Ref. no.: BZzp.261.63.2023

**CONTRACT TERMS OF REFERENCE**

for the open tendering procedure

in accordance with the Act of 11 September 2019 – Public Procurement Law (Journal of Laws of 2022, item 1710, as amended), hereinafter referred to as the “Act”

Contract title:

**Delivery of 29,000 m3 of 95 petrol to the reserves of the agency**

**CPV code:**

09000000-3 Petroleum products, fuel, electricity and other sources of energy

**APPROVED**

Director of the Procurement Office

(-) Justyna Gdańska

(signature on the original document)

Warsaw, 2 June 2023

Ref. no.: BZzp.261.63.2023

TERMS OF REFERENCE, hereinafter referred to as “ToR”, include:

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|  |  |
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| Appendix no. 2 | Tender form |
| Appendix no. 3 | Undertaking of the entity making available its resources |
| Appendix no. 4 | Declaration of the Contractor based on Article 108 section 1 point 5 of the Act, on non-belonging to the same capital group |
| Appendix no. 5 | Declaration on the up-to-date nature of information included in the ESPD form |
| Appendix no. 6 | List of deliveries |
| Appendix no. 7 | Draft provisions of the agreement |
| Appendix no. 8 | Declaration of the Contractor based on Article 7 section 1 of the Act of 13 April 2022 on special solutions to prevent support for aggression against Ukraine and to protect national security (Journal of Laws of 2022, item 835), and Article 5k of the Council Regulation (EU) No. 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1) |

**I. Information about the Contracting Authority**

1. Contracting Authority: **NATIONAL AGENCY FOR STRATEGIC RESERVES**

ul. Grzybowska 45, 00-844 Warszawa

Tax Identification Number (NIP): 526-00-02-004, Statistical Identification Number (REGON): 012199305

Website: [http://www.rars.gov.pl](http://www.rars.gov.pl/)

BIP (Bulletin of Public Information) site:  [http://bip.rars.gov.pl](http://bip.rars.gov.pl/)

2. Contact details:

1) telephone number: +48 22 360 91 53

2) e-mail address: zp@rars.gov.pl

3. Website of the procedure carried out: <https://platformazakupowa.pl/pn/rars>.

4. Website where amendments and clarifications to ToR, as well as other contract documents directly related to the contract award procedure will be made available:
<https://platformazakupowa.pl/pn/rars>.

**II. Procedure for awarding the contract**

1. The procedure shall have the form of open tendering based on Article 132 of the Act.

2. Together with the tender, the Contractor shall submit the statement referred to in Article 125 section 1 of the Act, in a form of the European Single Procurement Document drawn up on a basis of a standard form specified in the Commission Implementing Regulation (EU) 2016/7 of 5 January 2016 establishing the standard form for the European Single Procurement Document (OJ L 3, 6.01.2016, p. 16), hereinafter referred to as the ESPD form. The statement is evidence for the absence of grounds for exclusion and for the fulfilment of conditions for participation in the procedure, as at the date of submission of tenders, temporarily replacing the subjective means of evidence required by the Contracting Authority.

The ESPD form, in electronic version, is available on the website at [espd.uzp.gov.pl](http://espd.uzp.gov.pl/). The instruction for completing the ESPD form is available on the website of the Public Procurement Office.

The single document initially prepared by the Contracting Authority for the procedure in question (in xml format – to be imported on the ESPD website) is available on the Platform in the place where these ToR are published.

With respect to “Part IV: Selection criteria” of the ESPD, the Contractor can fill in only point a, and in such case, the Contractor does not need to fill in any of the remaining sections (A-D) in Part IV of the ESPD.

3. If a number of Contractors jointly applies for a contract, the statement referred to in section 2 – ESPD form shall be submitted by each of the Contractors jointly applying for the contract. These statements confirm the absence of grounds for exclusion and the fulfilment of the conditions for participation in the procedure to the extent that each Contractor demonstrates compliance with the conditions for participation in the procedure.

4. The Contractor relying on capacities of the entities making their resources available, shall submit, together with the statement, referred to in section 2, also a statement – ESPD form for the entity making available the resources, confirming the absence of grounds for exclusion of that entity and, accordingly, fulfilment of the conditions for participation in the procurement procedure, to the extent it relies on resources of that entity.

5. The statements referred to in sections 3-5 shall be submitted together with the tender, and they are evidence for the absence of grounds for exclusion from the procedure or for the fulfilment of conditions for participation in the procedure or selection criteria, as at the date of submission of requests to participate or tenders, as appropriate.

