

## General Conditions of Tender

Valid from 1 June 2015

### Recitals

These General Conditions of Tender define rules, basic relations and processes in preparing and executing selection proceedings for the companies belonging to the ZSE Group and RU Slovakia.

### I. Declaration of Confidentiality

1.1 All data and/or information stated in the documents concerning the selection proceedings (only “SP”) shall be considered confidential. Without the prior written consent of the Inviting Party the participant may not publish or use such information for any other purpose than that for which the participant received it. Tender conditions of the SP (such as tender documents) may not be reproduced, copied or disclosed to a third party without the prior written consent of the Inviting Party. If the Inviting Party finds out that the participant disclosed any data and/or information contained in the documents of the SP, in contradiction with the previous sentence, to a third party which is directly or indirectly engaged in the selection proceedings, this shall be considered as breach of the Declaration of Confidentiality and such behaviour of the participant gives reason for immediate exclusion from the selection proceedings. The right to claim damages incurred by the Inviting Party against the participant shall not be affected.

### II. Terms and Definitions

2.1 For purposes of these “General Conditions of Tender” (only “GCT”), the basic terms are defined as follows:

- a) Administrator of the selection proceedings (etendering) – is a person providing technical support during etendering;
- b) Price offered in the selection proceedings – is the total price including all expenses related to the subject of the selection proceedings, so that the subject of the selection proceedings meets all criteria required by the Inviting Party;
- c) Black List – is a list of contractors who:
  - i. have the status “unsuccessfully qualified”; and/or
  - ii. failed to pass an internal assessment of contractors; and/or;
  - iii. did not establish a contractual relationship with the Inviting Party after the end of the selection proceedings due to reasons on the part of the Contractor (shall not be applied to a public tender); and/or
  - iv. after the end of SP they failed to meet the offer they submitted to the Inviting Party within the selection proceedings; and/or
  - v. by their actions they thwarted the course and/or result of the SP; and/or
  - vi. despite the conflict of interests towards the Inviting Party, they do not declare and identify this fact in written “**Declaration of Participant of the Selection Proceedings for Purposes of Identifying the Conflict of Interests Towards the Inviting Party**” (only the “Declaration”) or they intentionally conceal this fact. A contractor that is blacklisted shall be excluded from the ongoing selection proceedings and the selection proceedings under preparation for the period of 3 years of the date when it was blacklisted. The Inviting Party shall inform the contractor that it was blacklisted.
- d) Delivery period – is a period specified in advance or a separately agreed period within which the Contractor is obliged to deliver the subject of the SP to the Contracting Entity;
- e) Contractor – is a participant whose offer was evaluated as the most favourable and with whom the Inviting Party established a contractual relationship after the end of the SP;
- f) E-auction house – is an e-environment in which the participants of the SP respond by their offers to request (in case of sale, they respond to an offer) of the Inviting Party;
- g) Expert analysis – is a free-of-charge assessment of additional modifications to material, services and works by already existing contractor and/or an authorised institution of given material, services and work (e.g. assessment of causes of failures);
- h) Conflict of interests – is a situation when an employee of the ZSE Group has or could have economic and/or personal interest in the selection proceedings, which could have adverse effect in relation to the Inviting Party. The conflict of interests in relation to the Inviting Party for purposes of the selection proceedings is in the cases of:
  - i. family and/or emotional bond/relationship, in particular but not limited to cases when:
    - a) a member of a statutory body, a member of a supervisory body or a member/shareholder of the participant (natural person) is currently an employee of some of the companies belonging to the ZSE Group and RU Slovakia (only “**the ZSE Group employee**”) or was such employee in the last 12 calendar months prior to the signature of the Declaration;
    - b) a member of a statutory body, a member of a supervisory body or a member/shareholder of the participant (natural person) is a person close to the ZSE Group employee;

- c) the employee of the participant is also the ZSE Group employee and/or his close person;
- ii. political bond/relation, in particular but not limited to cases when:
  - a) a member of a statutory body, a member of a supervisory body or a member/shareholder of the participant (natural person) and ZSE Group employee are officials of the same political party;
- iii. economic and/or other bond/relation, in particular but not limited to cases when:
  - a) the participant motivates and/or promises the ZSE Group employee an economic benefit (e.g. financial gift, rank) if the ZSE Group employee acts in favour of the participant.

The conflict of interests shall be declared and identified in the written declaration. A close person shall be defined, under Civil Code, as a relative in direct line, brother or sister and the spouse; other persons in a family or other relation shall be considered close to each other if a detriment suffered by one of them is reasonably felt as own by the other. Based on information stated by the participant in the written declaration, the Inviting Party shall assess the degree of relevance of the conflict of interests and may take steps which can lead to the removal of this conflict of interests or mitigate its real and/or potential consequences.

