submit a copy of appropriate PED certificate for each part of the Contract Subject-Matter, to which the tenderer submits a tender.

3.3.3. The Contracting Entity reserves right not to take into account references that will not include all information needed for assessment of compliance with this participation condition. The Contracting Entity reserves right to verify the truthfulness of information presented in each reference at customers specified therein and in the case, if the customer (upon request of the Contracting Entity) does not confirm the truthfulness of information presented in a reference, the Contracting Entity reserves right not to take such reference into account.

3.3.4. In order to demonstrate the technical or professional competences, a tenderer can use technical and professional capacities of other person disregarding their legal relationship. In such case, the tenderer must prove that, in performing the Contract, it will really use capacities of the person whose competences used for demonstrating the technical and professional competences; the tenderer proves this fact by a written agreement signed with the person, by whose technical and personal capacities intends to demonstrate its technical or professional competences. A commitment of such person to provide its capacities in course of the entire Contract has result of such written agreement. The person whose capacities are to be used for demonstrating the technical or professional competences, has to demonstrate its compliance with participation conditions related to the personal status and must not be there any reasons for disqualifying pursuant to Article 40, paragraph 6, letters a) to g) and paragraph 7 of the PPA. Such person demonstrates its authorization to supply goods, perform construction works or provide services in relation to that part of the Contract Subject-Matter, to which it provided its capacities.

3.4. **Submitting the documents proving compliance with participation conditions**

3.4.1. Documents proving compliance with participation conditions are submitted within tenders.

3.4.2. Every tenderer must submit documents proving its compliance with participation conditions in an electronic form into the Competition along with its tender by expiry the period for tender submitting according to paragraph 4.5.1 hereof by means of the JOSEPHINE system. Further information on submitting the tenders is specified in paragraph 4.5 hereof.

3.4.3. All documents submitted by a tenderer for the purpose of proving the compliance with participation

conditions must meet (besides others) requirements according to paragraph 4.6 hereof. Otherwise the Contracting Entity reserves right not to take such submitted documents into account.

3.5. **Assessment of the compliance with participation conditions**

- 3.5.1. The Contracting Entity will assess the compliance of individual tenderers with participation conditions by means of a commission that will be appointed in accordance with Article 51 of the PPA for assessment of the compliance with participation conditions and evaluation of tenders within the Competition (hereinafter referred to as the "Commission").
- 3.5.2. Electronic documents proving compliance with participation conditions have to meet respective requirements specified in paragraph 4.6 hereof. Otherwise, such documents shall not deem valid and shall not take into account.
- 3.5.3. In assessment of the participation condition compliance, the Commission is entitled to request a tenderer for an explanation of or supplementing the submitted documents.
- 3.5.4. In assessing the compliance with participation conditions, the Contracting Entity shall proceed in accordance with Article 40 of the PPA.
- 3.5.5. Pursuant to Article 40 paragraph (6) of the PPA, the Contracting Entity shall disqualify, at any time in course of the Competition, a tenderer or a candidate, if:
- a) it does not comply with participation conditions;
 - b) has submitted invalid documents; invalid documents are the documents to which their period of validity has expired;
 - c) has provided for information or documents that are untrue or modified so that they do not correspond to the reality and have an effect on assessment of the compliance with participation conditions or selection of candidates;
 - d) has attempted to influence a public procurement procedure improperly;
 - e) has attempted to acquire confidential information that would provide him/her an undue advantage;
 - f) a conflict of interests pursuant to Article 23 of the PPA cannot be eliminated by other effective measures;
 - g) in assessing the professional competences it has provably identified conflict interests of a candidate or tenderer, which may adversely affect fulfilment of the Contract;
 - h) upon a written request of the Contracting Entity according to paragraph 3.5.3 hereof, did not submit any explanation or supplementation of the submitted documents within the specified period;
 - i) upon a written request of the Contracting Entity according to paragraph 4.1.4.8 hereof did not submit documents substituted by the European Single Procurement Document within the specified period;
 - j) did not substitute a person, by means of whom it demonstrates its compliance with participation conditions related to financial and economic status or technical and professional competences according to paragraphs 3.2 a 3.3 hereof, who does not comply with requirements specified by the Contracting Entity, by other person complying with such requirements within the specified period;
 - k) did not substitute a subcontractor who does not comply with requirements specified by the Contracting Entity herein, by other subcontractor who complies with such requirements, within the specified period;
 - l) did not substitute technicians, technical bodies or persons nominated to fulfilment of the Contract, or managing employees, who do not comply with participation conditions pursuant to Article 34 , paragraph 1, letter c) or letter g) of the PPA (i.e. participation conditions related to technicians or technical bodies, or participation conditions related to professional qualification of persons nominated to fulfilment of the Contract or managing persons of a candidate), within the specified period by other persons or bodies, who comply with such participation conditions – **not applicable in this Competition**;
 - m) did not substitute a person, by means of which the candidate or tenderer demonstrates its compliance with participation conditions, or a subcontractor, who have their registered offices in a third country pursuant to Article 10, paragraph 4 of the PPA (i.e. in a country that is not a member country of the European Union and with which the Slovak Republic or European Union does not have concluded an

international agreement guarantying equal and effective access to public procurement events in such third country to economic subjects based in the Slovak Republic), within the specified period by other person or subcontractor, who has not its registered office in the third country pursuant to Article 10, paragraph 4 of the PPA;

4. CONTENTS, PREPARATION AND SUBMISSION OF TENDERS

4.1. Contents of tenders

4.1.1. A tender has include at least the following documents:

- A cover letter of tender according to paragraph 4.1.3 hereof;
- Documents proving tenderer's compliance with participation conditions according to paragraph 4.1.4 hereof;
- Technical documents of a tender according to paragraph 4.1.5 hereof;
- Commercial documents of a tender according to paragraph 4.1.6 hereof;
- Other documents according to paragraph 4.1.7 hereof;

4.1.2. The Contracting Entity reserves right to reject a tender from the Competition, contents of which will not be in accordance with instructions specified in this paragraph 4.1 hereof.

