

## **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: 23-0169-VS

## **Ball Valves DN 300 – 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 for nor guarantee the accuracy of this translation.*

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## 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 City Court Bratislava III, Section: Sa, Entry No.: 3480/B  
Company ID: 35 910 712  
Tax ID: 2021931175  
VAT ID: SK2021931175  
Web Site: [www.eustream.sk](http://www.eustream.sk)  
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(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;
- f) Announcement of tender evaluation result;
- g) 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/47827/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 one 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 300 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  $\geq$ DN 300 ÷  $\leq$ DN 700, PN 80:

<i>Annex 2 Item no.</i>	<i>DN</i>	<i>Locality</i>	<i>Quantity (pcs)</i>
1	300	TU 51 Kuchyňa	2
2	700	KS 02 Jablonov nad Turňou	2
3	700	RU 02 Vysoká pri Morave	3

Part 2: Ball valves  $>$ DN 700 ÷  $<$ DN 1000, PN 80:

<i>Annex 2 Item no.</i>	<i>DN</i>	<i>Locality</i>	<i>Quantity (pcs)</i>
1	800	RU 02 Vysoká pri Morave	1

Part 3: Ball valves  $\geq$ DN 1000  $\div$   $\leq$ 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 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 electro-hydraulic, electric, hand driven (manual) 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. extensions of shafts, etc.) and related 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, have to meet requirements of the specification and technical-delivery conditions "Ball Valves for High Pressure Gas Pipelines DN 300 – DN 1400" and "Actuators for "Ball Valves for High Pressure Gas Pipelines DN 300 – DN 1400". The technical-delivery conditions constitute annexes no. 1 and 2 to the Commercial and Contractual Terms & Conditions constituting Annex 1 hereof.
- 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 2.7 hereof for respective part(s) of the Contract Subject-Matter.
- 2.3.6. As the accurate specifications of ball valves that the Contracting Entity will purchase during the framework Contract, are not known at the time of this tendering procedure notification, the Contracting Entity has prepared a sample of ball valves for the purposes of this Competition, which constitutes Annex 2 to the Tender Documents in form of the Proposal for Criteria Fulfilment. This ball valve sample in Annex 4 is dedicated only to purposes of evaluation of tenders in this Competition and does not need to be any subject of a purchase order issued by the Contracting Entity. The Contracting Entity shall provide for accurate and binding specifications of individual ball valves, actuators and accessories thereof in the time of awarding individual partial contracts upon which the Framework Contract will be performed.

#### **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, which will be specified in partial contracts by means of which the Framework Purchase Contract will be performed.

#### **2.5. Deadline of the Contract Subject-Matter fulfilment**

- 2.5.1. The Contract becomes valid and comes into its effectiveness on the day of its signature by both contracting parties thereof.
- 2.5.2. The validity of the Contract will be 12 months with an option for extending its validity max. for next 12 months.
- 2.5.3. Deadlines for individual deliveries of ball valves will be specified within respective partial contracts upon which the Contract will be performed and which will be concluded on the basis of the Contract pursuant to

paragraph 2.8 hereof.

## 2.6. **Contract**

- 2.6.1. Kind of the contract to be concluded for the Contract Subject-Matter: Framework Purchase Contract (hereinafter referred as the **“Contract”**).
- 2.6.2. The result of this Competition will be conclusion of the Contract in a deed (i.e. paper form).
- 2.6.3. The Contracting Entity assumes to conclude the Contract with several tenderers. The conditions of the Framework Purchase Contract are the same for all participants thereof with regard to the part of the Contract Subject-Matter for which this Contract will be signed with particular tenderers
- 2.6.4. Pursuant to paragraph 5.3.7 hereof, the Contracting Entity will conclude the Framework Purchase Contract for respective part of the Contract Subject-Matter with each tenderer who shall prove its compliance with participation conditions related to the given part of the Contract Subject-Matter and submits technically and commercially acceptable offer for such part of the Contract Subject-Matter in the meaning of paragraphs 5.3.8 and 5.3.9 hereof.
- 2.6.5. 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”**).
- 2.6.6. 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 any 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 for modifications thereof can be a reason for refusing its tender.

