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Item 1171

## REGULATION OF THE COUNCIL OF MINISTERS

of 28 July 2015

## regarding the tender procedure for granting concessions for prospecting and exploring of hydrocarbon deposits and extracting of hydrocarbons from deposits, as well as concessions for extracting of hydrocarbons from deposits1)

Pursuant to Article 49o) of the Act of 9 June 2011 – Geological and Mining Law (Journal of Laws [Dz.U.] of 2015, item 196) the following is ordered:

**Article 1.** The Regulation shall specify:

1. the requirements to be met by the tender submitted in the tender procedure for granting concessions for prospecting and exploring of hydrocarbon deposits and extracting of hydrocarbons from deposits, as well as concessions for extracting of hydrocarbons from deposits, and documents required from the tenderer;
2. the requirements to be met by members of the tender committee, necessary to conduct the tender procedure, as well as the procedure for the operation of the committee;
3. the mode of conducting the tender procedure, including ways of evaluating the tenders.

**Article 2.** 1. A tender submitted in the tender procedure for granting concessions for prospecting and exploring of hydrocarbon deposits and extracting of hydrocarbons from deposits, as well as concessions for extracting of hydrocarbons from deposits shall specify:

1. name (company) and registered office of the tenderer;
2. subject of the tender procedure together with the specification of the area within which the concession is to be granted and the mining usufruct is to be established;
3. time for which the concession is to be granted, indicating the date of commencement of operations, and in the case of a tender submitted in the tender procedure for granting concessions for prospecting and exploring of hydrocarbon deposits and extracting of hydrocarbons from deposits – additionally the duration of the prospecting and exploring stage;
4. in the case of a tender submitted in the tender procedure for granting concessions for prospecting and exploring of hydrocarbon deposits and extracting of hydrocarbons from deposits:
	1. purpose, scope and type of geological development works, including geological works, or mining works and information on the works to be carried out to achieve the intended purpose, including their technologies,
	2. schedule, divided by years, of the implementation of geological development works, including geological works, and their scope,
	3. scope and schedule of mandatory sampling obtained as a result of geological works, including drilling cores referred to in Article 82(2)(2) of the Act of 9 June 2011 – Geological and Mining Law, hereinafter referred to as the ‘Act’;
5. This Regulation, within its scope of regulation, implements Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons (OJ UE L 164 of 30.06.1994, p. 3; OJ UE Polish special edition, chapter 6, t. 2, p. 262).
6. in the case of a tender submitted in the tender procedure for granting concessions for extracting of hydrocarbons from deposits:
	1. owners (perpetual usufructuaries) of the immovable properties within whose boundaries the intended activity is to be carried out as well as designation of these immovable properties according to the records of land and buildings;
	2. mineral deposit or a part thereof to be extracted;
	3. size and manner of the intended mineral extraction and the degree of intended utilisation of the mineral deposit reserves, including accompanying minerals and co-occurring usable trace elements, as well as the means for achieving that objective;
7. tenderer’s right to the land (space) within which the planned activity is to be carried out, or the right, the establishment of which they are applying for;
8. list of the areas covered by forms of nature preservation; this requirement does not apply to projects for which a decision on environmental conditions is required;
9. manner of counteracting negative environmental impact of the intended activity;
10. scope of the geological information available to the tenderer;
11. experience in carrying out activity in the field of prospecting and exploring of a hydrocarbon deposit or extraction of hydrocarbons from a deposit, including ensuring safety of the activity carried out, protection of life and health of humans, animals and environmental protection;
12. technical capabilities to exercise activity in the field of, respectively, prospecting and exploring of a hydrocarbon deposit and extraction of hydrocarbons from a deposit, or extraction of hydrocarbons from a deposit, and in particular possession of the necessary technical, organisational, logistical and human resources;
13. financial capabilities duly guaranteeing the pursuit of activity in the field of, respectively, prospecting and exploring of a hydrocarbon deposit and extraction of hydrocarbons from a deposit, or extraction of hydrocarbons from a deposit, and in particular the sources and methods of financing the intended activity, including the share of own funds and funds from borrowed capital;
14. proposed technology of performing geological development works, including geological works, or mining works;
15. proposed amount of remuneration for establishing the mining usufruct rights, no less than the amount specified in the notice on initiating the tender procedure;
16. if the tender is submitted jointly by several entities, in addition to the elements referred to in sections 2–14, the offer shall also specify:
	1. name (company) and registered offices of all the entities submitting the tender,
	2. elements referred to in Article 49j(2) of the Act.
17. A tender submitted in the tender procedure for granting concessions for prospecting and exploring of hydrocarbon deposits and extracting of hydrocarbons from deposits, as well as concessions for extracting of hydrocarbons from deposits, including the elements referred to in section 1 must comply with the requirements and terms and conditions set out in the notice on initiating this procedure.
18. The tender shall be accompanied by:
19. evidence confirming the existence of the circumstances specified therein, in particular the extracts from the relevant registers;
20. evidence confirming lodging a tender security deposit;
21. copy of the decision on obtaining positive assessment in the qualification proceedings, referred to in Article 49a(17) of the Act;
22. graphic appendices prepared according to the requirements for mining maps, with the boundaries of the territorial division of the country marked;
23. in the case referred to in Article 49k(2) of the Act, a written commitment referred to therein;
24. in the case of a tender submitted in the tender procedure for granting concessions for prospecting and exploring of hydrocarbon deposits and extracting of hydrocarbons from deposits – two copies of geological works design, referred to in Article 79 of the Act;
25. in the case of a tender submitted in the tender procedure for granting concessions for extracting of hydrocarbons from deposits:
	1. documents specifying the planned location of a mining area and mining land presented according to the requirements for mining maps, with the boundaries of the territorial division of the country marked,
	2. designed geological and hydrogeological conditions for extracting,
	3. if needed, the conditions for forcing water into the rock mass;
26. in the case of a tender submitted in the tender procedure for granting concessions for extracting of hydrocarbons from deposits, when the tenderer wants to propose the manner of a deposit management different from the one presented in the geological and investment documentation of this deposit, they add four copies of the supplement to the geological and investment documentation of a hydrocarbon deposit that includes the proposed amendments to the investment part of this documentation for the area covered by the tender procedure, in relation to which, if this tender is considered to be the winning tender, a proceeding regarding the approval of the supplement to the geological