4.1.3. Cover letter of tender

The cover letter of a tender has to include at least the following information: business name and registered office or address of the tenderer, list of all documents submitted within the tender specifying number of pages therein as well as the total number of pages within the entire tender. If the tender includes a separate part with confidential information according to paragraph 4.3 hereof, it is necessary to specify in the tender cover letter also the number of pages within such confidential part of the tender.

If a tenderer has not elaborated its tender itself, it is to specify in the tender cover letter also the person whose services or ground documents it had utilized in preparing the tender. The information as per the preceding sentence should be specified to the following extent: name and surname, business name, residence address, registered office or place of business conduct, and ID of such person, if granted.

4.1.4. Documents proving compliance with participation conditions

4.1.4.1. A tender must include documents proving tenderer's compliance with participation conditions to the extent specified in Article 3 hereof.

4.1.4.2. A tenderer can preliminary substitute the documents for demonstrating its compliance with participation conditions by the European Single Procurement Document that is available on the site: [Jednotný európsky dokument pre verejné obstarávanie - Úrad pre verejné obstarávanie \(gov.sk\)](http://jednotny.europskydokument.pre.verejne.obstaravanie-urad.pre.verejne.obstaravanie.gov.sk).

4.1.4.3. The European Single Procurement Document includes updated declaration of an economic subject that

- a) there is no reason for its disqualifying,
- b) meets objective and non-discriminatory rules and criteria of selection of a limited number of candidates, if the Contracting Entity limits number of candidates (not applicable in this Competition),
- c) it shall provide to the Contracting Entity, upon a request thereof, the documents substituted by the European Single Procurement Document.

4.1.4.4. The European Single Procurement Document must be signed by the tenderer, statutory body of the tenderer or by a member of the tenderer's statutory body or by a person authorized to act on behalf of the tenderer. Otherwise, the European Single Procurement Document shall be disregarded.

4.1.4.5. If a tenderer or candidate demonstrates its technical or professional competences by means of other person, the European Single Procurement Document according to paragraph 4.1.4.3 hereof includes also information on such person.

- 4.1.4.6. A tenderer is to specify in the European Single Procurement Document relevant information according to requirements of the Contracting Entity specified in these Tender Documents (mainly but not exclusively in Article 3 hereof), as well as bodies and subjects who issue documents for proving participation condition compliance. If the required documents available for the Contracting Entity directly and free of charge in electronic databases, the economic subject specifies in the European Single Procurement Document also information needed for accessing such databases, especially the internet address of electronic database, any identification information thereof and approvals needed for access to such database.
- 4.1.4.7. If the Contracting Entity has access according the second sentence of paragraph 4.1.4.6 hereof to documents, it does not require such documents from the tenderer or candidate and acquires the required information upon access to respective electronic database.
- 4.1.4.8. If a tenderer or candidate uses the European Single Procurement Document, the Contracting Entity can, in order to ensure proper course of the public procurement procedure, request the tenderer or candidate in writing at any time in the course thereof for submitting a document(s) substituted by the European Single Procurement Document. The tenderer or candidate delivers the documents to the Contracting Entity within 5 business days from the date of receipt of a request, unless the Contracting Entity specifies a longer period.

4.1.5. Technical document of a tender

A tender has to include also documents at tenderer's sole discretion, other than those submitted for demonstrating the tenderer's compliance with participation conditions related to technical and professional competences, which include technical information by means of which the tenderer demonstrates that its tender complies with requirements of the Contracting Entity related to the Subject-Matter of the Contract specified in the notification of this Competition and in these Tender Documents, especially (but not exclusively) with the requirements specified in the specification of the Contract Subject-Matter according to paragraph 2.3 hereof.

4.1.6. Commercial documents of a tender

A tender has to include at least the following documents of commercial nature:

- 4.1.6.1. The Proposal for Criteria Fulfilment specified in Annex 2 hereof, filled in properly, in which ball valve specifications for each part of the Contract Subject-Matter. This Proposal for Criteria Fulfilment is required to submit in PDF as well as in editable XLSX formats.
- 4.1.6.2. A solemn declaration of a tenderer pursuant to the template presented in Annex 4 hereof that it accepts without stipulations the T&C's constituting Annex 1 hereof, signed by the tenderer or its statutory body of a person authorized to act on behalf of the tenderer in contractual relations.
- 4.1.6.3. The list of all subcontractors known to the tenderer at the time of submitting the tender, specifying there also maximal assumed portion of their subcontracts in % of the total value of the Contract.

4.1.7. Other documents

- 4.1.7.1. Pursuant to the Regulation of the Council (EU) 2022/576 of 8 April 2022 amending the Regulation of the Council (EU) 2014/833 on restriction measures with regard to Russia acting by which destabilizes situation in Ukraine, it is forbidden awarding any public contracts or licenses belonging to the scope of public procurement legal regulations specified therein, to the following entities, subjects or bodies, or any continuing in fulfilment thereof with the following entities, subjects or bodies:

- a) a Russian nationality or an individual or a legal entity, subject or body settled in Russia;
- b) a legal entity, subject or body, of which more than 50% is directly or indirectly owned by the subject specified in letter a) of this paragraph hereof, or
- c) a legal entity or an individual, subject or body acting on behalf or upon instructions of the subject specified in letter a) or letter b) of this paragraph hereof,

including subcontractors, contractors or subjects whose capacities are used pursuant to public procurement directives, if they account for more than 10% of the Contract value.

- 4.1.7.2. With regard to the restriction according to paragraph 4.1.7.1 hereof, the Contracting Entity requires that

every tenderer submits within its tender a solemn declaration pursuant to Annex 5 hereof, signed by the tenderer or its statutory body or a person authorized to act on behalf of the tenderer.

- 4.1.7.3. If a tenderer commits the conditions of prohibition to award public contracts or licenses according to paragraph 4.1.7.1 hereof, it shall be disqualified from this Competition.
- 4.1.7.4. If a subcontractor of a tenderer commits the conditions of prohibition to award public contracts or licenses according to paragraph 4.1.7.1 hereof, the Contracting Entity shall request the tenderer to substitute such subcontractor by an economic subject who does not commit the prohibition conditions according to paragraph 4.1.7.1 hereof. The Contracting Entity shall disqualify from this Competition a tenderer who will not substitute the subcontractor according to the preceding sentence within the period that the Contracting Entity will specify in relevant appeal for subcontractor substitution.
- 4.1.7.5. The Contracting Entity reserves right to disqualify from the Competition a tenderer who shall not submit within its tender a properly signed solemn declaration according to paragraph 4.1.7.2 hereof and shall not otherwise prove that it does not commit the conditions of prohibition to award public contracts or licenses according to paragraph 4.1.7.1 hereof.