**III. Description of the contract subject matter, contract performance time limit**

1. The contract subject matter shall be the delivery of 29,000 m3 of 95 petrol in the reference temperature of 15°C (hereinafter: fuel) to the reserves of the agency, in order to fulfil the requirements of Article 3 section 2 point 2 of the Act of 16 February 2007 on stocks of crude oil, petroleum products and natural gas, the principles of proceeding in circumstances of a threat to the fuel security of the State and disruption on the petroleum market (consolidated text: Journal of Laws of 2022, item 1537). Taking into account the specifics of fuel deliveries by rail or pipeline, the Contracting Authority allows to – for logistics reasons – exceeding the amounts of fuel delivered to particular locations, but by no more than 60%. The Contracting Authority allows the delivery of fuel in tank capacity, provided that the Contractor signs or has signed an agreement with a stock-keeper.

2. The detailed description of the contract subject matter is included in the “Description of the contract subject matter” attached as appendix no. 1 to ToR.

3. The Contracting Authority allows for submitting the following tenders for lots:

1) Task no. 1 – delivery of up to 10,000 m3 of 95 petrol.

2) Task no. 2 – delivery of up to 19,000 m3 of 95 petrol.

4. The Contracting Authority does not require submission of qualitative means of evidence together with the tender.

5. The Contracting Authority will not accept variant tenders.

6. The Contracting Authority requires the Contractor to specify in the tender the parts of the contract, the fulfilment of which the Contractor will subcontract, and to specify names of potential Subcontractors, if known.

7. Contract performance period: from 1 October 2023 to 15 December 2023.

**IV. Information about electronic communication measures to be used by the Contracting Authority to communicate with Contractors, and to provide information on technical and organisational requirements, preparation, dispatch and receipt of electronic correspondence**

1. The procedure shall be carried out in Polish language.

2. Communication between the Contracting Authority and Contractors, in particular submission of statements, requests, notification, as well as transfer of information (other than the Contractor’s tender), shall be carried out using electronic communication mean, i.e. the procurement platform, hereinafter referred to as the “Platform,” available at:  [https://platformazakupowa.pl/pn/r](https://platformazakupowa.pl/pn/)ars.

3. The Contractor intending to participate in this contract award procedure does not have to have an account on the Platform. The use of the Platform by the Contractor is free.

4. Technical and organisational requirements for drawing up, sending and receiving electronic correspondence are described in the Rules of the Online Procurement Platform platformazakupowa.pl of Open Nexus Sp. z o.o., hereinafter referred to as the Rules, available on the Platform. The method of drawing up, sending and receiving electronic correspondence must comply with the requirements set out in the regulation issued based on Article 70 of the Act.

5. When entering this contract award procedure, the Contractor accepts terms and conditions of using the Platform set in the Rules and undertakes to follow provisions of the Rules when using the Platform.

6. The maximum size of files sent via the Platform shall be 150 MB.

7. The date of:

1) submission of the tender shall be the date of its submission in the Platform system by clicking the “Submit tender” button in the second step and displaying the message that the tender was submitted;

2) submission of notifications, documents and electronic statements, qualitative means of evidence or digital images of qualitative means of evidence and other information initially drawn up in paper form shall be the date of clicking the “Send message” button after which the message is displayed that the message was sent to the Contracting Authority.

8. The Contractor may request the Contracting Authority to clarify the content of the ToR via the Platform. The Contracting Authority shall provide explanations immediately, but no later than 6 days before the expiry of the time limit for submission of tenders, by making it available on the website of the procedure (Platform), provided that the request for clarification of the content of the ToR was received by the Contracting Authority no later than 14 days before the expiry of the time limit for submission of tenders. If the request for clarification of the content of the ToR is not received within the time limit, the Contracting Authority shall not be obliged to provide such clarifications of the ToR and to extend the time limit for submission of tenders. The extension of the time limit for submission of tenders shall not affect the run of the time limit for requests for clarifications of the ToR.

9. The Contracting Authority asks for questions to be submitted also in an editable form, as this will reduce the time of providing clarifications.

**V. Information about conditions for participation in the procedure**

1. The Contracting Authority requires the Contractor to satisfy conditions specified in Article 112 sections 2 of the Act, pertaining to:

1) authorisations to carry out specific economic or professional activity, if required under separate regulations;

2) economic or financial standing;

3) technical or professional capability.

2. The Contractor will satisfy the condition referred to in point 1.1. if it proves having:

1) a license for trading in liquid fuels (OPC) or foreign trade in liquid fuels (OPZ).

3. The Contractor will satisfy the condition referred to in point 1.2. if it proves that:

1) it is insured against civil liability with respect to the activities carried out, related to the contract subject matter, for a sum guaranteed no less than PLN 3,000,000.00 (in words: three million 00/100 Polish zloty);

2) it has financial resources or creditworthiness of at least PLN 10,000,000.00 (in words: ten million 00/100 Polish zloty).

