



# **UNLIMITED TENDER INVITATION**

## **(No. 19-DPP-2023)**

**EXALO Drilling S.A. invites your Company to submit an offer in an Unlimited Tender for  
the sale of Fracturing Equipment.**

Zielona Góra; 12.09.2023 r.

19-DPP-2023

*Dear Sir/Madam,*

*On behalf of Exalo Drilling S.A. I would like to invite Your Company to submit an offer for the sale of Fracturing Equipment.*

*On further pages, You will find a short instruction, how to prepare and submit the bid.*

*In case of any questions please do not hesitate to contact our office via [przetargi@exalo.pl](mailto:przetargi@exalo.pl).*

*Regards*

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## 1. SUBJECT OF TENDER

- 1.1 The main goal of the tender is to select a Buyer who will purchase Fracturing Equipment.
- 1.2 Description of the subject of the tender is presented in Technical Specification attached to hereby invitation as Appendix No. 1.
- 1.3 Collection of the Fracturing Equipment shall be performed on EXW (Incoterms 2020) terms. Location: ul. Lotników 4, 38-400 Krosno, Poland.
- 1.4 All costs related to the performance of the contract, including the cost of collection of the subject of the contract, transport and insurance costs shall be borne by the Buyer.
- 1.5 Variant offers are not allowed.
- 1.6 Presence of Bidders is not allowed during the tender opening.
- 1.7 Tender is conducted only in English language.
- 1.8 Tender is governed by the laws of Republic of Poland.

## 2. PREPARATION OF VALID BID – GENERAL RULES

- 2.1. Each Bidder may submit only one offer.
- 2.2. A bid should contain all documents indicated in point 3 of tender invitation document.
- 2.3. The bid and enclosed documents must be prepared in English, and signed by the Bidder or person(s) authorized to make obligations on behalf of the Bidder.
- 2.4. The bid has to be accompanied by a power of attorney, unless the authorization to represent the Bidder stems from other documents enclosed by the Bidder for example Company Register Document.
- 2.5. **Visual Inspection of the Fracturing Equipment is available between 18.09.2023 – 29.09.2023 on working days from 7:00 a.m. to 2:00 p.m. (GMT+ 2). Willingness to perform an visual inspection should be made by e-mail to the following address: [przetargi@exalo.pl](mailto:przetargi@exalo.pl), min. 2 days before the visit.**

## 3. CONTENTS OF THE OFFER

Below you will find detailed description what kind of documentation is required to prepare the valid bid. Please make sure that you have included all documents requested. If any documents from mandatory sections are missing we reserve the right to reject the Offer.

Offer has to contain the following three mandatory sections with such documentation as:

Section 1.	<p>Price Form attached as Appendix 2, which provide such information as:</p> <ol style="list-style-type: none"> <li>a) net price – expressed in USD,</li> </ol> <p><b>NOTE:</b></p> <p><b><u>Net price cannot be lower than starting price set by Seller, which is 2 240 000,00 USD \$ netto + VAT if payable.</u></b></p> <ol style="list-style-type: none"> <li>b) collection time (counting from the date of contract signing) - expressed in days – no later than 30 days after payment of the full price; collection after payment of the full price,</li> </ol>
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	<p>c) validity of the offer - minimum 60 days, counting from the deadline for bid submission</p> <p>d) Payment Scheme - required by Exalo: 100% due within 30 days after delivery of the Invoice to the Buyer</p>
Section 2.	Bidder statement attached as Appendix No 4.
Section 3.	Bidder's Company Register Documents and (if needed) a power of attorney confirming the authorization to represent the Bidder. All documents must be presented in English language.
Section 4.	Deposit confirmation – Confirmation of payment the tender deposit by the Bidder or Bank Guarantee document, in accordance with requirements specified in point 10.

#### 4. SUBMITTING THE BID

4.1 The required documents must be submitted electronically. Each page has to be numbered and signed by authorised person.

4.2 In order to submit the bid properly, please follow the below steps:

- a) Scan signed by authorised person documentation of offer, to pdf file and name it as:  
19-DPP-2023 \_[BIDDER'S COMPANY NAME]\_Offer
- b) Protect pdf file against unauthorized opening by setting a PASSWORD.**
- c) Send pdf file (offer), protected by unauthorized opening, in one e-mail to address:  
[przetargi@exalo.pl](mailto:przetargi@exalo.pl) .