4.2. Instructions for preparation of a tender

- 4.2.1. All solemn declarations of a tenderer, submitted within a tender, should be elaborated in accordance with legal regulations applicable in country of tenderer's residence and must be signed by the tenderer, tenderer's statutory body or a member of tenderer's statutory body or by a person authorized to act on behalf of the tenderer in obligation relations. Otherwise, such solemn declaration shall not deem valid and shall be disregarded.
- 4.2.2. All pages of a tender including a cover letter, solemn declarations, documents and Proposal for criteria fulfilment, along with any eventual attachments thereof, have to be numbered.
- 4.2.3. A tenderer can submit within a tender also copies of proofs including copies in electronic form. The Contracting Entity can request a tenderer, at any time during the public procurement procedure, for submission of the original of respective document, officially verified copy thereof or a qualified conversion of a paper document into electronic form thereof, if having a doubt about the authenticity of such document, or if needed it to ensure proper public procurement process. If a tenderer does not submit requested documents within a period specified by the Contracting Entity, which must not be shorter than five (5) business days upon receipt of relevant request, the Contracting Entity shall disqualify the tenderer.
- 4.2.4. Electronic documents submitted within a tender have to comply with requirements specified in paragraph 4.6 hereof. Otherwise, such documents shall not deem valid and shall be disregarded.
- 4.2.5. A tender has to be prepared in accordance with the notification of this Competition and these Tender Documents as well. A tender has include all information, proofs and documents required in these Tender Documents or Annexes thereof and all information specified in the tender must be truthful. Otherwise, the Contracting Entity reserves right to reject a tender from the Competition.

4.3. Manner of determining the price in a tender

- 4.3.1. The Contracting Entity requires that a tender is prepared and also the price for the Contract Subject-Matter is determined upon the commercial and contractual terms and conditions specified in the T&C's (i.e. in the Contract including annexes thereof).
- 4.3.2. The price for the Contract Subject-Matter has to be specified in EUR without any VAT and with accuracy to 2 decimal places. It is required that the price proposal is submitted in the form of the Proposal for criteria fulfilment, a template of which is in Annex 2 hereof, and in accordance with the instructions specified in paragraphs 4.1 and 4.5 hereof.
- 4.3.3. The Contracting Entity excludes herewith any possibility to change the price for the Contract Subject-Matter in dependence on any exchange rate change of EUR towards any other currency or mutual exchange rate change of any other currencies (so called "exchange rate clause"). The Contracting Entity reserves right not to accept a tender in which an option for price change upon any exchange rate clause shall be specified.
- 4.3.4. The price for the Contract Subject-Matter, which a tenderer offers in its tender, should include all

economically justified costs of the tenderer for the Contract Subject-Matter (e.g. transporting costs, customs duty and customs fees and so on) to the extent and upon terms specified in the T&C's.

- 4.3.5. The price for the Contract Subject-Matter has to be determined, in case of a tenderer with registered office in the Slovak Republic, in accordance with provisions of the Act no. 18/1996 Coll. on prices in wording of later regulations. The a tenderer has its registered office outside of the Slovak Republic territory, the price has to be determined in the manner common in international trade relations, otherwise in accordance with price legal regulations applicable in the country of tenderer's registered office.
- 4.3.6. The Contracting Entity reserves right to reject a tender from the Competition, in which the price for the Contract Subject-Matter will not be determined in accordance with requirements specified in this Article hereof.

4.4. **Confidentiality**

- 4.4.1. A tenderer can designate some parts of its tender, or some parts of proofs and documents thereof respectively, as confidential pursuant to Article 22 of the PPA. However, the PPA provisions related to the obligations of the Contracting Entity to publish some information and tenders, are not affected by the preceding sentence.
- 4.4.2. As confidential pursuant to the PPA can be designated within a tender solely a trade secret, technical solutions and blueprints, manuals, drawings, design project documentation, models, manner of unit price calculation and, if unit prices are not specified but only the price, also manner of price calculation and patterns.
- 4.4.3. If a tenderer deems some information in its tender confidential (hereinafter referred to as the "confidential information"), it is required **to submit such confidential information separately from other parts of a tender, in particular as separate file(s)** (hereinafter referred to as the "confidential part of a tender").
- 4.4.4. Name of each file comprising confidential part of a tender has to include the designation "**Confidential Part of Tender**", in order to be clear that it includes confidential information. The same sign has to be specified clearly and readably also in header of each page of every document included in relevant confidential part of a tender.
- 4.4.5. Each page of every documents included in the confidential part of a tender has to be numbered by a serial number and also total number of pages of the confidential part of a tender has to be indicated therein. Pages of each separate document of confidential part of a tender have to be numbered separately from other documents included into other parts of a tender.
- 4.4.6. If a tenderer does not designate its tender, or a part thereof respectively, as confidential information in accordance with the aforementioned requirements for submission of confidential information, the Contracting Entity shall not be responsible for any eventual disclosing such confidential information or disclosing a trade secret of the tenderer.