- i) Contact person of the Inviting Party – is a person in charge of the selection proceedings;
- j) Qualification – is a process of assessment of qualitative, legal, economic and other parameters of the participants (more details can be found at: <http://www.zsdis.sk/sk/Ospolocnosti/Informaciepredodavatelovtovarovsluziebabprac/Verejne-obstaravanie>);
- k) Contracting Entity – is an organisation on behalf of which the Inviting Party carries out the selection proceedings. After the end of the selection proceedings, the Contracting Entity is a party to the contract for purposes of the contractual relationship;
- l) Post-warranty service – is service provided by the contractor for compensation for already delivered goods whose warranty period has already expired;
- m) Subject of the SP – materials, services and works requested by the Inviting Party; in case of sale, the subject of the SP are materials, services and works offered by the Inviting Party;
- n) Registration – is a process in which the Inviting Party assesses the basic qualification of the participant (more details can be found at: <http://www.skupinazse.sk/sk/Informaciepredodavatelov/Akosatatnasimodavatelom/Registraciadodavateľa>). After the successful registration the participants get the status “successfully registered” and access to the databases of the selection proceedings under preparation;
- o) ZSE Group and RU Slovakia – is a summary title for the following companies:
  - i. Západoslovenská energetika, a.s., registered office: Čulenova 6, 816 47 Bratislava, Company Reg. No: 35 823 551, registered with the Companies Register of Bratislava I District Court, Section Sa, Entry No: 2852/B;
  - ii. Západoslovenská distribučná, a.s., registered office: Čulenova 6, 816 47 Bratislava, Company Reg. No: 36 361 518, registered with the Companies Register of Bratislava I District Court, Section Sa, Entry No: 3879/B;
  - iii. ZSE Energia, a.s., registered office Čulenova 6, 816 47 Bratislava, Company Reg. No: 36 677 281, registered with the Companies Register of Bratislava I District Court, Section: Sa, Entry No: 3978/B;
  - iv. ZSE Development, s.r.o., registered office Čulenova 6, 816 47 Bratislava, Company Reg. No: 36 254 711, registered with the Companies Register of Trnava District Court, Section: Sro, Entry No: 14151/T;
  - v. E.ON Elektrárne, s.r.o., registered office: SPP Kompresorová stanica 3, Trakovice 919 33, Company Reg. No: 36 239 593, registered with the Companies Register of Trnava District Court, Entry No: 12311/T;
  - vi. E.ON Business Services Slovakia spol. s r. o., registered office Čulenova 5, 811 09 Bratislava, Company Reg No: 31 404 600, registered with the Companies Register of Bratislava I District Court, Section: Sro, Entry No: 9763/B;
  - vii. E.ON Slovensko, a.s., registered office Čulenova 6, 811 09 Bratislava, company Reg No: 36 837 318, registered with the Companies Register of Bratislava I District Court, Section: Sa, Entry No: 4243/B;
  - viii. ZSE Energy Solutions, s.r.o., registered office: Hraničná 12, Bratislava 827 14, Company Reg No: 35 859 423, registered with the Companies Register of Bratislava I District Court, Section: Sro, Entry No. 28992/B;
  - ix. ZSE MVE, s.r.o., registered office: Hraničná 12, Bratislava 827 14, Company Reg. No. 35 927 593, registered with the Companies Register of Bratislava I District Court, Section: Sro, Entry No. 35418/B;
- p) Subcontractor – for purposes of these GCT, the “Subcontractor” is a natural or legal person that is a contractor of the Contractor participating in the performance to the benefit of the company belonging to the ZSE Group according to the requirements of the Inviting Party;
- q)
- r) Goods – any material, service or work which is the subject of the selection proceedings;
- s) Participant – is a person (natural or legal) or a group of persons which submits and modifies its offer within the selection proceedings;
- t) Public consultation day – is a period during which the Inviting Party or other technical services of the Contracting Entity can be available to the participants, for example but not only for answering questions concerning the subject of the SP;

