

Tender Documents / Invitation to Tender

For the contract award procedure of the Erdölbevorratungsverband Körperschaft des öffentlichen Rechts, Hamburg

Tender Number: EBV-6-001/2024

Subject matter of the tender: Conclusion of storage and/or delegation contracts with a term from 1 April 2025 until 31 March 2035 (incl.) at the latest

A. Conditions for the Proposal

1. Deadlines

1.1.	<u>Deadline for request for information</u> or similar requests in the case of ambiguities in the tender documents: By the end of 09 August 2024	Within this period, requests for information or similar requests may be addressed to the Erdölbevorratungsverband in the event of potential ambiguities in the tender documents. Please refer to no. 6 for details.
1.2.	<u>Deadline for bidder questions:</u> By the end of 09 August 2024	Within this period, questions may be submitted to the Erdölbevorratungsverband with regard to the tender procedure. Please refer to no. 7 for details.
1.3.	<u>Deadline for bid submission:</u> By 30 August 2024 at 12 p. m. CEST	Bids have to be received by the Erdölbevorratungsverband within this deadline. Bids which are received later will be excluded unless the deadline was missed for reasons which are outside of the bidder's control.
1.4.	<u>Period of validity:</u> By the end of 11 October 2024	The bidder shall be bound to his bid until this deadline has expired.
1.5.	<u>Period of execution:</u> Starts on 01 April 2025	See no. 17 for more details.

2. Central Email Address / Choice of Language

With the exception of the submission of the bid by the bidder, any communication with the Erdölbevorratungsverband in this tender procedure shall exclusively be made by email to the email address

ausschreibung6@ebv-oil.org

The subject line of the email shall solely contain the tender number indicated in the header of these tender documents.

The tender procedure - and, if the award is granted, also the execution of the contract - will solely be done in German. This also applies to the communication of the bidder.

3. Competent Body

The body requesting the proposal, the body granting the award as well as the body that shall receive the bids is the Erdölbevorratungsverband Körperschaft des öffentlichen Rechts, Jungfernstieg 38, 20354 Hamburg, Germany. For more information on the Erdölbevorratungsverband, please consult our website **www.ebv-oil.org**. You may find an information brochure on *About us* → *Information brochure*.

4. Type of Tender / Legal Framework

The Erdölbevorratungsverband intends to award the service/performance described in Part B of these tender documents.

This tender is a procedure pursuant to Section 26 (1) Petroleum Stockholding Act [*Erdölbevorratungsgesetz*]. In addition, the contents of the tender announcement regarding this tender on www.service.bund.de as well as these tender documents including annexes shall apply.

Below, bidder shall also include bidding consortia.

The Erdölbevorratungsverband is entitled to revoke the tender procedure in full or in part, if no bid is received which meets the requirements, if the basis for the tender procedure has significantly changed, if no economic outcome has been generated or for other serious reasons. Besides that, the Erdölbevorratungsverband is not obliged to grant the award. If the tender procedure is revoked, the Erdölbevorratungsverband will inform the bidders accordingly.

Negotiations in particular on changes to the bids or prices are inadmissible.

5. Request for Proposal / Submission of Bid

Interested bidders are hereby requested to submit a proposal on the basis of these tender documents.

Bids, which have to be duly signed, shall be submitted in writing and in a sealed envelope which cannot be opened without being damaged by mail or by courier within the bid submission deadline and free of charge for the Erdölbevorratungsverband to

Erdölbevorratungsverband
Körperschaft des öffentlichen Rechts
Jungfernstieg 38
20354 Hamburg

Germany *[only to be indicated on shipments from abroad]*

The Erdölbevorratungsverband does not have a post box accessible from the outside.

The sticker shown in Annex 1 must be attached to the front of the envelope. It is mandatory that the declaration of the bidder (Annex 2) is enclosed. Preferably, the bid should only consist of the completed and signed bid form and the annexes mentioned in the tender proposal form.

Bids submitted by fax or email will not be considered!

Additions or changes to the wording dictated by the Erdölbevorratungsverband in the tender documents and proposal documents are inadmissible. Such additions or changes will lead to the offer being excluded.

The bidder may only correct or withdraw his bid until the deadline for proposals expires. Such amendments or withdrawals of bids have to be made in writing and must be received by the Erdölbevorratungsverband free of charge and in a sealed envelope (as is the case for bids) before the deadline for proposals expires.

There will be no compensation for the preparation of a proposal.

6. Ambiguities in the Tender Documents

If the bidder is of the opinion that the documents contain unclear regulations or raise questions which could influence the preparation of the bid or the calculation of the bid price, the bidder shall inform the Erdölbevorratungsverband by email (see lit. 2) immediately in this regard, but in any event within the deadline indicated in lit. 1.1.