4.5. **Submission of tenders**

- 4.5.1. Tenders must be submitted into the Competition not later than by expiry of the period for tender submission, which shall expiry on **24 January 2023 at 10:00 hour CET.**
- 4.5.2. Tenders are submitted into the Competition only electronically through the JOSEPHINE system located on the web address <https://josephine.proebiz.com/>. The exact link to the Competition is specified in paragraph 1.5.4 hereof. Information how to get access into the JOSEPHINE system is presented in paragraph 1.6 hereof.
- 4.5.3. An electronic tender is to be inserted by filling a bidding template and by uploading the required proofs and documents in the JOSEPHINE system at the web address <https://josephine.proebiz.com/>. It is required that tenderer fills in individual items of the bidding template in the JOSEPHINE system and, at the same time, uploads also duly filled in Proposal for criteria fulfilment (Annex 2 hereof) in PDF and XLSX formats.
- 4.5.4. With regard to the need of authentication of each tenderer prior to inserting its tender into the Competition within the JOSEPHINE system, it is not required that the tenderer signs its tender by any electronic signature. However, this does not affect the obligation of a tenderer to sign certain particular documents

- (e.g. the European Single Document, if submitted, and solemn declarations of the tenderer), if required so anywhere in these Tender Documents.
- 4.5.5. In a tender submitted by means of the JOSEPHINE system, the scanned documents as specified in these Tender Documents must be attached therein. All documents of a tender must comply with requirements specified in paragraph 4.6 hereof.
- 4.5.6. A tender is submitted in the moment of its uploading into the system, i.e. after completion of uploading the entire content of a tender (including all and any documents included into a tender by the tenderer) upon pushing the button "Send envelope". If a tenderer hits the button "Send envelope" only a while prior to expiry of the period for tender submission, there may happen (depending on the time remaining by expiry of the period for tender submission, volume of files uploaded within a tender and tenderer's internet connection speed) that the whole content of the tender will not be uploaded by the expiry of the period for tender submission. In such case, the whole tender shall be uploaded into the JOSEPHINE system however, it shall be deemed a tender submitted after expiry of the period for tender submission. In such event the tender shall not be made available pursuant to paragraph 4.5.12 hereof.
- 4.5.7. The price for Contract Subject-Matter proposed by a tenderer, must be specified in EUR (Euros) with accuracy of 2 decimal places and inserted into the JOSEPHINE system. **Please, insert only the price without VAT, do not insert the VAT rate!** VAT shall be applied pursuant to applicable legal regulations during the Contract execution. Further requirements related to determining the price for the Contract Subject-Matter are specified in paragraph 4.3 hereof.
- 4.5.8. A notification e-mail shall be sent to the tenderer (i.e. to the e-mail address of tenderer's user who has uploaded the tender) after successful uploading of a tender.
- 4.5.9. A tenderer can withdraw from its submitted tender by expiry of the period for tender submission. In withdrawing from a tender, the tenderer proceeds similarly as at inserting the first tender (by clicking on the button "Remove" and by inserting a new tender).
- 4.5.10. Tenderers are bound by their tenders by expiry of the tender binding period specified in paragraph 8.1 hereof. Any eventual extension of such period shall be notified to tenderers upon electronic communication within the JOSEPHINE system.
- 4.5.11. Pursuant to Article 49, paragraph 4 of the PPA, the Contracting Entity shall reject a tenderer, if
- a) did not comply with specified manner of the communication,
 - b) the content of its tender cannot be made available, or
 - c) it has not submitted a tender in the required format of encoding, if necessary for further treatment in evaluation of tenders.
- 4.5.12. A tender submitted after the expiry of the period for tender submission shall not be made available.
- 4.5.13. A tenderer is allowed to submit only single-one tender. If a tenderer submits more tenders within the period for tender submission, the Contracting Entity takes into account only the tender submitted as the last whereas other tenders thereof are considered as submitted after expiry of the period for tender submission.
- 4.5.14. A tender submitted in paper form to any address of the Contracting Entity, even if delivered within the period for tender submission, shall be considered as submitted after expiry of the period for tender submission and shall be returned back to the tenderer unopened.
- 4.6. **Requirements for submission of electronic documents**
- 4.6.1. The requirements specified in this paragraph 4.6 hereof relate generally to any documents that a tenderer submits into this Competition regardless whether within a tender or within any explanation or supplementation of submitted documents or tender.
- 4.6.2. Neither encoding nor encryption of electronic documents submitted within a tender (including documents and proving compliance with participation conditions in this Competition) is required.
- 4.6.3. If not specified otherwise elsewhere in these Tender Documents, electronic documents (including those containing confidential information of a candidate or tenderer pursuant to paragraph 4.4 hereof) have to

be submitted in PDF format secured against any modification thereof so that they can be opened without any limitation and made available after the expiry of relevant period for submission of such documents (i.e. the period for tender submission or period for submission of explanation or supplementing documents) in Adobe Reader program.

- 4.6.4. In cases when required so in these Tender Documents or annexes thereof, or if required by the contracting Entity at any time in course of this Competition, electronic documents are submitted also in other formats as specified in relevant sections in these Tender Documents or in relevant request of the Contracting Entity.
- 4.6.5. Documents issued in a paper form, if submission of the original document or a verified copy thereof is required, must be submitted as electronic documents in PDF format (secured against any modification thereof) created by means of qualified conversion of the original documents in paper form pursuant to legal regulations applicable in the country of candidate's or tenderer's residence, which guarantees the authenticity of the converted documents (hereinafter referred to as the "qualified conversion").
- 4.6.6. A qualified electronic signature of the issuer must sign documents issued by a public authority in an electronic form (if submission of original document is required).
- 4.6.7. If a tenderer has its registered office or a place of business conduct in the EU territory and submits in its tender any document according to paragraph 4.6.6 hereof signed by a qualified electronic signature or by a signature based on a qualified certificate, such qualified certificate must be issued by a certification service provider listed in a list maintained pursuant to a specific legal regulation (the Resolution of the Commission 2009/767/ES as amended). At the same time, an electronic signature based on a qualified certificate or a qualified electronic signature must be of a format pursuant to a specific legal regulation (the Resolution of the Commission 2011/130/EU as amended).
- 4.6.8. If a tenderer has its registered office or a place of business conduct in a third country outside of the EU territory and submits in its tender any documents according to paragraph 4.6.6 hereof signed by a qualified electronic signature or by a signature based on a qualified certificate issued by a certification service provider other than the one according to paragraph 4.6.7 hereof, the certificates issued by a provider of certification services in the third country as qualified certificates will be recognized (in accordance with provision of Article 7 of the Directive of the European Parliament and Council 1999/93/ES) as legally equivalent to the certificates issued by a certification service provider based within the EU territory, in:
- a) the certification service provider meets conditions specified in the Directive of the European Parliament and Council 1999/93/ES and is accredited within a program of voluntary accreditation implemented within an EU member country, or
 - b) a certification service provider based in the commonwealth, who meets conditions specified in the Directive of the European Parliament and Council 1999/93/ES, guarantees the certificate, or
 - c) the certificate or the provider of the certification services is recognized upon a bilateral or multilateral agreement between EU and the third country or international organizations.
- A tenderer is obliged to prove the fulfilment of the conditions for recognizing the certificates according to this paragraph in its tender, otherwise the Contracting Entity has right to disregard respective document.
- 4.6.9. If a tenderer uses for signing a document according to paragraph 4.6.6 hereof a qualified electronic signature of other format than specified in the Resolution of the Commission 2011/130/EU, the electronic signature or electronic document carrier must include also information that must enable the Contracting Entity to verify such electronic signature based on a qualified certificate online, free of charge and in a way understandable to persons of mother language other than Slovak.
- 4.6.10. Documents issued by a tenderer in an electronic form (e.g. the European Single Documents or tenderer's solemn declaration), if submission of original document is required, must be signed by an electronic signature of the tenderer or a person authorized to act on behalf of the tenderer. Such electronic signature must meet at least the requirements specified for the improved electronic signature pursuant to the Directive of the European Parliament and Council 1999/93/ES.
- 4.6.11. If a tenderer uses for signing a document according to paragraph 4.6.9 hereof an electronic signature of a format other than specified in the Resolution of the Commission 2011/130/EU, the electronic signature