4. The Contractor will satisfy the condition referred to in point 1.3. if it proves:

1) to the satisfaction of the Contracting Authority that, during the last 3 (three) years before the expiry of the time limit for submission of tenders and if the period of operation is shorter – during that period – it performed at least 2 deliveries of petrol in the quantity of, at least:

a) no less than 10,000 m3 – task no. 1;

b) no less than 19,000 m3 – task no. 2.

When submitting the tender for more than one task, the Contractor shall be obliged to document performing the deliveries for the task with the higher number of m3.

The evaluation of meeting the conditions for participation in the procedure will be based on the fulfilling/non-fulfilling formula, taking into account information included in statements and documents that the Contractors are required to provide in order to confirm meeting conditions for participation in the procedure.

5. To confirm compliance with the conditions for participation in the procedure, the Contractor may, in relevant situations, rely on technical capacity or professional capabilities, or financial or economic position of other entities making available their resources, regardless of the legal nature of relationships between the Contractor and these entities.

6. In relation to the conditions relating to experience, Contractors may rely on capabilities of other entities if the latter perform the deliveries that require such capabilities.

7. The Contractor that relies on capabilities or position of entities making available their resources shall submit, together with the tender, the undertaking (template – Appendix no. 3 to ToR) of the entity making available its resources on providing necessary resources to the Contractor for the purposes of performance of a given contract or other qualitative means of evidence that when performing the contract, the Contractor will have access to necessary resources of these entities. The undertaking of the entity making available its resources is to confirm that the relationship between the Contractor and the entity making available its resources guarantees actual access to these resources and specifies, in particular:

1) scope of resources of the entity making available its resources that are available to the Contractor;

2) manner and period of making available the resources of the entity making available its resources and their use by the Contractor when performing the contract;

3) whether and to what extent the entity making available its resources, on whose capacities the Contractor relies with regard to the conditions for participation in the procedure relating to experience, will perform the deliveries to which these capacities refer.

8. The condition relating to the authorisation to pursue a particular economic or professional activity, referred to in Article 112 section 2 point 2 of the Act, shall be fulfilled if at least one of the Contractors jointly competing for the contract is authorised to pursue a particular economic or professional activity and performs the works, supplies or services for which such authorisation is required.

9. With regard to the conditions relating to experience, the Contractors jointly competing for the contracts may rely on the capacities of those Contractors who perform the deliveries for which these capacities are required. In such a case, the Contractors jointly competing for the contract shall attach, to the tender, a statement specifying which of the deliveries will be performed by each of the contractors.

**VI. Grounds for exclusion of the Contractor from the procedure**

1. Contractors, who are not excluded on the grounds of Article 108 and Article 109 section 1 points 1 and 4 of the Act, can compete for the contract in question.

2. The contractor that prevents or hinders the finding of the criminal origin of money or conceals its origin, due to the inability to determine the beneficial owner within the meaning of Article 2 section 2 point 1 of the Act of 1 March 2018 on counteracting money laundering and terrorist financing (Journal of Laws of 2022, item 593) shall be excluded from the contract award procedure.

3. Eligible to compete for the contract in question shall be the Contractors who are not excluded:

1) based on Article 7 section 1 of the Act of 13 April 2022 on special solutions to prevent support for aggression against Ukraine and to protect national security (Journal of Laws of 2022, item 835);

2) based on Article 5k of the Council Regulation (EU) No. 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1).

4. If the Contractor relies on capacities or position of the entities making the resources available, the Contracting Authority shall verify whether the grounds for exclusion provided for the Contractor do not apply to this entity.

5. In case of Contractors jointly competing for the contract, the Contracting Authority will verify whether the grounds for exclusion apply, separately for each of these Contractors.

**VII. Information about qualitative means of evidence**

1. The Contracting Authority shall call on the Contractor whose tender has been evaluated as the best to submit within a specified time limit, no less than 10 days of the call, the following qualitative means of evidence, valid as at the submission date, confirming lack of ground for exclusion of the Contractor from the procedure and fulfilment of conditions for participation in the procedure:

1) information from the National Criminal Record, within the scope specified in Article 108 section 1 points 1 and 2 of the Act and Article 108 section 1 point 4 of the Act, pertaining to prohibition from competing from public contracts, issued not earlier than 6 months before its submission;

2) declaration of the Contractor, within the scope of Article 108 section 1 point 5 of the Act, on non-belonging to the same capital group within the meaning of the Act of 16 February 2007 on competition and consumer protection (Journal of Laws of 2021, items 1076 and 1086) with another Contractor that submitted a separate tender or declaration on belonging to the same capital group together with documents or information confirming preparation of the tender independently from another Contractor belonging to the same capital group (template – Appendix no. 4 to ToR);