and investment documentation of a hydrocarbon deposit will be carried out.

1. The tenderer may, on their own initiative, present additional information in the offer or attach additional documents thereto.
2. Documents submitted by the tenderer shall be in the form of an original or a certified true copy as provided for by the provisions of the Code of Administrative Procedure. This requirement shall not apply to a copy of the decision on obtaining positive assessment of the qualification proceedings referred to in Article 49a(17) of the Act, and other documents to be attached to the tender that were drawn by the concession-granting authority.
3. Documents drawn in a foreign language shall be submitted together with a translation into the Polish language made by a sworn translator.
4. A tender shall be submitted in a sealed envelope or a closed package bearing the name (company) of the tenderer and specification of the subject of the tender procedure.
5. A tender submitted after the time limit for submission of tenders shall be returned to the tenderer without opening.

**Article 3.** 1. The tender committee shall consist of at least one employee of the office providing services to the concession-granting authority with legal education, and at least one employee of the office providing services to the concession-granting authority who graduated from higher studies including geological sciences.

1. Members of the tender committee shall have at least one year’s experience in the office providing services to the concession-granting authority.
2. The chairperson of the tender committee shall organise the work of the tender committee and represent the tender committee when contacting the tenderers. The deputy chairperson of the tender committee shall act as the secretary of the tender committee and stand in for the chairperson of the tender committee in their absence.

**Article 4.** 1. The chairperson of the tender committee shall notify the members of the tender committee in writing of the date and place of the committee meeting, no later than one day before the planned meeting.

1. For the validity of the tender committee meeting, the presence of all members of the committee is required.
2. In the absence of a member of the tender committee, the chairperson of the tender committee amends the date of the meeting, informing on the new date the other members of the committee.
3. If the amendment to the date of the tender committee meeting caused by the absence of a committee member may significantly affect the date of the tender procedure, the chairperson of the tender committee shall submit to the concession-granting authority a written request to dismiss the absent member of the committee and appoint a new one. In the absence of the chairperson of the tender committee, the request shall be made by the deputy chairperson of the tender committee.
4. The secretary of the tender committee shall draw up a note from each meeting of the tender committee, which shall be signed by the chairperson of the tender committee.