or electronic document carrier must include also information that must enable the Contracting Entity to verify such electronic signature online and free of charge, or the tenderer is obliged to specify such information in its tender enabling the Contracting Entity to verify such electronic signature online and free of charge (e.g. web address/link to a free software application). Otherwise, the Contracting Entity has right to disregard respective document.

- 4.6.12. The Contracting Entity reserves right to disregard documents that will be submitted into the Competition in contrary to the requirements specified in this paragraph 4.6 hereof.

5. EVALUATION OF TENDERS

5.1. Opening of tenders

- 5.1.1. Opening of tenders shall be done electronically within the JOSEPHINE system by making tenders available automatically.
- 5.1.2. Tenders shall be opened on **24 January 2023 at 10:30 hour CET**
- 5.1.3. Place of tender opening: <https://josephine.proebiz.com/sk/tender/35978/summary>
- 5.1.4. As the final ranking of tenders in this Competition will be determined upon automated manner by means of an online electronic auction, pursuant to Article 54, paragraph 3 of the PPA, the opening of tenders shall not be public and thus tenderers shall not be allowed to attend the tender opening, the information on tenders shall not be made available to tenderers in the JOSEPHINE system and the Contracting Entity shall not send any minutes of tender opening to the tenderers.

5.2. Rules for evaluation of tenders

- 5.2.1. The Commission evaluates tenders in accordance with provisions of Article 53 of the PPA. The tender evaluation is not public.
- 5.2.2. The Commission shall evaluate tenders in terms of meeting the requirements of the Contracting Entity for the Contract Subject-Matter and in case of doubts will verify correctness of information and evidences provided by tenderers. If the Commission identifies discrepancies or ambiguities in information or evidences provided by a tenderer, it will request in writing for an explanation of tender and, if needed, also for submitting respective evidences. A tender cannot be changed by means of tender explanation. The correction of obvious errors in writing and calculation is not considered a change of a tender.
- 5.2.3. If an exceptionally low bid appears, the Commission shall proceed in accordance with Article 53 of the PPA. If some tender appears as exceptionally low bid in relation to the goods, construction works or a service, the Commission shall request the tenderer in writing for an explanation regarding those parts of the tender, which are essential for the price thereof. An explanation can especially relate to:
- a) economy of construction procedures, economy of production procedures or provided services,
 - b) technical solution or particularly advantageous conditions that the tenderer has available for the delivery of goods, execution of construction works or provision of service,
 - c) particularity of the goods, particularity of the construction works or particularity of the of the service proposed by the tenderer,
 - d) compliance with obligations in area of labor law, especially with regard to compliance with minimum wage requirements, environmental protection or social law pursuant to special regulations,
 - e) compliance with obligations towards subcontractors,
 - f) the possibility of the applicant to obtain state aid.
- 5.2.4. If at least three tenders have been submitted by tenderers complying with participation conditions, which meet requirements of the Contracting Entity for the Contract Subject-Matter, an exceptionally low bid is considered always also a tender that includes the price
- a) lower by 15% than average of prices according to other tenders exempt for the tender with the lowest price, and

- b) lower by 10% than the price according to the tender with the second lowest price.

5.2.5. The Contracting Entity shall reject a tender, if

- a) the tenderer has not posted a bid bond according to the required conditions (if the Contracting Entity had required a bid bond),
- b) the tender does not meet requirements for the Contract Subject-Matter specified in the documents needed for tender elaboration,
- c) the tenderer does not deliver a written explanation of tender upon a request according to paragraph 5.2.2 of this Article hereof within two (2) business days from the date of sending the request for explanation, if the Commission has not specified a longer period,
- d) explanation of the tender submitted by the tenderer, in its content, is not in accordance with the requirement according to paragraph 5.2.2 of this Article hereof,
- e) the tenderer does not deliver a written justification of exceptionally low bid within five (5) business days from the date of sending the request according to paragraph 5.2.3 of this Article hereof, if the Commission has not specified a longer period,
- f) explanation of exceptionally low bid and evidences, submitted by the tenderer, do not satisfactorily justify the low level of prices or costs especially with regard to the fact according to paragraph 5.2.3 of this Article hereof,
- g) the tenderer had provided for untrue information or distorted information with substantial effect to evaluation of tenders,
- h) the tenderer had attempted unduly influence the public procurement procedure.

5.2.6. If a tenderer justifies the exceptionally low bid by obtaining a state aid, it must be able to prove within a reasonable period specified by the Commission, that the state aid has been provided to him in accordance with the rules of the internal market of the European Union, otherwise the Contracting Entity shall reject the tender.

5.2.7. In evaluating the tenders that have not been rejected, the Commission proceeds only upon the criteria specified in the notification of this Competition and in the manner specified in these Tender Documents.