7. Questions regarding the Tender Procedure and respective Answers

Questions concerning the tender procedure may be addressed to the Erdölbevorratungsverband by email (see lit. 2) within the deadline mentioned in lit. 1.2.

Questions that are asked in another manner (personally, orally, by telephone, by fax, by letter etc.) will not be considered. Answers to bidder questions provided by the Erdölbevorratungsverband by other means - in particular oral answers or answers given by telephone - are not binding. Information provided from other sources is also not binding. The bidder may not rely on such answers.

All the questions and answers of the Erdölbevorratungsverband will be summarized in a pdf document *Questions regarding the tender procedure* and published as soon as possible after the expiry of the deadline stated in lit. 1.2 on www.ebv-oil.org → *Tenders* without indicating the author of the question. The Erdölbevorratungsverband may summarize questions that have the same content and give a standardized answer.

8. Confidentiality / Data Protection / Exclusion of References

These tender documents and all the information the bidder receives or gains in the course of the award procedure – and in case of the award of the contract also in the context of the execution of the contract – are to be treated as strictly confidential by the bidder, unless it is proven that the information was public and has become so without any actions of the bidder. This obligation must be passed on fully by the bidder to his potential subcontractors.

The data collected from the bidders, including the personal data, are processed and, in particular, stored by the Erdölbevorratungsverband for the purpose of conducting the award procedure and – in case of the award of the contract – the execution of the contract. By submitting an offer the bidder agrees to the above. For information on data protection for contractual partners of the Erdölbevorratungsverband (including pre-contractual actions), visit www.ebv-oil.org → *About Us* → *Privacy Policy*.

In case of the award of the contract, the bidder shall refrain at any time from announcing or publishing the fact, the subject matter and the results of the contract and its implementation in individual or public advertising leaflets, activity or business reports, company brochures, web pages or any other means be it in paper, electronic or any other form. The above also applies without restriction to the communication of information in anonymised form i.e. without express mention of the Erdölbevorratungsverband. The bidder will also refrain from naming the Erdölbevorratungsverband as a reference both expressly and in a general descriptive form.

9. Bid Price

A net fixed price in Euro/m³ per annum exclusive of statutory VAT shall be offered as the price (bid price).

10. Allocation into lots: An allocation into lots is not possible and therefore not intended.

11. Variant Solutions: Variant solutions are not permitted.

12. Bidder Consortia

Bidder consortia will be permitted. They will be treated as individual bidders in this tender procedure. Bidder consortia shall add to the proposal (contract documents pursuant to no. 17) an informal written attachment signed by all members of the bidder consortium. It must follow from the attachment which members (indication of full name or company name, legal form and address) the bidder consortium consists of and which member of the bidder consortium is authorized to act on behalf of the consortium vis-à-vis the Erdölbevorratungsverband for the execution of the tender procedure - and for the performance of the contract if the award is granted.

If the award is granted, bidder consortia will have to take on a legal form which guarantees that all its members are jointly and severally liable vis-à-vis the Erdölbevorratungsverband for the performance of the contractual duties.

13. Collateral Security

A collateral security is not intended for the awarding of the Storage and Delegation Agreements respectively.

However, for bids for an Exchange Agreement, it has to be noted that this Exchange Agreement (version: June 2017) includes the *General Conditions of Contract of the Erdölbevorratungsverband* (version: June 2017). These General Conditions of Contract, in turn, provide for the exchange partner (this is either the bidder or a third party) to provide a collateral security to the Erdölbevorratungsverband if the requirements set out in the General Conditions of Contract are met.

14. Eligibility of the Bidder

The eligibility of the bidder follows from the bidder's declaration contained in **Annex 2** to these procurement documents.

15. Award Criteria

For all offers: If the price of a bid appears to be unusually low in relation to the service provided in return, the Erdölbevorratungsverband will request respective clarification from the bidder. If, after such an investigation, the Erdölbevorratungsverband is not able to clarify the low amount of the offer price, the Erdölbevorratungsverband is entitled to refuse the bid.

The individual award criteria are as follows:

General award criteria

The award will be granted on the basis of the criteria listed below, which will be considered in the order specified, whereas the relevance of the criteria decreases in the order in which they are mentioned:

■ **Regionalisation**

■ **Economic viability of the bids**, in particular in consideration of

- ◆ Price;
- ◆ Logistics (type, restriction of existing storage and supply/delivery options, costs);
- ◆ Type of storage (commingled storage/segregated storage);
- ◆ Costs for transport, handling, preservation and other ancillary costs.