## 2.7. **Performance of the Contract**

- 2.7.1. The Contract shall be performed upon partial contracts that the Contracting Entity as the buyer will conclude according to its needs with individual economic subjects, with whom as the sellers will be concluded the Contract for any part of the Contract Subject-Matter, based on this Contract during its validity and in the manner specified in paragraph 2.8 hereof and in the Contract.
- 2.7.2. Concluding of partial contracts upon the Contract will be possible up to expiration of Contract validity concluded for relevant part of the Contract Subject-Matter. No partial contract can be concluded upon the Contract after the expiry of the validity thereof.
- 2.7.3. Fulfilment of a partial contract is possible even after expiry of the Contract validity, if such partial contract was concluded within validity of the Contract.

## 2.8. **Concluding of partial contracts**

- 2.8.1. During the entire period of the Contract validity, individual partial contracts for ball valve purchasing will be concluded upon electronic demands (hereinafter referred to as **“e-demand”**) performed via an e-auction web portal among the tenderers with whom the Contract will be concluded for the relevant part of the Contract Subject-Matter. Within e-demands, the suppliers will submit their price bids through the e-auction web portal for particular ball valves according to particular specifications.
- 2.8.2. Prior to concluding partial contract, the Contracting Entity shall call all tenderers, with whom the Framework Purchase Contract will be concluded for relevant part of the Contract Subject-Matter, to submit their price bids within the respective e-demand. Such call shall include conditions and information needed for preparation and submission of a price bid, especially the specification of requested ball valves, place and deadline of delivery, period for price bid submission and criteria for offer evaluation as well as other information needed for submitting the price bid and for communication within the e-demand. This call shall be in an electronic form and shall be sent to tenderers by means of the e-auction web portal.
- 2.8.3. The submitted bids shall be evaluated upon the criterion **PRICE – 100%** that shall be applied in the way specified in respective call for price bid submission within the e-demand and in an invitation to an on-line electronic auction (hereinafter referred to as **“e-auction”**). In the case, if the e-demand is carried out for several ball valves of different specifications or dimensions, the bids shall be evaluated for each

specification or dimension separately.

- 2.8.4. The final ranking of bids within an e-demand shall be identified in an automated manner upon an e-auction. Basic rules of e-auctions are specified in Annex 1 hereof (T&C's) and will be specified in details in calls by which the Contracting Entity will invite relevant tenderers for participating in respective e-and e-auction.
- 2.8.5. Further information on concluding partial contracts and conditions of e-demands and e-auctions, upon which individual partial contracts will be concluded during the validity of the Contract, are specified in Article II of the T&C's and Annex 3 thereto, presented in Annex 1 hereto.

### 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. 2 pieces of ball valves within the dimensions  $\geq$ DN 300 –  $\leq$ DN 700 and therefrom at least 1 ball valve equipped with an electric or electro-hydraulic actuator (tenderer to specify kind of supplied actuator), PN $\geq$ 80, supplied by the tenderer (both ball valve as well as actuator), if submitting the tender for **Part 1 of the Contract Subject-Matter** (ball valves  $\geq$ DN 300  $\div$   $\leq$ DN 700);
- b) min. 3 pieces of ball valves within the dimensions  $>$ DN 700 –  $<$ DN 1000 and therefrom at least 1 ball valve equipped with an electric or electro-hydraulic actuator (tenderer to specify kind of supplied actuator), PN $\geq$ 80, supplied by the tenderer (both ball valve as well as actuator), if submitting the tender for **Part 2 of the Contract Subject-Matter** (ball valves  $>$ DN 700  $\div$   $<$ DN 1000);
- c) min. 1 piece of ball valve within the dimensions  $\geq$ DN 1000 –  $\leq$ DN 1400 equipped with an electric or electro-hydraulic actuator (tenderer to specify kind of supplied actuator), PN $\geq$ 80, supplied by the tenderer (both ball valve as well as actuator), if submitting the tender for **Part 3 of the Contract Subject-Matter** (ball valves  $\geq$ DN 1000  $\div$   $\leq$ DN 1400);

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 copy of valid certificate issued to the manufacturer(s) and proving that the goods offered are manufactured in accordance with the European Directive PED 2014/68/EU on pressure equipment, issued by bodies authorized or notified by in the European Union, which possess authorization 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 to disregard 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 to disregard such reference.

- 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 mutual 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 to 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 there must not be 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, for 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 to disregard such submitted documents.