5.3. Criteria for evaluation of tenders and rules of their application

5.3.1. Tenders that have not been rejected shall be evaluated upon the criterion and rules of its application specified in this paragraph 5.3 of these Tender Documents.

5.3.2. Tenders shall be evaluated upon the criterion: **The Lowest Price – 100%**

5.3.3. Upon the criterion specified in paragraph 5.3.2 of this Article hereof, every part of the Contract Subject-Matter shall be evaluated separately.

5.3.4. In each part of the Contract Subject-Matter, the total price (without VAT) for the relevant part of the Contract Subject-Matter shall be subject of evaluation upon the criterion specified in paragraph 5.3.2 of this Article hereof.

5.3.5. The successful tender will always be the tender with the lowest price for the given part of the Contract Subject-Matter, which is placed first in the order of tenders. Other tenders shall be assigned places in the order in direct proportion to the amount of the price so that the tender with the highest price shall be assigned the highest place in the order.

5.3.6. The final ranking of tenders in this Competition upon the criterion specified in paragraph 5.3.2 of this Article hereof shall be determined in an automated manner by means of online electronic auction (hereinafter referred to as the "e-Auction"). More detailed information on the e-Auction is specified in Article 6 hereof.

5.3.7. Upon the final ranking of tenders determined by means of the e-Auction, the Contracting Entity will conclude Supply Contracts for supplies of ball valves with those tenderers whose tenders will be successful according to paragraphs 5.3.2 till 5.3.5 of this Article hereof within at least one part of the Contract Subject-Matter.

5.4. Information on result of tender evaluation

- 5.4.1. If documents proving the compliance with the participation conditions have not been submitted earlier, the Contracting Entity is obliged, after completing the tender evaluation, to assess the compliance of the tenderer who ranked first in the order, with the participation conditions. The Contracting Entity can assess the compliance with the participation conditions also for other tenderers in the order.
- 5.4.2. In assessing the compliance with participation conditions, the Contracting Entity proceeds according to paragraph 3.5 of these Tender Documents, while requesting tenderers to submit documents proving the compliance with participation conditions within a period of no less than five (5) business days from the date of delivery of such request; a failure to submit documents within this period is considered a failure to meet the conditions of participation.
- 5.4.3. After completing the procedure according to paragraphs 5.4.1 and 5.4.2 of this Article hereof and after sending all notices of disqualification of the tenderer or tenderers, the Contracting Entity shall immediately notify all affected tenderers in writing of the result of the evaluation of tenders, including the order of tenderers. The affected tenderer is a tenderer whose tender was evaluated, a disqualified tenderer to whom the period for filing objections to the disqualification is running out, and a tenderer who had filed objections against disqualification whereas the Office for Public Procurement has not legally decided yet on such objections. At the same time, the Contracting Entity shall publish the information about the result of tender evaluation and ranking of tenderers in its profile.
- 5.4.4. The Contracting Entity will notify the successful tenderer that its tender is accepted. Unsuccessful tenderers will be notified of their failure and the reasons for not accepting their tender. In the notification, the Contracting Entity shall also indicate the identification of the successful tenderer, information on the characteristics and advantages of the accepted tender, the result of the evaluation of the successful tenderer's compliance with the participation conditions, which contains information proving the fulfillment of the participation conditions regarding the financial and economic status and technical competence or professional competence, including the identification of the person providing the financial sources according to Article 33 paragraph 2 of the PPA and persons providing technical and professional capacities according to Article 34 paragraph 3 of the PPA, and the deadline in which an objection can be filed.

6. ELECTRONIC AUCTION

This article contains the rules of the e-Auction that will be used within this Competition and based on the results of which the Contract will be concluded.

6.1. General information

- 6.1.1. For the purpose of this Competition, the e-Auction is understood as a repeating process using electronic devices for submission of new prices adjusted downwards within this Competition.
- 6.1.2. The aim of the e-Auction is determination of the order of tenders by automated evaluation after the completion of initial evaluation of tenders.
- 6.1.3. The subject of the e-Auction is the same as the Subject-Matter of Contract specified in the notification of this public procurement procedure and further specified in this Tender Documents.
- 6.1.4. The e-Auction administrator is a person at Contracting Entity's party, which invites the e-Auction participant to submit new prices adjusted downwards (hereinafter referred to as the "Administrator"). The Administrator in this Competition is:
- | | |
|-------------------|-----------------------------------|
| Name and surname: | Martin Mikula, Procurement Expert |
| E-mail address: | martin.mikula@eustream.sk |
| Phone: | +421 (0)2 6250 7161 |
- 6.1.5. The electronic auction room (hereinafter referred to as the "e-Auction Room") is an environment placed at the determined address in the public data network Internet, where the tenderers submit new prices adjusted.
- 6.1.6. The filling stage (entry phase) is a part of the procedure when, after making the e-Auction Room available, the tenderers may become acquainted with the e-Auction environment prior to launching the e-Auction.

Further information on filling stage are specified in paragraph 6.4.4 hereof.

- 6.1.7. The competition stage (competition phase) is a part of the procedure where online mutual comparison of prices offered by tenderers logged in into the e-Auction and their evaluation within a limited time takes place. Further information on competition stage are specified in paragraph 6.4.5 hereof.
- 6.1.8. The Contracting Entity reserves the right to perform the e-Auction even in several consecutive stages. In such case, a time schedule of individual stages will be a part of the invitation to e-Auction participation.