3) declaration of the Contractor on the up-to-date nature of information included in the statement referred to in Article 125 section 1 of the Act – ESPD form with respect to grounds for exclusion from the procedure specified by the Contracting Authority, referred to in:

a) Article 108 section 1 point 3 of the Act;

b) Article 108 section 1 point 4 of the Act, pertaining to imposition of a prohibition to compete for public contracts as a preventive measure;

c) Article 108 section 1 point 5 of the Act, pertaining to entering into an agreement with other contractors aimed at distorting competition;

d) Article 108 section 1 point 6 of the Act;

e) Article 109 section 1 points 1 and 4 of the Act, pertaining to breaching the obligations relating to the payment of taxes and local charges referred to in the Act of 12 January 1991 on local taxes and charges (Journal of Laws of 2019, item 1170), as well as the Contractor in case of whom winding-up proceedings were initiated or that was declared bankrupt;

f) Article 7 section 1 of the Act of 13 April 2022 on special solutions to prevent support for aggression against Ukraine and to protect national security (Journal of Laws of 2022, item 835) and Article 5k of the Council Regulation (EU) No. 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1);

4) information from the Central Register of Beneficial Owners, within the scope of Article 108 section 2 of the Act, if separate regulations require entry into this register, issued not earlier than 3 months before its submission;

5) certificate issued by a competent head of the tax office, confirming that the Contractor is not in arrears with payment of taxes and charges, within the scope of Article 109 section 1 point 1 of the Act, issued not earlier than 3 months before its submission, while in case of being in arrears with payment of taxes or charges, the Contracting Authority shall request filing the documents confirming that the Contractor paid due taxes and charges together with interests or fines, or entered into a binding agreement on the repayment of these amounts due;

6) certificate or another document issued by a competent local organisational unit of the Social Insurance Institution or the Agricultural Social Insurance Fund, confirming that the Contractor is not in arrears with payment of social or health insurance contributions, within the scope of Article 109 section 1 point 1, issued not earlier than 3 months before its submission, while in case of being in arrears with payment of social or health insurance contributions, the Contracting Authority shall request filing, together with the certificate or another document, the document confirming that before the expiry of the time limit for submission of tender, the Contractor paid due social or health insurance contributions together with interest and fines, or entered into a binding agreement on the repayment of these amounts due;

7) excerpt from the National Court Register or information from the Central Registration and Information on Business, within the scope of Article 109 section 1 point 4 of the Act, issued not earlier than 3 months before its submission, if separate regulation require entry into the register;

8) a license for trading in liquid fuels (OPC) or foreign trade in liquid fuels (OPZ);

9) documents confirming that the contractor is insured against civil liability with respect to the activities carried out, related to the contract subject matter, including information on the sum guaranteed of this insurance;

10) information from a bank or cooperative saving and lending association, confirming the amount of financial resources or creditworthiness of the contractor, for the period not earlier than 3 months before its submission;

11) list of deliveries meeting the requirements of the Contracting Authority specified in Chapter V point 4.1) (template – Appendix no. 6 to ToR).

2. If the Contractor has its registered office or place of residence outside the Republic of Poland, the Contractor shall be obliged to submit qualitative means of evidence referred to in in § 4 of the Regulation of the Minister of Development, Labour and Technology of 23 December 2020 on subjective means of evidence and other documents or statements that may be requested from the contractor by the contracting authority.

3. If the Contractor relies on capabilities or position of entities making available their resources, the Contractor shall be obliged to submit qualitative means of evidence pertaining to these entities, in accordance with § 5 of the Regulation of the Minister of Development, Labour and Technology of 23 December 2020 on subjective means of evidence and other documents or statements that may be requested from the contractor by the contracting authority.

4. Qualitative means of evidence and other documents or statements shall be submitted to the Contracting Authority using electronic communication means allowed in ToR, within the scope and in a manner specified in the regulation issued based on Article 70 of the Act.

5. Qualitative means of evidence drawn up in a foreign language shall be submitted together with a translation into Polish.

**VIII. Tender validity period**

1. The Contractor shall be bound by the tender until 6 November 2023, while the first day of the tender effective period shall be the day of expiry of the time limit for submission of tenders.

2. If the most advantageous tender is not selected before the expiry of tender validity period specified in the contract documents, before the expiry of the tender validity period, the Contracting Authority shall ask the contractors once to agree to extend that period by a period specified by the Contracting Authority, not exceeding 60 days.

3. The extension of the tender validity period referred to in section 2 shall require the contractor to submit a written declaration of consent to extend the tender validity period.

4. If the Contracting Authority requests the tender security, the extension of the tender validity period shall be accompanied by the extension of the period of validity of the tender security or, if this is impossible, with providing a new tender security for the extended tender validity period.

5. If the tender validity period expires before selecting the most advantageous tender, the Contracting Authority shall call the contractor whose tender was scored the most advantageous to grant, within the time limit specified by the Contracting Authority, a written consent to selection of its tender. If no such consent is granted, the Contracting Authority shall request granting such a consent from the next contractor whose tender was scored the second most advantageous, unless grounds for invalidating the procedure exist.