**The deadline for bid submission is:**

**02 October 2023 (CET)**

**NOTE:**

**DO NOT SEND THE PASSWORD TO FILES IN THE E-MAIL WITH BID.  
SUBMITTING THE PASSWORD WITH BID FILES OR BEFORE BELOW DATE WILL CAUSE  
AUTOMATIC REJECTION OF THE OFFER**

- d) Send **PASSWORD** for opening the bid files to e-mail address: [przetargi@exalo.pl](mailto:przetargi@exalo.pl)

**Password has to be sent next day after bid submission, it is:**

**03 October 2023 (CET)**

**If the Bidder fails to send the password in the deadline specified above, Seller may request the Bidder to send the password in an additional period, but no later than at the time of opening the offers.**

## **5. QUESTIONS AND CLARIFICATIONS**

- 5.1 Questions, request for clarifications and also remarks for draft of sales agreement shall be send only via e-mail for: [przetargi@exalo.pl](mailto:przetargi@exalo.pl). E-mail subject should be as follows: 19-DPP-2023 (Bidder Name) – Clarifications.
- 5.2 Our Answers and Clarifications (if needed-amendments) will be distributed to all invited bidders within maximum 3 (three) business days. It is not allowed to send questions, requests for clarifications or modifications for 2 (two) business days before bid submission date.
- 5.3 Seller may extend the deadline for bids submission, taking into account the time that Bidders will need to implement changes to the offers resulting from the Answers/ Clarifications/ Amendments to the Tender Invitation (as well as to the draft of the sales agreement). The Seller, upon own or Bidder's initiative may also modify terms of the tender as well as sales agreement draft but no later than 2 (two) business days before the bid submission date.
- 5.4 Regardless of the preceding point, the Seller on his own initiative or at the Bidder's request or in other cases specified in this Tender Invitation, may extend the deadline for submitting Offers.
- NOTE: Requests for modifications of Draft Sales Agreement can be done only at this stage. Bidder by submitting the offer accepts the final Sales Agreement Draft determined during the tender procedure. The Buyer and the Seller cannot enter into agreement with different contents to the one established at the moment of deadline for bid submissions. In case the Bidder whose offer was chosen by Exalo refuses to sign the agreement or proposes changes to the agreement, the offer may be rejected or the Tender may be cancelled and such bidder may be restricted from participation in a new tender for the same or similar scope.
- 5.6 In case of an extension of the deadline for submission of Offers, the Bidders shall be obliged to extend the period of being bound by the Offer by the same period of time as the extension of the deadline for submission of Offers.

## **6. MODIFICATION OR WITHDRAWAL THE OFFER.**

- 6.1 The Bidder may modify or withdraw the Offer until the date indicated as a deadline for bids submission.
- 6.2 The statement of modification or withdrawal, has to be sent in electronic form. Files name and message title has to be marked as: 19-DPP-2023\_MODIFICATION OF THE OFFER\_[\[BIDDER'S COMPANY NAME\]](#) or 19-DPP-2023\_WITHDRAWAL OF THE OFFER\_[\[BIDDER'S COMPANY NAME\]](#).
- 6.3 The statement of modification/withdrawal, has to be submit to email to address: [przetargi@exalo.pl](mailto:przetargi@exalo.pl), in accordance with point 6.1 and 6.2.

## 7. BIDS OPENING AND INITIAL EVALUATION

- 7.1 The Seller (without the participation of Bidders) will open Offers after the deadline for their submission).
- 7.2 The Seller will first determine whether the Offers are complete and contain all required documents specified in point 3. Then The Seller will check whether all conditions for participation in the Tender are met, whether all documents were properly numbered, signed and stamped.
- 7.3 If the Seller finds that the Offer has formal shortcomings, he reserves the right to individually request the Bidders to clarify, change or amend the Offers within the time limit set by the Seller. If the Offer will not be corrected or amended within the time set by the Seller or if the Bidder fails to provide explanations regarding the content of the submitted Offers, the Bidder may be excluded from the proceedings. This will result in the rejection of the Offer.

## 8. EVALUATION OF BIDS

- 8.1. The Bids will be evaluate according to 1 (one) criteria, which is Price:  
Points for criteria Price will be calculated according to following formula:

$$P_{C1} = \frac{W_{max}}{W_o} \cdot 100$$

where:

- $P_{C1}$  – total points for offer in price criteria  
 $W_{max}$  – highest price net received in tender  
 $W_o$  – offer Total net Price

- 8.2. The Seller shall provide the Bidder whose offer was considered the best a notice of selection as the Buyer with an indication of the final scope of the Sales Agreement. The Agreement shall be signed at the date and place indicated by the Seller.
- 8.3. If the Bidder, whose Offer was selected, refuses to enter into the Sales Agreement, the Seller shall request the Bidder, whose Bid was the most advantageous from among the remaining Offers, to enter into the Sales Agreement unless the period of being bound by the Offer has not expired.
- 8.4. After signing the Sales Agreement, the Seller shall notify the remaining Bidders of the completion of the bidding process, without disclosing the contents of the Offers or which Bidder was selected as the Buyer.