**Article 5.** 1. The tender procedure shall consist of a part with the participation of tenderers and a part without their participation.

The part with the participation of tenderers shall be open to the public.

1. In the part of the tender procedure with the participation of the tenderers, the tender committee shall announce the number of tenders submitted, open the tenders and announce the names (companies) of the tenderers.
2. In the part of the tender procedure with the participation of the tenderers, the tender committee having read the names (companies) of the tenderers, shall make a written statement regarding the circumstances referred to in Article 491(3) of the Act.
3. If the circumstances referred to in Article 491(3) of the Act occur:
4. a member of the tender committee, concerned by the circumstance referred to in Article 491(3) of the Act, shall apply to the concession-granting authority to exclude them from the composition of the tender committee and appoint a new member of the committee in their place;
5. the tender committee shall suspend its operations until the new member of the tender committee has been appointed by the concession-granting authority; the provision of section 3 shall apply respectively.
6. In the part of the tender procedure, without the participation of the tenderers, the tender committee shall perform the following activities:
7. determine whether the submitted tenders meet the requirements and terms and conditions set out in the notice on initiating the tender procedure;
8. evaluate the tenders in terms of substantive content;
9. determine the order of the tenders – from the tender that received the highest grade (the best tender), to the tender that received the lowest grade (the worst tender);
10. select the winning tender.
11. When evaluating the tenders, the tender committee may call for tenderers to provide additional written explanations regarding the content of their tenders, indicating the time limit for answers. Explanations regarding the content of the tenders must not lead to any amendments to the content of the tender.

**Article 6.** 1. The tender committee shall evaluate the tenders in terms of formal and substantive issues.

1. Formal evaluation shall consist in checking whether the tender meets the requirements and terms and conditions set out in the notice on initiating the tender procedure.
2. A tender that does not meet the requirements and terms and conditions set out in the notice on initiating the tender procedure shall be subject to rejection.
3. Substantive evaluation shall consist of:
4. checking that each tender meets the tender requirements referred to in Articles 49h(3)(4)–(10) and (12) of the Act, specified in the notice on initiating the tender procedure;
5. determining the level of compliance of each of the tenders with the requirements referred to in Articles 49h(3)(4)–(10) and (12) of the Act, specified in the notice on initiating the tender procedure;
6. awarding each tender number of points on the basis of the criteria and their meaning set out in the notice on initiating the tender procedure;
7. considering the tender that received the highest number of points the winning tender.

**Article 7.** 1. Following the formal and substantive evaluation of the tenders, the tender committee shall draw up tender minutes, which shall contain in particular:

1. specification of the subject of the tender procedure;
2. designation of the place and duration of the tender procedure;
3. names and surnames of the members of the tender committee;
4. number of tenders submitted and names (companies) of the tenderers;
5. indication of the tenders that have been returned or rejected together with justification;
6. explanations of the tenderers regarding the content of the tenders submitted, referred to in Article 5(6);
7. substantive evaluations of all tenders submitted on time, which were not rejected, together with justification, as well as the order of the tenders, determined in the manner referred to in Article 5(5)(3);
8. indication of the winning tender together with justification for the selection.
9. Tenders submitted in the tender procedure and written declarations of the members of the tender committee, referred to in Article 5(3), shall constitute appendices to the tender minutes.
10. The appendices to the tender minutes shall be made available to the tenderers for inspection at the office providing services to the concession-granting authority following the selection of the winning offer, within 14 days from the date of delivery of the tender minutes.
11. The tender minutes shall be signed by all members of the tender committee at the last committee meeting. If a member of the tender committee refuses to sign the minutes, the committee makes a note on that in the minutes, and the refusing member of the tender committee shall give their decision in writing to the concession-granting authority.
12. The tender committee shall conclude its work by providing the concession-granting authority with the tender minutes.
13. If the concession-granting authority accepts the protest referred to in Article 49n of the Act, to repeat the protested activities, the provisions of Articles 3–6 and Articles 7(1)–(4) shall apply accordingly. In this case, the tender committee shall conclude its work by providing the concession-granting authority with minutes on the performance of the activities objected to.

**Article 8.** The Regulation comes into force after 14 days from the day of publishing.

Prime Minister: *E. Kopacz*