**IX. Description of the method of drawing up the tender**

1. The tender must be drawn up in Polish, in electronic form, with a qualified electronic signature, in generally available data formats, in particular: .txt, .rtf, .pdf, .doc, .docx. For the purposes of drawing up the tender, it is recommended to use the Tender Form attached as Appendix no. 2 to ToR. If the Contractor does not use the Tender From template prepared by the Contracting Authority, the tender should contain all information required in the template. Together with the tender, the Contractor shall submit Appendix no. 1 to the tender – Price Form.

2. Together with the tender, the Contractor shall submit the statement referred to in Article 125 section 1 of the Act, in a form of the European Single Procurement Document drawn up on a basis of a standard form specified in the Commission Implementing Regulation (EU) 2016/7 of 5 January 2016 establishing the standard form for the European Single Procurement Document (OJ L 3, 6.01.2016, p. 16), hereinafter referred to as the ESPD form. The statement is evidence for the absence of grounds for exclusion and for the fulfilment of conditions for participation in the procedure, as at the date of submission of tenders, temporarily replacing the subjective means of evidence required by the Contracting Authority.

The ESPD form, in electronic version, is available on the website at [espd.uzp.gov.pl](http://espd.uzp.gov.pl/). The instruction for completing the ESPD form is available on the website of the Public Procurement Office.

The single document initially prepared by the Contracting Authority for the procedure in question (in xml format – to be imported on the ESPD website) is available on the Platform in the place where these ToR are published.

With respect to “Part IV: Selection criteria” of the ESPD, the Contractor can fill in only point a, and in such case, the Contractor does not need to fill in any of the remaining sections (A-D) in Part IV of the ESPD.

3. If a number of Contractors jointly applies for a contract, the statement referred to in section 2 – ESPD form shall be submitted by each of the Contractors jointly applying for the contract. These statements confirm the lack of grounds for exclusion and the compliance with the conditions for participation in the procedure to the extent in which each of the Contractors demonstrates the fulfilment of conditions for participation in the procedure.

4. The Contractor relying on capacities of the entities making their resources available, shall submit, together with the statement, referred to in section 2, also a statement – ESPD form for the entity making available the resources, confirming the absence of grounds for exclusion of that entity and, accordingly, fulfilment of the conditions for participation in the procurement procedure, to the extent it relies on resources of that entity.

5. The statements referred to in sections 2-4 shall be submitted together with the tender, under pain of invalidity, in electronic form with a qualified electronic signature.

6. To the tender, the Contractor shall attach statements pertaining to grounds for exclusion:

1) based on Article 7 section 1 of the Act of 13 April 2022 on special solutions to prevent support for aggression against Ukraine and to protect national security (Journal of Laws of 2022, item 835);

2) based on Article 5k of the Council Regulation (EU) No. 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1) (template – Appendix no. 8 to ToR).

**X. Requirements pertaining to the tender security**

1. The Contracting Authority shall require providing a tender security for particular tasks:

1) Task no. 1 – PLN 514,054.25;

2) Task no. 2 – PLN 976,703.07.

2. The tender security must be provided before the expiry of the time limit for submission of tenders specified in ToR.

3. The tender security can be provided in one or more forms referred to Article 97 section 7 of the Act.

4. The tender security in cash should be transferred by wire transfer to bank account no.: 96 1130 1017 0000 3159 1590 0002.

5. In case of the tender security in a form other than cash, the Contractor shall submit the original guarantee or surety to the Contracting Authority, in electronic form.

6. The tender security provided in a non-cash form shall remain valid until the end of the tender validity period, and should meet all requirements under Article 98 section 6 of the Act.

7. The guarantee or surety shall include, in its content, irrevocable and unconditional obligation of the issuer of the document to pay the amount of the tender security to the Contracting Authority.

8. The tender security should be marked as follows “Tender security – Delivery of 29,000 m3 of 95 petrol to the reserves of the agency, task no. ……… – ref. no.: BZzp.261.63.2023” or in any other way allowing identifying the procedure to which it refers.

9. In case of the tender security in cash, it shall be considered provided upon crediting the bank account referred to in point 4; in case of other forms of the tender security, it shall be considered provided upon their saving on the Platform.

**XI. Manner and date of submission of tenders**

1. The Contractor may submit the tender for one or more tasks.

2. The Contractor shall submit the tender, under pain of invalidity, in electronic form with a qualified electronic signature.

3. The tender should be signed by a person/persons authorised to represent the Contractor.

4. If the Contractor is represented by a person whose authorisation to represent the Contractor does not arise from registration documents (National Court Register, Central Registration and Information on Business or other relevant register), the Contractor shall attach the power of attorney to the tender.