#### **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 be disregarded.
- 3.5.3. Within the 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 means of 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 prescribed 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 prescribed 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, not complying with requirements specified by the Contracting Entity by other person complying with such requirements within the prescribed 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 prescribed period;
- l) did not substitute technicians, technical bodies or persons nominated for fulfilling 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 for fulfilling the Contract or managing persons of a candidate), within the prescribed period by other persons or bodies complying 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 prescribed 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 to 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 4.4 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.europskydokumentpreverejneobstaravanie-uradpreverejneobstaravanie.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**

- 4.1.5.1. A tender has to include a technical description of the offered ball valves including layout and/or technical drawings thereof and, at the same time, also including layout and/or technical drawings of the offered actuators pursuant to Annex 2 hereof. Upon the technical description and layout and/or technical drawings of the offered ball valves and actuators, there has to be clear technical solution and design thereof and concurrently also that such technical solution and design complies with the technical-delivery conditions "Ball Valves for High Pressure Gas Pipelines DN 300 – DN 1400" and "Actuators for "Ball Valves for High Pressure Gas Pipelines DN 300 – DN 1400". The Contracting Entity reserves right to disqualify from this Competition a tender in which it will not be proven that the technical solution and design of the offered ball valves and actuators complies with the technical-delivery conditions "Ball Valves for High Pressure Gas Pipelines DN 300 – DN 1400" and "Actuators for "Ball Valves for High Pressure Gas Pipelines DN 300 – DN 1400" constituting Annexes 1 and 2 of the T&C's.
- 4.1.5.2. A tender has to include also other relevant documents at tenderer's sole discretion, other than those

submitted according to paragraph 4.1.5.1 hereof, 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. Properly filled-in Proposal for Criteria Fulfilment presented in Annex 2 hereof, in which the Contracting Entity has specified a sample of ball valves for each part of the Contract Subject-Matter. This ball valve sample that tenderer is to price, is dedicated only to the evaluation of tenders in this Competition and does not need to be a subject of any purchase order issued by the Contracting Entity. The Proposal for Criteria Fulfilment is required to submit in PDF as well as in editable XLSX formats.
- 4.1.6.2. A tenderer's solemn declaration pursuant to the template presented in Annex 4 hereof that the tenderer accepts without reservations 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 an 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 **06 November 2023 at 14:00 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.

**Note:** For each part of the Contract Subject-Matter, to which a tenderer submits its tender, only total price for the entire respective part of the Contract Subject-Matter specifies in the bidding template in the JOSEPHINE system (such price is subject to tender evaluation according to paragraph 5.3 hereof) whereas in the Proposal for Criteria Fulfilment in Annex 2 hereof it is required to fill in all items specified therein.

- 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 7.1 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 a 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 on-line.

- 5.1.2. Tenders shall be opened on **06 November 2023 at 14:15 hour CET**
- 5.1.3. Place of tender opening: refer to the link in paragraph 1.5.4 hereof;
- 5.1.4. As the ranking of tenders in this Competition will not be determined upon an automated manner by means of an electronic auction, the Contracting Entity is obliged pursuant to Article 52, paragraph 2, of the PPA to allow to participate in tender opening to all tenderers who submitted their tenders within the period for tender submission, by making the tenders available in the JOSEPHINE system, whereas the tenderers will have access to the following information on the tenders: number of submitted tenders and proposals of tenderers for criteria fulfilment which can be expressed by a number. Other information specified in tenders shall not be disclosed.
- 5.1.5. The tenderers who submit their tenders into the Competition via the JOSEPHINE system within the period for tender submission, can attend the on-line making offers available in the JOSEPHINE system and will have access to the information according to paragraph 5.1.4 hereof upon the login data granted to them for accessing this Competition in the JOSEPHINE system.
- 5.1.6. Pursuant to Article 52, paragraph 3 of the PPA, within 5 business days from the day of tender opening as latest the Contracting Entity shall send a written record of tender opening, which shall include information disclosed to tenderers at opening the tenders according to paragraph 5.1.4 hereof, to all tenderers who submitted their tenders within the period for tender submission.