## 9. EXCLUDED BIDDERS

- 9.1 Following entities cannot participate in the tender as the Bidders:

- a) Members of the Management Board and Supervisory Board of the Exalo Drilling S.A.;

- b) Business entity conducting the tender and Members of its Management Board and Supervisory Board;
- c) Persons entrusted with the performance of activities related to the conduct of the tender;
- d) Spouse, children, parents and siblings of persons indicated in letters a-c above,
- e) Persons who are in such a legal or factual relationship with the entity conducting the tender that it may raise justified doubts as to the impartiality of the entity conducting the tender

9.2 The following Bidders will be excluded from the tender:

- a) for which liquidation has been opened, the dissolution procedure has been initiated or the bankruptcy of which has been announced or which has suspended the performance of business activities,,
- b) who submitted false information that has or may have an impact on the result of the procedure,
- c) who is in arrears with the payment of taxes, fees, social or health insurance contributions, except for cases when he has obtained the exemption, deferment or distribution provided for by law for instalments of overdue payments or suspension of the entire execution of the decision of the competent authority,
- d) being an entity who has been legally convicted of a crime against the environment, a crime of bribery, an offense against economic trade or another crime committed for financial gain, as well as a fiscal crime or the crime of participating in an organized group, committed in connection with the contract award procedure, or an association aimed at committing a crime or a fiscal offense,
- e) if an incumbent member of its management or supervisory body, a partner in a general partnership or a partnership, or a general partner in a limited partnership or limited joint-stock partnership has been legally convicted of an offense against the environment, a crime of bribery, an offense against economic turnover committed in connection with the contract award procedure or other offense committed for the purpose of obtaining financial gain, as well as a fiscal offense or the offense of participating in an organized group or association aimed at committing a crime or fiscal offense ,
- f) being a collective entity against which the court has ruled a ban on applying for contracts on the basis of the provisions on the liability of collective entities for acts prohibited under penalty,
- g) who does not meet the conditions specified in the Tender Invitation or did not submit or complete the required documents or declarations confirming the fulfillment of the conditions for participation in the procedure or did not provide explanations regarding the submitted Offer within the prescribed period,
- h) who has not agreed to extend the period of being bound by the Offer,
- i) who has not extend the validity of Tender Deposit Bank Guarantee,
- j) who did not send a password-protected Offer within the prescribed period by e-mail or password, or has sent the Offer together with the password in one e-mail,
- k) who submitted an Offer with reservations,
- l) who submitted a variant Offer,
- m) who has not accepted the draft of Agreement,



- n) who did not provide explanations in the case the abnormally low or abnormally high price or if the assessment of the explanations confirms that the Offer contains an abnormally low or abnormally high price.

9.3 Seller can also exclude a Bidder from the Tender in weak financial condition, which, in the opinion of the Seller, does not guarantee the proper performance of the Agreement