– In the decision on the award of contract delegations, those in the form of finished products will be preferred. –

■ **Emergency power supply capability of the tank terminal for retrieval purposes in the event of a failure of the general power supply:**

- ◆ Preference is given to an emergency power supply system in the tank terminal over a connection possibility for an emergency power unit to be provided externally (Note: the absence of an emergency power supply capability of the tank terminal is not an exclusion criterion).

16. Briefing of the Bidders who were not granted the Award

Upon the request of a bidder who did not succeed, the Erdölbevorratungsverband will inform such bidder within 15 days after receipt of the request on the reasons for the refusal of the bid.

B. Contract Documents

I. Specification

17. Description of Type and Extent of the Performance / Period of Performance

The bidder may offer to the Erdölbevorratungsverband storage and/or delegation contracts with the following specifications:

a) Information on the Contract Terms

The bidder may submit bids for storage and delegation contracts for crude oil, for the petroleum products premium gasoline (SOK), diesel fuel (DK), heating oil extra light (HEL), jet fuel (JET A-1) and for special petroleum components (see further below in this regard).

For information on the content of the bids please also refer to b) below.

The proposed Storage and Delegation Agreements have to be for storage facilities within the scope of the Petroleum Stockholding Act [*Erdölbevorrattungsgesetz*] (territory of the Federal Republic of Germany) or in another member state of the European Union.

Contracts on storage facilities in a member state of the European Union outside of the Federal Republic of Germany require authorization by the Federal Ministry of Economic Affairs and Climate Action of the Federal Republic of Germany and the approval of the EU member state in the territory of which the reserves are supposed to be stored. The authorization of the foreign EU member state must be obtained by the bidder immediately after the storage contract or the delegation contract respectively has been

accepted. If such authorization is not given, the storage contract or the delegation contract respectively will not become effective.

With regard to bids for storage contracts, reference is made in particular to Section 1 (3) of the framework storage agreement where the requirements for the technical standards of the depots are described.

Moreover, the storage facility which is offered including the handling facilities has to comply with the contractually guaranteed standard for the entire term of the individual storage contract. If this is not the case, e.g. due to official measures regarding the restriction of the operating license, the Erdölbevorratungsverband reserves the right to an extraordinary termination of the Individual Storage Agreement.

If a storage contract on tank storage is supposed to be offered where the stored substances of the Erdölbevorratungsverband shall also be provided in the form of mineral oil components, or if contract delegations are supposed to be offered that are also supposed to be provided in the form of mineral oil components, this shall be expressly indicated in said contract offers. In these cases, the following shall apply: Only those components are admissible that are registered in the *Monthly Oil Statistics Report [Integrierter Mineralölbericht]* as gasoline components (BK) or as middle distillate components (MK). The Erdölbevorratungsverband points out that in the case of contract delegations those in form of finished products will be preferred in the decision on the award.

Storage must be possible at least via pipeline and/or inland waterway vessel and/or tank wagon block train. Retrieval must be possible at least via tank lorry.

The tanks will be filled according to TRbF [*Technische Regeln für brennbare Flüssigkeiten*]. Storage must take place in an energy tax storage facility which is or will be authorised either in favour of the storage holder or by a third party to be designated by the storage holder. Proof of this must be provided to the Erdölbevorratungsverband on request. The Erdölbevorratungsverband shall not be available as energy tax storage facility holder.

If the bidder intends to offer tank storage in different tank terminals, a respective individual storage contract has to be handed in for **each** tank terminal including the annex *Handling Rates and Ancillary Costs - two copies each*. Likewise, a separate individual storage contract including the annex *Handling Rates and Ancillary Costs – two copies each* – must be handed in per type (SOK, DK, HEL, JET A-1, crude oil, components).

Per storage and per type of stored goods offered (SOK, DK, HEL, JET A-1, crude oil, components), the storage contracts have to comprise at least 2,000 m³.

The term to be offered for the Storage or Delegation Agreements respectively starts on 1 April 2025 and ends at the latest upon expiry of 31 March 2030. Differing from this, contracts for Jet A-1 may be offered until the end of 31 March 2035 at the longest. The term for the Storage or Delegation Agreements has to be at least 12 months and shall end upon expiry of 31 March of any respective year.

Offers for unfilled tank space may be submitted to the Erdölbevorratungsverband with a differing earlier start date.