6.2. The course of e-Auction

- 6.2.1. The e-Auction will be executed by electronic devices through the Internet network.
- 6.2.2. The Administrator shall send an invitation to participation in the e-Auction by the electronic means at the same time to all tenderers who will be invited to participate in the e-Auction, at least two (2) business days prior to the date of e-Auction launching.
- 6.2.3. In the invitation to participation in the e-Auction, all the respective information related to the individual connection to the used electronic equipment, date and time of starting and completing the filing stage, date and time of starting the competition part and the method of e-Auction completion, the minimum and maximum step of reducing the new prices, the formula for determination of the automated re-evaluation of the order of new prices will be included.
- 6.2.4. The call will also contain an application to the e-Auction. A tenderer must complete the application and in return send it through electronic means to the Administrator. Otherwise the tenderer shall not be allowed to log in into the e-Auction and shall not be able to submit its new price bid.
- 6.2.5. After delivering the completed application, the Administrator shall send to the tenderer a ten-digit access key with the use of which the tenderer may enter into the e-Auction Room.
- 6.2.6. The e-Auction will take place in two stages:
 - (i) filling;
 - (ii) competition;
- 6.2.7. Within the filing stage, the e-Auction Room will be made available to tenderers, whereas they can check for correctness of the initial price that the Administrator enters into the e-Auction Room for each tenderer in accordance with submitted tender of each tenderer after completing the initial evaluation of tenders. Each tenderer can see only its own bid within the filing stage.
- 6.2.8. Within the filling stage, the tenderers shall become acquainted with the course and rules of the e-Auction. The e-Auction rules include also information regarding the minimum step of reducing the bid, rules of prolongation of the competition stage and the period of validity of the access keys.
- 6.2.9. Within the filling stage, the tenderers may not change their proposals.
- 6.2.10. Within the competition stage, the e-Auction will take place online and the tenderers will have the possibility to adjust their prices downwards at least by the minimum and at most by the maximum step determined by the Administrator. The new price bid submitted by a tenderer, however, may not be the same as the current lowest bid.
- 6.2.11. The change of the price must not be to the detriment of the quality of the Contract Subject-Matter or deadline for the performance thereof. This means that the new price offered by a tenderer must be the price for the same Contract Subject-Matter as specified in the tenderer's tender submitted within the period for tender submission.
- 6.2.12. During the competition stage, online information enabling the tenderers to determine their relative order at each moment shall be concurrently available to all tenderers in the e-Auction Room. The Contracting Entity may make available also further information related to other submitted prices (e.g. the lowest price, etc.) to the tenderers during the e-Auction.
- 6.2.13. The basic time limit of competition stage term is 20 minutes.
- 6.2.14. If there is a change in the lowest price downwards within the last two minutes of the basic time limit, the competition stage shall be automatically extended by next two more minutes (hereinafter referred to as "extended time limit").

- 6.2.15. If there is a change in the lowest price downwards within the extended time limit, the competition stage is always automatically extended by next two more minutes.
- 6.2.16. The e-Auction shall finish:
- upon expiration of the basic time limit according to clause 6.2.13 hereof, if there is no change in the lowest price downwards according to clause 6.2.14 hereof until basic time limit expiration, or
 - upon expiration of any extended time limit, if there was no change in the lowest price downwards according to clause 6.2.15 hereof within such extended time limit.
- 6.2.17. After completion of the competition stage, the tenderers may print out the protocols from the course of the e-Auction.
- 6.2.18. The validity period of the access keys will be determined in the call to participation in the e-auction and after expiration of this period a tenderer shall not be allowed to log in into the e-Auction Room.

6.3. Information related to the electronic equipment, conditions and specifications of technical connection

The computer must be connected to the Internet and installation of one of the following supported web browsers is required:

- Mozilla Firefox version 13.0 or higher (<http://firefox.com>),
- Google Chrome (<http://google.com/chrome>),
- Microsoft Edge (<https://www.microsoft.com/edge>),

6.4. Other information

6.4.1. Logging into the e-Auction

In the section APPLICATION of the invitation for participation in the e-Auction, click on "**HERE**" in order to get into your application form. There you should fill in the required information, confirm your consent with the Description of the PROEBIZ e-auction environment and send the Application. By completing this procedure you will be entered in the e-Auction. Within the Application, you need to choose login name and password (minimal length of both login name and password is eight characters). Space, punctuation marks or special characters are not used. It is necessary to remember your login information! Using these login information, you can enter into the e-Auction Room once you receive the access key. Instead of the login information (login name and password), you can log in by means eID card alternatively.

6.4.2. Entering the e-Auction Room

To access the e-Auction Room use the website link/address in the section GENERAL of the invitation for participation in the e-Auction. Clicking thereon will open the Internet browser at the address of tenderer's e-Auction Room. You will be asked to enter your access data (login name, password and key, or alternatively use eID card and the key). After this data is authenticated, the e-Auction Room opens. The ten-digit key may be copied from the email (using Ctrl+C) and pasted into the appropriate field (using Ctrl+V). Be careful to copy only the code (the space at the end thereof must not be copied). The e-Auction Room cannot be accessed before the start of the e-Auction (the filling stage is the commencement thereof). If there are any complications just contact the Administrator whose contact details are in clause 6.1.4 of this Article hereof or it can be found also in the CONTACT section of the invitation for participation in the e-Auction.

6.4.3. Exit from the e-Auction Room

Log out from the e-Auction Room by clicking on "Logout" in the top-right corner of the e-Auction Room. If the browser window is closed, it'll be possible to log in into the e-Auction Room again after 1 minute.

6.4.4. Filling stage

The filling stage is for entering the initial bid that the Administrator shall enter in accordance with the tender submitted by the tenderer.

Within this stage, the tenderer may view its initial bid and become familiar with the e-Auction Room environment. The tenderer is allowed neither to change nor modify its bid within this stage. At this stage, the tenderer can see only its own bid.

If an item is underlined, clicking on it will show more information (usually detailed information about that item).

Particular attention should be paid to the time until the end of the round. This time usually changes every 3-5 seconds (if it's less than 24 hours until the end of the stage). If this isn't happening, then your connection has probably been lost and you will need to log in to the e-Auction Room again.

In case of any questions, you can contact the Administrator.

6.4.5. **Competition stage**

Within the competition stage, you can modify your price bid according to the rules specified in the tender documents and in the invitation for participation in the e-Auction.

It is inevitable to confirm every new bid entry by clicking on "ENTER" key, otherwise your new price bid shall not be accepted by the system!

Your new price offer must not be identical with the already entered minimum price.

Within this stage, it is recommended to monitor that the time until the end of the stage – its updating confirms your connection with the e-Auction system. If the time stops, click on F5 key on your keyboard in order to refresh the e-Auction Room.

The e-Auction Room includes also a Chat communication feature. This can be used to communicate with the Administrator and to receive his messages.

The whole course of the e-Auction from the sending of the invitation for participation in the e-Auction up to the very end is logged in a history report. All operations carried out are recorded to the nearest second.