## **10. TENDER DEPOSIT**

- 10.1. The Buyer is obliged to provide, before the deadline for bid submission a deposit, paid in form of money bank transfer or Bank Guarantee. Tender deposit should cover at least the entire offer binding period indicated in the tender invitation, Bank Guarantee Tender deposit should cover 90 days after the closing date of Bid. The deposit is established at 112 000 \$ (in words: one hundred twelve thousands USD ).
- 10.2. The deposit should be paid to the bank account at Bank Gospodarstwa Krajowego with the number IBAN: PL09 1130 1088 0016 0075 5220 0003; BIC/SWIFT: GOSKPLPW; with the annotation: „19-DPP-2023\_ Fracturing Equipment – tender deposit”. The Bidder should attach to the offer an electronic copy of the confirmation of the transfer to the Selling Party's bank account. The effective date of payment of the deposit by bank transfer will be determined by the date of receipt of the funds on the Seller 's bank account.
- 10.3. Bank Guarantee of Deposit delivered by the Buyer must be: unconditional, paid on first and each subsequent written request, irrevocable, non-transferable, governed by Polish law and granted by the Bank settled in Poland (preferred Bank Gospodarstwa Krajowego) or accepted by the Seller. Bank Guarantee should contain:
- a. name and address of the applicant,
  - b. name and address of the beneficiary,
  - c. name and address of the guarantor,
  - d. information allowing identification of the principal relationship (i.e. hereby Invitation),
  - e. information allowing identification of the issued guarantee,
  - f. maximum payout amount and its currency,
  - g. guarantee expiry date,
  - h. the date from which the guarantee is valid,
  - i. terms for the request for payment,
  - j. form of request for payment.
  - k. clause that the place of jurisdiction will be Piła, Poland.
- 10.4. Buyer may use draft of the Bank Guarantee of the Advance Payment contained in Appendix no. 5 to this Invitation. Otherwise, the Buyer must submit the draft of guarantee to the Seller for approval before its final issue by the bank.
- 10.5. Bank guarantee should be issued in electronic form - signed by empowered representatives of the bank with the use of qualified electronic signature, as defined by relevant polish regulations or in written form (paper document with original handwritten signatures of empowered representatives must be delivered personally, by post or courier to the Seller; scan of the document or photo-copy does not comply with given condition) and should be in possession of the Seller no later than before the deadline for bid submission.

- 10.6. The deposit submitted by the bidders will be returned within 14 working days after the Sale Agreement is concluded, withdrawal, cancellation or closing the tender. In case of the tender deposit submitted in money, Seller shall retain deposit of the winning bidder for the account of the price of the sold equipment.
- 10.7. The deposit paid in form of money bank transfer will be returned at the request of the Bidder (within 3 days from the date of its submission) who withdrew the Bid before the deadline for submission of Offer or who was excluded from the procedure or whose Offer was rejected.
- 10.8. Seller will retain the deposit if:
  - a) the Bidder has failed to enter into a contract despite winning the tender.
  - b) the winning Bidder who signed the contract refuses to pay the price.
  - c) the conclusion of a contract has become impossible for reasons attributable to the Bidder whose bid was selected;
  - d) the Seller withdraws, terminates or dissolves the concluded contract under its provisions or under provisions of generally applicable law for the reasons attributable to the Buyer.

## **11. OTHER**

- 1.1. The Bidder bears all costs related to preparation and delivery of Tender Documentation.
- 1.2. Seller reserves the right to include in the final content of the Sales Agreement provisions more favourable to the Seller than those provided in Appendix 3, if such conditions were proposed by the Bidder. In particularly justified cases, the Seller reserves the right to enter into the final content of the Sales Agreement provisions less favourable to the Seller than those provided in Appendix no. 3.
- 1.3. The Offer binding period is a minimum of 60 days, and the period begins with the deadline for Bids submission.
- 1.4. The Seller reserves the right to cancel Unlimited Tender Procedure at any stage without the obligation to inform Bidder about the reason for cancellation.
- 1.5. The Bidder shall not pursue any claim against the Seller for any damages arising as a result of the cancellation of the proceedings or the closing of the proceedings without the selection of any offer by the Seller.
- 1.6. Attachment of any Bidders terms and conditions to the submitted offer is not allowed. Such documents will not be binding on the Seller.
- 1.7. NOTE: In case of any discrepancies, pdf files prevail over docx file.

**Price form**

ITEM DESCRIPTION according to Technical Specification	QUANTITY	UNIT	TOTAL NET PRICE
<b>Fracturing Equipment</b>	1	SET	..... USD

We declare to accept of Draft Sales Agreement:

YES \*

\*approval required

Exalo Drilling S.A

ul. Lotników 4

Place of hand-over of the Equipment

38-400 Krosno

Poland

Reception time (days):

.... days

Validity of offer:

.... days

(minimum 60 days)

100% of the Total Price within 30 days after delivery of the Invoice to

Payment scheme:

the Buyer\*\*

\*\* required

- Current Company Register Document.
- If offer is signed by Authorized person other than the one indicated in the registration documents, please provide Power of Attorney here.

.....  
Bidder offer No.