5. The power of attorney to submit the tender or a statement referred to in Article 125 section 1 of the Act – ESPD form shall be submitted in electronic form with a qualified electronic signature.

6. If the power of attorney to submit the tender or statement referred to in Article 125 section 1 of the Act – ESPD form is prepared in paper form with a handwritten signature, a digital image of this document with a qualified electronic signature, confirming compliance of the digital image with the document in paper form, shall be submitted. The digital image of the power of attorney should confirm the correctness of authorisation as at the date of submission of the tender or a statement referred to in Article 125 section 1 of the Act – ESPD form.

7. In case of Contractors jointly competing for awarding the contract, the power of attorney for the attorney to represent them in the procedure for awarding the contract or to represent them in the procedure and conclusion of the agreement on the public procurement should be attached to the tender.

8. The Contractor shall submit the tender via the Platform at [https://platformazakupowa.pl/pn/r](https://platformazakupowa.pl/pn/)ars.

9. The manner of submission of the tender is described in the Rules.

10. All information regarded as a business secret within the meaning of the Act of 16 April 1993 on combating unfair competition (Journal of Laws of 2020, item 1913), in case of which the Contractor requests protection, should be provided in a separate and properly marked file. Together with restricted information regarded as a business secret, the Contractor shall be obliged to present evidence of satisfying the grounds specified in Article 11 section 2 of the Act of 16 April 1993 on combating unfair competition. If the Contractor fails to provide a justification for regarding restricted information as a business secret, the Contracting Authority will consider such restriction as ineffective due to the Contractor’s failure to take, with due diligence, actions to maintain confidentiality of information in question in accordance with Article 18 section 3 of the Act.

11. The time limit for submission of tenders is on 10 July 2023, 10:00 hours The date and exact time (hh:mm:ss) generated in accordance with the local server time synchronised with the clock of the Central Office of Measures shall decide.

12. Tenders submitted after the expiry of the time limit will be rejected based on Article 226 section 1 point 1 of the Act.

13. The Contractor may change or withdraw its tender prior to the expiry of the time limit for submission of tenders. Principles for withdrawal or change of tenders are set out in the Rules.

14. The Contractor cannot effectively withdraw its tender or amend its content after the expiry of the time limit for submission of tenders.

**XII. Date of opening of tenders**

1. Tenders will be opened immediately after the expiry of the time limit for submission of tenders – on 10 July 2023, at 10:30 hours. Tenders will be opened by decoding and opening the tenders.

2. Before opening the tenders at the latest, the Contracting Authority shall make available, on the website of the procedure (Platform), information about the amount that it intends to allocate for financing the contract.

3. If tenders are open with the use of a tele-information system, in case of a failure of this system hindering opening the tenders on the date specified by the Contracting Authority, the tenders shall be opened immediately after the failure is eliminated. The Contracting Authority shall notify of changing the tender opening date on the website of the procedure (Platform).

4. Immediately after opening the tenders, the Contracting Authority shall make available, on the website of the procedure (Platform), information about:

1) names or first names and surnames, as well as registered offices or locations of business activities carried out, or places of residence of contractors whose tenders were opened;

2) prices included in the tenders.

**XIII. Method of calculating the price**

1. The tender price calculation shall be based on the tender form attached as Appendix no. 2 to ToR.

2. The gross value specified in the tender should include costs of petrol, including: all taxes, charges, as well as costs of transport, unloading and other costs affecting the implementation of the contract, including potential discounts and rebates applied by the contractor.

3. The price should be rounded to whole grosz, with fractions below 0.5 grosz being omitted and fractions of 0.5 grosz and above rounded up to 1 grosz.

4. The VAT rate should be specified in accordance with the Act of 11 March 2004 on tax on goods and services (Journal of Laws of 2022, item 931).

5. The tender price should be expressed in Polish zloty (PLN).

**XIV. Description of the criteria, including information on weights of these criteria and the method of evaluation of tenders**

1. When selecting the most advantageous tender, the Contracting Authority will use the following criteria:

The price of the tender in question, calculated for the purposes of evaluating the tenders, will include the price being an arithmetic average of 95 petrol quotes published in Platt's European Marketscan cargoes CIF NWE/Basis ARA high for gasoline 10 ppm for the 13th week of 2023 (calculated from Monday to Friday) translated into PLN per tonne (PLN/Mg) based on the average exchange rate of U.S. dollar (table A of average exchange rates of foreign currencies of the National Bank of Poland) for the week accepted for 95 petrol quotes, increased/reduced by a bonus/discount offered by the Contractor, in PLN/Mg. The price determined in such a way shall be calculated in PLN/m3 based on the fuel density of 0.755 Mg/m3 (price per 1 m3 should be rounded to 2 decimal places) and multiplied by the quantity of fuel. The price shall be calculated in accordance with the following formula:

C = (Cw x k +/- P) x 0.755 x I

where:

Cw – average of all petrol quotes in USD/tonne published in Platt's European Marketscan cargoes CIF NWE/Basis ARA high gasoline 10 ppm for the 13th week of 2023 (calculated from Monday to Friday). The average will be rounded to 2 decimal places in accordance with mathematical rules.