After the end of the e-Auction the tenderer will be offered an option to view the history and participation protocol thereof that the tenderer can print out.

7. **CONCLUSION OF THE CONTRACT**

- 7.1. Pursuant to Article 11 of the PPA, every tenderer and its subcontractor has to be registered in the register of public sector partners pursuant to the Act No. 315/2016 Coll. as amended even prior to the conclusion of the Contract. The Contracting Entity cannot conclude an agreement, framework agreement or concession agreement with a tenderer who does not meet the condition according to the preceding sentence.
- 7.2. The Contracting Entity may conclude an agreement, framework agreement or concession agreement with the successful tenderer or tenderers **no earlier than on the eleventh (11th) day** as of the date of sending the information on the result of tender evaluation according to Article 55 of the PPA, if no request for remedy has been delivered, if a request for remedy has been delivered after expiration of the deadline according to Article 164, paragraph 3 of the PPA, or if no objections have been delivered according to Article 170 of the PPA.
- 7.3. If a request for remedy has been delivered within the period according to Article 164, paragraph 3 of the PPA, the Contracting Entity may conclude an agreement, framework agreement or concession agreement with the successful tenderer or tenderers **no earlier than on the eleventh (11th) day** after expiration of the period for performing the remedy according to Article 165, paragraph 3, letter a) of the PPA, if no objections according to Article 170, paragraph 4 of the PPA have been delivered.
- 7.4. If a request for remedy was rejected, the Contracting Entity may conclude an agreement, framework agreement or concession agreement with the successful tenderer or tenderers **no earlier than on the eleventh (11th) day** as of the date of sending the notice of remedy request rejection according to Article 165, paragraph 3, letter b) of the PPA, if no objections according to Article 170, paragraph 4 of the PPA have been delivered.
- 7.5. If the Contracting Entity did not act in the request for remedy and if no objections according to Article 170, paragraph 4 of the PPA have been delivered, it may conclude an agreement, framework agreement or concession agreement with the successful tenderer or tenderers **no earlier than on the eleventh (11th) day** after expiration of the determined period for arranging the request for remedy according to Article 165, paragraph 3 of the PPA.
- 7.6. Without prejudice to any provisions of clauses 7.3 to 7.6 hereof, if objections have been delivered, the Contracting Entity may conclude an agreement, framework agreement or concession agreement with the successful tenderer or tenderers if one of the following facts occurs:
 - a) the delivery of the decision of the Office for Public Procurement pursuant to Article 174, paragraph 1 of the PPA to the Contracting Entity,
 - b) the date of validity of the decision of the Office for Public Procurement pursuant to Article 175, paragraph 3 of the PPA,
- 7.7. The Contracting Entity shall further proceed upon conclusion of the Contract according to Article 56 of the PPA.

- 7.8. The successful tenderer, whom the Contracting Entity will call for the conclusion of the Contract, is obliged pursuant to Article 56, paragraph 8 of the PPA to provide the Contracting Entity for proper cooperation needed for conclusion of the Contract so that the Contract can be concluded within 10 business days from the expiry of the periods according to paragraphs 7.2 till 7.5 of this Article hereof.

8. OTHER CONDITIONS OF THE COMPETITION

8.1. Tender binding period

The tender binding period will expire on **31 March 2023**. Within the tender binding period, the tenderers are bound by their tenders and cannot withdraw from them. The Contracting Entity may reasonably extend in a justified case (e.g. in the event of application of review procedures or submission of an objection by tenderer against the Contracting Entity's, etc.).

8.2. Variant solution

- 8.2.1. Submission of a variant solution is not enabled. If a variant solution is submitted in the tender, such a variant solution will not be taken into consideration in evaluation of tenders.
- 8.2.2. If in case of submitting a variant solution it is not clear which of the submitted variants is the main solution, that variant will be included in the evaluation of tenders, which is listed as first on the list of submitted documents on the cover sheet of the tender. If the variant solution is not listed on the cover sheet of the tender, that variant will be included in the evaluation of tenders, which will be listed as first in the Proposal for criteria fulfilment.

8.3. Conditions of Competition Cancellation

The Contracting Entity will cancel this Competition if the conditions for its cancellation pursuant to Article 57, paragraph 1 or 2 of the PPA are met.

8.4. Bid bond

The Contracting Entity does not require **from tenderers any bid bond for securing the blindness of tenders**.

9. FURTHER INFORMATION

9.1. Costs of tenderers for participation in the Competition

The participation of a tenderer in this Competition is voluntary and represents its own business risk. All the costs of tenderers related to their participation in this Competition, as well as with preparation and submission of their tenders and the related communication between the Contracting Entity and the tenderer, will be borne by the tenderers in full. The Contracting Entity shall neither bear any liability nor provide for any compensation of any costs or damages to a tenderer in connection with its participation in this Competition regardless of the fact whether the tenderer is successful in this Competition or not, and that even in case of cancelling this Competition due to any reason.

9.2. Relevant Law and Other Legal Information

This Competition is governed by applicable legal regulations of the Slovak Republic. If it is proven that the tenderer, whose tender will be successful in this Competition and with whom the Contract should be concluded, submitted invalid certificates or documents within its tender or provided false information in its tender, thereby misleading the Contracting Entity and thus obtaining an undue advantage against other tenderers in the Competition, the tender of such tenderer shall be rejected from the Competition. If such conduct of the tenderer is proven only after conclusion of the Contract, the Contracting Entity reserves the right to take steps leading to fair remedy including the right to file to a competent public administration authority or court a petition for determination of invalidity of so concluded Contract. The tenderer, who has acted in this way, is then responsible in full for all damages caused by its conduct.

10. LIST OF ANNEXES HEREOF

- Annex 1: Commercial and contractual terms and conditions – Supply Contract no. 134/22/EUS;
- Annex 2: Proposal for criteria fulfilment;
- Annex 3: List of supplies;
- Annex 4: Tenderer's declaration that it agrees with the T&C's without any reservations;
- Annex 5: Tenderer's declaration related to the conditions according to Article 5k of the Regulation of the Council (EU) 2022/576 of 8 April 2022;