- u) Inviting Party – is a person which declares its interest to buy the subject of the selection proceedings for the Contracting Entity and defines criteria of the selection proceedings, means and time required for the evaluation of results of the selection proceedings, persons in charge of the selection proceedings (including the administrator and necessary contacts). The Inviting Party may execute SP for all entities within the ZSE Group and RU Slovakia;
- v) Sample – is a sample of goods which the participant must submit to the Inviting Party for assessment of quality and other parameters of goods;
- w) Selection proceedings – is a way of selection of the most successful contractor from potential participants. The most frequent types of the selection proceedings:
  - i. Etendering – is a selection proceedings executed through procurement e-tools. It includes mainly:
    - Request and price offers according to internal procedures; the participants submit their proposals electronically to the specified email address or in procurement e-tool;
    - Eaucion – dynamic online comparison of current proposals of the participants; it is a reverse auction (the price goes down) in procurement e-tool;
    - Japanese auction – automatic management of offer change and on-line regular acceptance of offer change by a participant in procurement e-tool;
    - Dutch auction – automatic management of offer change and on-line maximum acceptance of offer change by the Participant in procurement e-tool;
    - Sale auction – dynamic online comparison of current offers of the participants, it is an auction (the price goes up).
  - ii. Envelope tender – is a tender under internal procedures of the Inviting Party where the participants submit their proposals in a sealed envelope in paper form or electronically through a certain form of electronic procurement;
  - iii. Negotiation – is a tender under internal procedures of the Inviting Party where the participants submit their proposals in a personal meeting during which conditions of the contract relations are agreed upon;
  - iv. Public tender - is a form of the selection proceedings under Sections 281 to 288 of Act No 513/1991 Zb. Commercial Code as amended;
  - v. Public Procurement (only “PP”) – is a way of SP under Act No. 25/2006 Z. z. on Public Procurement and on the Amendment to Certain Acts as amended.
- x) Warranty period – is a period during which the participant is obliged to remove without delay all defects on goods (if caused by inappropriate handling or by an error of the customer).

### **III. Communication with the Inviting Party**

3.1 Communication with the Inviting Party is only in written and/or electronic form, according to requirements of the SP. Information obtained via telephone is not binding.

If the Inviting Party changes criteria of the public tender or cancel it, the change or cancelation of the public tender shall be communicated:

- a) in the same way as the public tender was announced; if such change and/or cancelation took place before the period for the registration of Participant and/or change or cancelation of the public tender concerns uncertain persons;
- b) only to successfully registered participants, if such change or cancelation took place after the period for the registration of Participant and concerns only these certain persons.

### **IV. Rights and obligations of the Inviting Party**

4.1 The Inviting Party declares that its interest to negotiate price and business conditions for the purchase of the subject of the SP is real but does not have to be binding.

4.2 The Inviting Party shall not reimburse the Participant any costs related to its participation in the SP.

4.3 Rights of the Inviting Party – the Inviting Party reserves the right to exclude the Participant from the selection proceedings in cases where:

- a) the procedure of the Participant of the selection proceedings is in contradiction with requirements of the Inviting Party or with these criteria;
- b) the offer submitted by the Participant is not in line with the Inviting Party’s requirements for required parameters of the subject of the SP;
- c) the offer is strikingly different from other submitted offers and the Participant is not able to deliver the required parameters;
- d) the Participant has been blacklisted by the Inviting Party;
- e) the Participant repeatedly thwarts the course and/or the result of the SP and has been informed of this fact by the Inviting Party;
- f) the Participant fails to submit required documentation, price offer, sample and meet other requirements within the SP in a required form and/or quality and/or time;
- g) there is a conflict of interests between the Participant and the Inviting Party, however the Participant failed to declare and identify this fact in the written Declaration or concealed this fact intentionally;

- h) there is a conflict of interests between the Participant and the Inviting Party, and the Participant declared and identified this fact in the written Declaration, however the Inviting Party is not able to remove the conflict of interests and prevent resulting negative effects;
- i) the Participant breached contract obligations in the previous contractual relationship with the Inviting Party. The exclusion of the Participant must be preceded by a written notice by the Inviting Party on the breach of one of the above conditions. If the Participant received a written notice and declares the interest to immediately meet all the requirements of the Inviting Party, the latter may decide on temporary non-exclusion of the Participant of the selection proceedings.

4.4 Furthermore, the Inviting Party reserves the right to (to avoid doubts – it is its right, not an obligation):

- a) invite, once the offers of the Participants have been evaluated, to further round of the SP (e.g. individual negotiation on the price, offer presentation) and/or negotiation on further conditions of the contract;
- b) make one-round SP from multi-round SP;
- c) enter into a contract based on the evaluation of criteria with the Participant whose offer ranks as the most favourable;
- d) repeat the SP or a part of it from the proved time of shortcomings (if shortcomings are on the part of the Inviting Party). The Inviting Party shall not be responsible for technical and other problems on the part of the Participants;
- e) change the published conditions of the SP or cancel it even without reason;
- f) refuse all submitted proposals or make a contract with several Participants;
- g) determine specific contractor or subcontractor for partial performances of the subject of the SP;
- h) approach only successfully registered Participants (status “successfully registered”);
- i) approach (for given categories) only qualified Participants;
- j) approach only registered Participants (status “successfully registered”);
- k) not prolong any period within the SP (e.g. when the Participant is included in the SP additionally after the SP has been announced). The Inviting Party shall not be responsible for a shorter period for offer submission;
- l) reject the Participant of the SP, if he does not express interest to participate in the SP within the period specified by the Inviting Party;
- m) enter into a contract with another Participant who ranked next, if the Participant refuses to enter into a contract with the Inviting Party for the price submitted in the SP;
- n) re-asses the Participant’s request for the correction of an apparent error in typing and computing which occurred when drafting the offer;
- o) decide to go for any type of the selection proceedings;
- p) not accept any comments and proposals regarding the invitation, course, tender documents or the course of the SP;
- q) verify the accuracy of data and facts in the offer and/or other available information.