P – fixed bonus/discount of PLN …… per 1 Mg.

k – average exchange rate of US Dollar to Polish zloty based on Table A of average exchange rates of foreign currencies of the National Bank of Poland on the announcement dates, for the period accepted for calculating an arithmetic average of petrol quotes, rounded to 4 decimal places in accordance with mathematical rules.

0,755 – density of fuel in the reference temperature of 15°C.

I – quantity of fuel – in m3 – purchased by location.

The description of the contract subject matter includes quality standards for all material characteristics of the contract subject matter.

Maximum score that can be obtained: 100 points.

Calculations will be rounded to two decimal places.

The offered price includes the price of performance of the whole contract subject matter. The tender with the lowest price will be awarded the maximum number of points = 100 points, and other tenders will be evaluated in relation to the lowest priced tender, based on the following formula:

C = [C min / C bad] x 100

where:

C – number of points for the gross price in the tender

C min – the lowest gross price offered based on analysed tenders

C bad – gross price of the tender in question

2. If the most advantageous tender cannot be selected because two or more tenders present the same balance of price or cost and other contract evaluation criteria, the Contracting Authority shall select from among those tenders the one with the highest score in the criterion with the highest weight.

3. Where tenders have received the same assessment in the criterion of the highest weight, the Contracting Authority shall select the tender with the lowest price or the lowest cost.

4. If the tender cannot be selected in the manner referred to in point 4, the Contracting Authority shall call on the Contractors who have submitted these tenders to submit, within a time limit specified by the Contracting Authority, additional tenders containing a new price.

5. When submitting additional tenders, the Contractors cannot offer the prices higher than the prices offered in their previously submitted tenders.

6. In case of inconsistency between the price in number and in words, the Contracting Authority shall adjust the price accordingly and accept the price in number.

**XV. Requirements concerning the security on due performance of the agreement**

The Contracting Authority shall not request any security on due performance of the agreement from the Contractor whose tender has been selected as the most advantageous.

**XVI. Information concerning formalities which should be met following the selection of a tender in order to conclude a public procurement agreement**

1. In the case of selecting a tender submitted by Contractors competing for the contract jointly, the Contracting Authority may request prior to the conclusion of the public procurement agreement, a copy of the agreement governing cooperation between those Contractors.

2. The Contracting Authority shall notify the chosen Contractor of the date of signing the public procurement agreement.

3. If the Contractor, whose tender has been selected as the most advantageous, avoids signing the public procurement agreement, the Contracting Authority may re-analyse and re-evaluate tenders of remaining Contractors participating in the procedure, and select the most advantageous tender or cancel the procedure.

4. Before signing the agreement, the selected Contractor shall provide the Contracting Authority with information that should be entered into the agreement (e.g. first names and surnames of authorised persons representing the Contractor when signing the agreement).

**XVII. Information on legal protection measures available to the Contractor**

1. Legal protection measures, specified in Title IX of the Act, shall be available to the Contractor and other entity if they have or had interest in being awarded the contract and suffered or may suffer a damage as a result of the violation of the provisions of the Act by the Contracting Authority. Legal protection measures against the contract notice and contract documents shall be also available to organisations entered in the list referred to in Article 469 point 15 of the Act, and to the Ombudsman for Small and Medium-Sized Enterprises.

2. An appeal shall only be admissible against acts incompliant with the Act, performed by the Contracting Authority in the course of this contract award procedure, including draft provisions of the agreement, or against failure to act which the Contracting Authority is bound to perform under the Act.

3. The appeal should contain information referred to in Article 516 of the Act.

4. The appeal shall be submitted to the President of the Chamber in writing or in electronic form with a trusted signature.

5. The appellant should dispatch a copy of the appeal to the Contracting Authority before the expiry of the time limit for lodging the appeal, so that the Contracting Authority is able to become familiar with the appeal before the end of that time limit. It shall be presumed that the Contracting Authority might become familiar with the appeal before the expiry of the time limit for lodging the same, if a copy thereof was sent before the expiry of the time limit for lodging with the use of electronic means of communication. A copy of the appeal shall be submitted to the Contracting Authority via the Platform.