With the submission of the bid, the bidder grants to the Erdölbevorratungsverband the right to accept the Storage or Delegation Agreements respectively at shorter term than was offered and/or with a smaller tank- or delegation volume than was offered.

b) Further information on the contents of the contract and the modalities of the bid submission

For the bids, exclusively the following contracts which are provided as electronic forms that can be completed online on the homepage of the Erdölbevorratungsverband on www.ebv-oil.org via → *Tenders - Tenders for Tank Storage and Delegations* shall be used:

- a) Framework Storage Agreement (version: June 2016);
- b) Individual Storage Agreement (version: June 2019); including annex *Handling Rates and Ancillary Costs*;
- c) Exchange Agreement (version: June 2017);
- d) Framework Delegation Agreement for mineral oils (version: June 2016);
- e) Individual Delegation Agreement for contract delegations (version: June 2016).

In addition, the *General Conditions of Contract of the Erdölbevorratungsverband* (including annexes 1 and 2; version: June 2017), which are included in the Exchange Agreement are provided on said homepage.

The contracts mentioned above must not be changed.

Calibration certificates for the tanks shall not be attached to the offer for the time being.

An Exchange Agreement (version: June 2017) has to be submitted with each Individual Storage Agreement - i.e. also in the case of commingled storage. Only offers for segregated storage without exchange partner are excluded in this regard.

If no contract has yet been concluded between the exchange partner and the Erdölbevorratungsverband for the purchase or sale including "exchange" (Tausch/Wälzung) of mineral oil, the Erdölbevorratungsverband will obtain a self-disclosure from the new contract partner in accordance with the obligations arising from internal instructions ("KYC requirements") at short notice before concluding a business relationship for the first time.

If a bid is supposed to be submitted, the contracts have to be completed fully and signed by the bidder.

Exchange Agreements have to be signed by the bidder (as the holder of the storage) and the exchange partner (this is either the bidder or a third party).

Exchange Agreements have to be submitted in three duly signed copies, all other contract documents have to be submitted in two duly signed copies.

Please make sure not to submit contracts printed on both sides or stapled contracts.

Attention! It is necessary to submit the Framework Storage Agreement (version: June 2016) or the Framework Delegation Agreement (version: June 2016), if there is not yet a Framework Storage Agreement (version: June 2016) or Framework Delegation Agreement (version: June 2016) respectively in place between the contract partner and the Erdölbevorratungsverband.

Together with the bids, the bidder has to submit the bidder declaration (Annex 2) completed and duly signed by the bidder - one copy. This declaration is downloadable on the homepage of the Erdölbevorratungsverband on www.ebv-oil.org via *Tenders* → *Tenders for Tank Storage and Delegations* as a form to be filled out.

II. Contract Conditions

18. Contract Components

The contract shall be concluded with the acceptance of the bid by the Erdölbevorratungsverband (by returning the countersigned bid to the bidder).

If the award is granted, the following regulations will become part of the contract:

1. The offered Individual Storage Agreement or Individual Delegation Agreement respectively and, if it was submitted, the Exchange Agreement for the respective Individual Storage Agreement which has been awarded respectively, including the *General Conditions of Contract of the Erdölbevorratungsverband* (version: June 2017);
2. the Framework Storage Agreement (version: June 2016) or the Framework Delegation Agreement respectively (version: June 2016);
3. these tender documents including annexes in German.

In the event of discrepancies between the aforementioned regulatory frameworks, the individual provisions of a contract shall prevail over the conflicting provisions of the respective contracts mentioned after that.

Own contract terms of the bidder – irrespective of their designation (e.g. as general terms and conditions) – are not a part of the contract. The submission of such general terms and conditions by the bidder (also on the back of commercial documents or similar) may lead to the exclusion of the bid.

Annex 1: Sticker for labelling the envelopes containing the bid



Tender!
Do not open!

Please forward immediately to
department

Logistics and Stocks

Bid for tender
No.: EBV-6-001/2024

Expiry of the deadline for bid
submission:
30.08.2024 at 12 p.m. CEST

Registered as received by the
EBV:

Date: _____

Time: _____

Responsible: _____



Annex 2: Bidder Declaration

Bidder Declaration

In the tender procedure of the Erdölbevorratungsverband
with tender number: EBV-6-001/2024

The bidder

This is a bidder consortium: yes no

Name or company name
and legal form:

Street and house no.:

Postal code and place:

Country, if applicable:

declares what follows - in the case of bidder consortia on behalf of each individual member of the bidder consortium (whereas the bidder or the individual members of the bidder consortium hereinafter are each referred to as Company):

(1) With regard to the mandatory grounds for exclusion of Section 123 of the Law against Restrictions of Competition we declare that neither a person whose conduct is to be assigned to the Company pursuant to paragraph 3 has been sentenced with legally binding effect nor that monetary fines have been determined against the Company with legally binding effect pursuant to Section 30 on the Law of Administrative Offences due to an offense pursuant to:

- a) Section 129 of the German Criminal Code (forming criminal associations), Section 129a of the German Criminal Code (forming terroristic associations) or Section 129b of the German Criminal Code (criminal and terroristic associations abroad),
- b) Section 89c of the German Criminal Code (financing of terrorism) or due to the participation in such an offense or the collection of financial means knowing that these financial means will be used or are supposed to be used, in full or in part, to commit an offense pursuant to Section 89a para 2 no. 2 of the German Criminal Code,
- c) Section 261 of the German Criminal Code (money laundering; hiding unlawfully obtained financial benefits),

- d) Section 263 of the German Criminal Code (fraud), insofar as the offense is directed against the budget of the European Union or against budgets which are administrated by the European Union or on its behalf,
- e) Section 264 of the German Criminal Code (subsidy fraud), insofar as the offense is directed against the budget of the European Union or against budgets which are administrated by the European Union or on its behalf,
- f) Section 299 of the German Criminal Code (taking bribes and bribery in commercial practice),
- g) Section 108e of the German Criminal Code (corruption and bribery of delegates),
- h) Sections 333 and 334 of the German Criminal Code (granting of undue advantages and bribery), each also in connection with Section 335a of the German Criminal Code (foreign and international officials),
- i) Article 2 section 2 of the Act on Combating International Bribery (bribery of foreign public officials in international business transactions) or
- j) Sections 232 and 233 of the German Criminal Code (human trafficking) or Section 233a of the German Criminal Code (promotion of human trafficking).

(2) In our declaration pursuant to paragraph 1, we took into consideration that a sentence or a fine that has been imposed within the meaning of paragraph 1 is equivalent to a sentence or a fine that has been imposed according to comparable regulations of other countries.

(3) In our declaration pursuant to paragraphs 1 and 2, we have taken into consideration the following: the conduct of a person who was convicted by a final judgment is attributable to a company if this person has acted as a person responsible for the management of the company, which also includes the supervision of the management or the conduct of other supervisory powers in an executive position.

(4) We further declare: It is not correct that the Company has not met its obligations to pay taxes, duties or social security contributions and that this was found by a legally binding court judgment or a final administrative decision. Otherwise, however, the Company has met its aforementioned obligations by making the payment or by committing to pay the taxes, duties and social security contributions including interest, default interest and penal surcharges.

(5) With regard to the facultative grounds for exclusion of Section 124 of the Law against Restriction of Competition, we declare:

- a) In the execution of public assignments, the company has not acted in breach of applicable environmental or social obligations or obligations under employment law.
- b) The Company is not insolvent. No insolvency proceedings or comparable proceedings over the assets of the Company have been requested for or opened; the opening of such a proceeding has not been refused for lack of assets. The Company is not in liquidation and has not discontinued its operations.
- c) In the context of its business activities, the Company has not been found guilty of gross misconduct which would put the Company's integrity into questions, whereas the conduct of a person who was convicted by a final judgment is attributable to a company if this person has acted as a person responsible for the management of the company, which also includes the supervision of the management or the conduct of other supervisory powers in an executive position.
- d) The Company has not entered into any agreements with other companies that aim at or cause a hindrance, restriction or distortion of competition.
- e) There is no conflict of interest regarding the execution of the tender procedure which could impair the impartiality and independence of a person working for the Erdölbevorratungsverband in the execution of the tender procedure.
- f) The fact that the Company was already involved in the preparation of the tender procedure does not result in distortion of competition.

- g) The Company has not, substantially or continuously, inadequately met a crucial requirement in the execution of a previous public contract or concession contract with the consequence that this led to a premature termination, damages or a comparable consequence in law.
- h) With regard to grounds for exclusion or eligibility criteria, the Company has not committed gross deceit or withheld information and is in a position to provide the required evidence in this regard.
- i) The Company has not attempted to influence the decision-making process of the Erdölbevorratungsverband in an unlawful manner. The Company has not attempted to obtain confidential information with which it could benefit from inadmissible advantages in the tender procedure. The Company has not negligently or intentionally provided misleading information which could substantially influence the Erdölbevorratungsverband's decision on granting the award. The Company has not attempted either to provide such information.

We undertake to inform the Erdölbevorratungsverband immediately of changes arising during the term of the storage or delegation contracts respectively with regard to the declarations provided in paragraphs 1 to 5 above in writing pursuant to Section 126 German Civil Code.

We are aware that the tender documents/request for proposal of the above-mentioned tender procedure including all annexes also form the basis of our bid.

_____, _____
(place) (date)

(personal signature(s))

Repetition of names:

First name/Surname: _____

First name/Surname: _____