## 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 satisfactory 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 affect 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 any 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 to the criterion and rules of its application specified in this paragraph 5.3 of these Tender Documents
- 5.3.2. For the purpose of acquiring informative prices for ball valves of individual dimensions, the Contracting Entity has specified a sample of ball valves in the Proposal for Criteria Fulfilment in Annex 2 hereof, which serves only to formal evaluation of tenders according to the criterion pursuant to paragraphs 5.3.3 till 5.3.5 hereof.
- 5.3.3. Tenders shall be evaluated upon the criterion: **The Lowest Price – 100%**
- 5.3.4. Upon the criterion specified in paragraph 5.3.3 hereof, every part of the Contract Subject-Matter according to paragraph 2.3.2 hereof shall be evaluated separately.
- 5.3.5. In each part of the Contract Subject-Matter, the total price (without VAT) for the relevant part of the Contract Subject-Matter specified in the Proposal for Criteria Fulfilment shall be subject of evaluation upon the criterion specified in paragraph 5.3.3 hereof.
- 5.3.6. As the Contracting Entity shall not award any partial contract for any ball valve purchase directly upon this Competition but it intends to conclude the Contract (i.e. the Framework Purchase Contract) with several tenderers whereas the Contracting Entity will award individual partial contracts upon opening a competition among the participants of this Framework Purchase Contract pursuant to paragraphs 2.7 and 2.8 hereof, the evaluation of tenders in this Competition upon the criterion pursuant to paragraphs 5.3.3 till 5.3.5 hereof will be only formal.
- 5.3.7. Disregarding the result of tender evaluation pursuant to paragraphs 5.3.3 till 5.3.5 hereof, the Contracting Entity shall conclude the Contract with every tenderer for that part (parts) of the Contract Subject-Matter according to paragraph 2.3.2 hereof, for which the tenderer proves its compliance with the participation conditions and submits technically and commercially acceptable tender in the meaning of paragraphs 5.3.8 and 5.3.9 hereof.

- 5.3.8. As technically acceptable tender, the Contracting Entity shall deem a tender in which the tenderer submits such technical solution and design of the offered ball valves and actuators, which is in compliance with the technical specification of the Contract Subject-Matter and with technical-delivery conditions “Ball Valves for High Pressure Gas Pipelines DN 300 – DN 1400” and “Actuators for “Ball Valves for High Pressure Gas Pipelines DN 300 – DN 1400” presented in Annexes 1 and 2 to the T&C’s respectively.
- 5.3.9. As commercially acceptable tender, the Contracting Entity shall deem a tender in which the tenderer submits its solemn declaration according to paragraph 4.1.6.2 hereof that it agrees to the T&C’s.
- 5.3.10. In each ball valve purchasing, the Contracting Entity shall proceed by the procedure according to paragraphs 2.7 and 2.8 hereof.

#### 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 hereof, 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 hereof and after sending all notices of disqualification of 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 against 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. CONCLUSION OF THE CONTRACT

- 6.1. 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. Pursuant to Article 11 of the PPA, the Contracting Entity cannot conclude the Contract with a tenderer who does not meet the condition according to the preceding sentence.
- 6.2. The Contracting Entity may conclude the Contract with the successful tenderer or tenderers **no earlier than on the eleventh (11<sup>th</sup>) 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.
- 6.3. 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 the Contract with the successful tenderer or tenderers **no earlier than on the eleventh (11<sup>th</sup>) 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.

- 6.4. If a request for remedy was rejected, the Contracting Entity may conclude the Contract with the successful tenderer or tenderers **no earlier than on the eleventh (11<sup>th</sup>) 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.
- 6.5. 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 the Contract with the successful tenderer or tenderers **no earlier than on the eleventh (11<sup>th</sup>) day** after expiration of the determined period for arranging the request for remedy according to Article 165, paragraph 3 of the PPA.
- 6.6. Without prejudice to any provisions of clauses 6.3 to 6.5 hereof, if objections have been delivered, the Contracting Entity may conclude the Contract 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,
- 6.7. The Contracting Entity shall further proceed upon conclusion of the Contract according to Article 56 of the PPA.
- 6.8. 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 6.2 till 6.5 of this Article hereof unless the Contracting Entity specifies a longer period in the call for conclusion of the Contract.

## 7. OTHER CONDITIONS OF THE COMPETITION

### 7.1. Tender binding period

The tender binding period will expire on **31 December 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.).

### 7.2. Variant solution

- 7.2.1. 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.
- 7.2.2. 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.

### 7.3. 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.

### 7.4. Bid bond

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

## **8. FURTHER INFORMATION**

### **8.1. 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.

### **8.2. 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.

## **9. LIST OF ANNEXES HEREOF**

- Annex 1: Commercial and contractual terms and conditions – Supply Contract no. 162/23/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;