6. Time limits for lodging the appeal:

1) the appeal shall be lodged within 10 days of the date of sending the information on the Contracting Authority’s act constituting the basis for lodging the appeal, if the information was sent using electronic communication means, or within 15 days – if it was sent in any other manner;

2) the appeal against the contract notice or content of contract documents shall be lodged within 10 days of the date on which the notice was published in the EU Official Journal or of the date of publication of the documents on the Platform;

3) the appeal against acts other than referred to in points 1 and 2 above shall be lodged within 10 days of the date on which one have become or with due diligence may have become aware of the circumstances constituting the basis thereof;

4) If the Contracting Authority failed to dispatch to the Contractor a notice of selection of the most advantageous tender, the appeal shall be lodged no later than within:

a) 30 days of the date on which the contract award notice was published in the EU Official Journal;

b) 6 months of the date of conclusion of the agreement if the Contracting Authority failed to publish the contract award notice in the EU Official Journal.

7. Detailed procedural rules applicable after lodging the appeal are specified by relevant provisions of Title IX of the Act.

8. The parties and participants of the appeal procedure shall be entitled to lodge a complaint to the Regional Court in Warsaw – public procurement court against the ruling of the National Chamber of Appeal.

9. The complaint should be lodged through the President of the National Chamber of Appeal within 14 days of the day, on which the ruling of the National Chamber of Appeal or decision of the President of the Chamber referred to in Article 519 section 1 was submitted, dispatching simultaneously its copy to the complaint’s opponent. Submission of the complaint to the office of a postal operator appointed within the meaning of the Act of 23 November 2012 – Postal Law shall be equivalent to its lodging.

10. The judgement of the court or the ruling terminating the case shall be subject to a cassation appeal before the Supreme Court.

**XVIII. Information clause on personal data processing**

In accordance with Article 13(1) and Article 13(2) of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.05.2016, p. 1), hereinafter: “GDPR,” the Contracting Authority would like to inform you that:

1) the controller of your personal data is the National Strategic Reserves Agency with its registered office in Warsaw (00-855), ul. Grzybowska 46, tel.: +48 (22) 36 09 100, e-mail address: kancelaria@rars.gov.pl;

2) the controller has designated a Data Protection Officer, who can be contacted by e-mail, at iod@rars.gov.pl, or by telephone, at +48 22 36 09 237;

3) your personal data will be processed based on point (c) of Article 6(1) of the GDPR, for the purposes related to the procedure for award of the contract in question;

4) recipients of your personal data will include:

a) persons or entities to whom the documentation of the procedure is made available based on Article 18 and Article 74 of the Act of 11 September 2019 – Public Procurement Law;

b) persons or entities to whom the controller provides public information in accordance with the Act of 6 September 2001 on access to public information (Journal of Laws of 2020, item 2176);

5) your personal data will be stored, in accordance with Article 78 section 1 of the Act, for 4 years since closing the public contract award procedure in question, and if the term of the agreement exceeds 4 years – the storage period shall be the same as the whole term of the agreement, and after their use will be stored for archival purposes based on the Act of 14 July 1983 on national archival resources and archives (Journal of Laws of 2020, item 164);

6) your obligation to provide personal data pertaining directly to you is a statutory requirement arising from provisions of the Act, related to the participation in the public contract award procedure; consequences of a failure to provide certain data are set forth in the Act;

7) no automated decisions will be taken with respect to your personal data, in accordance with Article 22 of the GDPR;

8) you have the following rights:

a) based on Article 15 of the GDPR – right of access to personal data pertaining directly to you;

b) based on Article 16 of the GDPR – right to rectification or completing of your personal data, while exercising the right to rectification or completing cannot result in changing the outcome of the public contract award procedure or a change of provisions of the agreement to the extent inconsistent with the PPL Act, and cannot violate integrity of the protocol or appendices thereto;

c) based on Article 18 of the GDPR – right to restriction of processing of personal data by the controller, except instances referred to in Article 18(2) of the GDPR, while the right to restriction of processing shall not apply to storage, in case of referring to legal remedies, the protection of the rights of another natural or legal person or in case of processing for reasons of important public interest of the European Union or of a Member State, as well as shall not result in restriction of processing of personal data until closing the contract award procedure;

d) right to lodge a complaint with the President of the Office for the Protection of Personal Data, when you conclude that the processing of personal data pertaining to you breaches provisions of the GDPR;

9) you shall not have the following rights:

a) in relation to point (b), (d) or (e) of Article 17(3) of the GDPR – right to erasure of personal data;

b) right to personal data portability referred to in Article 20 of the GDPR;

c) based on Article 21 of the GDPR – right to object to processing of personal data, because your personal data are processed based on point (c) of Article 21(6) of the GDPR.

At the same time, the Contracting Authority would like to remind you of your information duty based on Article 14 of the GDPR towards natural persons whose data are provided to the Contracting Authority in relation to the procedure and that the Contracting Authority obtains directly from the contractor participating in the procedure, unless at least one of the exclusions referred to in Article 14(5) of the GDPR applies.

**XIX. Draft provisions of the agreement**

Draft provisions of the agreement are attached as Appendix no. 7 to ToR.