4.5 Obligations of the Inviting Party – the Inviting Party is obliged to:

- a) enable the Participants to submit their offers and ensure transparent course of the SP and non-discriminatory evaluation and notification of the results of the SP;
- b) send invitations to the Participants’ contact address to Participants who met conditions for the participation in the SP. If the invitation is not delivered to the stated address or the Participant fails to respond to it within specified time, it shall not be considered as the Inviting Party’s mistake;
- c) assess, bona fide and in line with rules of good business relations Commercial Code is based on (pillar of Commercial Code), failures to meet periods within the SP as a result of vis maior (if the Participant requests so);
- d) review received comments from the Participant regarding the subject of the SP and send a statement to all Participants (if they are legitimate);
- e) publish tender criteria, but without the duty to publish weights of individual tender criteria.

## **V. Rights and obligations of the Participants**

5.1 By its participation in the selection proceedings the Participant confirms that his declared interest to negotiate price and business conditions of the subject of the SP is real. The Participant of the SP shall express the consent with “General Conditions of Tender” and “General Business Terms” of the Inviting Party and/or Contracting Entity by the participation in the SP.

5.2 Rights of the Participant – the Participant has the right to:

- a) access the list of the ongoing SP (after successful registration);
- b) get information about the possibility of participating in the SP;
- c) transparent treatment;
- d) refer, in justified cases, to [dispecing\\_logistiky@zse.sk](mailto:dispecing_logistiky@zse.sk) within 3 business days of the date after the receipt of the SP result. This right does not have suspensive effect;
- e) not participate in the SP after the registration without other possible negative consequences in the future;
- f) ask the Inviting Party for the possibility to meet the deadline additionally in case the Participant fails to meet one of the deadlines of the SP as a result of vis maior;
- g) send to the Inviting Party comments (which shall be considered non-binding by the Inviting Party) on tender documents no later than 48 hours of the moment when the invitation to the SP was sent;

h) ask for the correction of an apparent error in typing and computing which occurred when drafting the offer.

**5.3 Obligations of the Participant – the Participant is obliged to:**

- a. have status “successfully registered” for the participation in the SP;
- b. have status “qualified” (for selected categories of the subject of the SP);
- c. submit a sample of goods free-of-charge, which is the subject of the SP according to the request of the Inviting Party (the sample shall be returned after the end of the SP).
- d. act according to the invitation and requirements of the SP;
- e. to confirm its interest to participate in the SP within the period specified by the Inviting Party, in case of public tender;
- f. fill-out and sign the Declaration and, where the conflict of interests exists, to state specific description of the conflict of interests towards the Inviting Party. The Declaration shall be send to [dispecing\\_logistiky@zse.sk](mailto:dispecing_logistiky@zse.sk) and, subsequently, to the Inviting Party also in writing signed by a statutory representative or by other authorised person;
- g. send to the Inviting Party identification data of all his sub-contractors who will, if the Participant becomes a contractor, be involved in the performance of the subject of the selection proceedings to the benefit to the Inviting Party and, at the same time, have a valid contractor/business contract with a company belonging to the ZSE Group;
- h. enter with the Inviting Party into a contract for the subject of SP with the subject of the SP (if he received notification of the results of his offer) for the required contract period (if not stated otherwise in the SP specification). Also, the Participant agrees to meet conditions of the Inviting Party as well as other conditions which he agreed to meet in his offer valid in the moment of the end of the SP. Lawful claims on the warranties of goods shall remain unchanged (if, in case of public tender, the Inviting Party announces acceptance of the proposal after the period specified in the announcement of public tender, the contract will not be made, if the selected Participant informs the Inviting Party without undue delay that he refuses to make a contract).

**VI. Appeal**

6.1 No appeal may be lodged against the decision and/or procedure of the Inviting Party under these “General Conditions of Tender” and/or specific tender conditions of the given SP.

**VII. Other**

7.1 To avoid doubts, the following order of the application between the Inviting Party and Participant shall be decisive:

1. Slovak laws;
2. Tender conditions in the given selection proceedings;
3. “General Condition of Tender”.