.....  
Date and Signature of Bidders

.....  
Bidders Company Stamp

Authorized Person

**TENDER PARTICIPANT STATEMENT WITH REFERENCE TO SANCTIONS IMPOSED WITH REFERENCE TO THE INVASION OF RUSSIAN FEDERATION ON UKRAINE AND WITH REFERENCE TO OTHER CONFLICTS**

**1. REPRESENTATIONS OF THE TENDER PARTICIPANT (THE BUYER)**

- 1.1. The Buyer declares that, to the best of its knowledge, as at the date of the bid submission, it and its subsidiaries, parent companies and members of its bodies and persons acting on its behalf:
- 1.1.1. are in compliance with the sanctions regulations introduced by the Republic of Poland, the United Nations and the European Union, (the "Sanctions Regulations");
  - 1.1.2. are not subject to any sanctions, including economic sanctions, trade embargoes or other restrictive measures imposed under the Sanctions Regulations and are not legal or natural persons with whom the Sanctions Regulations prohibit transactions (hereinafter: the "Sanctioned Entity");
  - 1.1.3. are not directly or indirectly owned or controlled by legal or natural persons meeting the criteria described in sec. 11.1.2 above;
  - 1.1.4. do not reside or have their registered office or principal place of business in a state being subject of Sanctions Regulations or are not incorporated under the laws of a state being subject to Sanctions Regulations;
  - 1.1.5. are not involved in any proceedings or investigations against them in relation to a breach of any Sanctions Regulations.
- 1.2. **TENDER PARTICIPANT (THE BUYER) UNDERTAKES:**
- 1.2.1. it and its subsidiaries and the members of its bodies and persons acting on its behalf and for its benefit conduct themselves in accordance with the Sanction Regulations;
  - 1.2.2. the items purchased under the agreement will not be directly or indirectly available to the Sanctioned Entity or used for the benefit of the Sanctioned Entity or used by the Buyer to the extent that such action is not permitted under the Sanctions Regulations;
  - 1.2.3. in the event that any statement made in sec. 11.1 becomes untrue, it shall, unless prohibited by law, promptly, but in any event within 30 days of becoming aware of such event, inform the Seller of each such event and of the steps taken to restore the truth of such statements;
  - 1.2.4. shall indemnify the Seller for any damage caused by any acts or omissions of the Buyer, its subsidiaries, parent companies and members of its bodies and persons acting on its behalf and for its benefit in connection with the non-performance or improper performance of the obligations referred to in this sec. 11.2.

TENDER PARTICIPANT DETAILS:

\_\_\_\_\_  
\_\_\_\_\_

PERSON/S ENTITLED TO SIGN STATEMENT ON  
BEHALF OF TENDER PARTICIPANT WITH THE  
POSITION:

\_\_\_\_\_  
\_\_\_\_\_

DATE OF SIGNATURE:

\_\_\_\_\_

SIGNATURE:

\_\_\_\_\_



Appendix No. 5 Draft of the Bank Guarantee

....., ..... [date]

To: [Exalo Drilling S.A.] (further also as the Beneficiary)

**TENDER DEPOSIT  
BANK GUARANTEE**

Whereas (name of Company) a company incorporated in (state) having its principal place of business at (address), registered in the register of ... run by ... under the number ..., having tax id number ... (further as the Applicant) have requested through (Bank name) to issue a Bank Guarantee in your favor for the sum of US\$ 112,000/- (one hundred twelve thousand united states dollars) being deposit against Tender no. 19-DPP-2023 for the sale of of Fracturing Equipment , due on ..... 2023.

In consideration of aforesaid, we (Bank Name & address), as of the date given above, hereby GUARANTEE irrevocably and unconditionally to make payment to you without cavil or demur and without recourse to any person whatsoever of US\$ 112,000/- (one hundred twelve thousand United States dollars) against your first and each subsequent written demand stating that:

- 1) the Applicant has failed to enter into a sales contract despite winning the Tender.
- 2) the Applicant who signed the sales contract refuses to pay the price.
- 3) the conclusion of a sales contract has become impossible for reasons attributable to the Applicant whose bid was selected;
- 4) the Beneficiary has withdrawn, terminated or dissolved the concluded contract under its provisions or under provisions of generally applicable law for the reasons attributable to the Applicant.

Notwithstanding anything mentioned herein our liability under this guarantee shall not be affected by any dispute or difference between you and the Applicant and is restricted to US\$ 112,000/- (one hundred twelve thousand United States dollars). This guarantee shall be valid for a period of 90 days after the closing date of Bid ("Expiry Date"). The claim under this Guarantee should be presented on or before the said Expiry Date i.e. .... 2023.

After the expiration date, this guarantee should be returned to us. This guarantee expires automatically upon expiry of its validity regardless of whether this document is returned to us or not.

This guarantee is subject to polish law, the place of jurisdiction will be Piła, Poland.

Name of Bank  
Bank officer seal