Tender number COVA 2024/1: Summary of Additional Information and Changes

Regarding COVA framework agreements for (i) purchase of crude oil and oil products en (ii) CSO-tickets

Date: 23 February 2024

Ref.:	Regarding:	Question:	Answer:
1.	Tender Guidelines, paragraph 2.1	Since we have already filled the ESPD document together with the Extract from the Commercial Register back in October (copies attached), I am wondering which other documents we are missing, could you please check and advise so I can arrange the necessary, thanks.	The documents that a tenderer needs to send (no later than 18 March 2024) by e-mail to cova-tender@cova.nl, in order to construct a valid tender are the following: - The ESPD, filled in by the Tenderer; - The signed Framework Agreement(s); and - extract of the Commercial Register and, in case this authorisation of representation does not show from the afore-mentioned extract, a power of attorney that shows that the signatory is authorised to submit a tender on behalf of the person(s) that are authorised to legally represent the Tenderer according to the extract of the Commercial Register. Regarding the ESPD, we note that it is of utmost important that the ESPD that is specifically added to the tender documents filled in by the Tenderer and send to COVA. This specific ESPD can be found as an attachment to the Tender Guidelines (in order to find this attachment, the Tender Guidelines need to be opened using Adobe Acrobat). Regarding the Framework Agreement(s), we note that every tenderer can opt to send either one or both of the Framework Agreements to COVA. If only one Framework Agreement is sent to COVA, the tenderer has only

			submitted a tender for that specific Framework Agreement. Regarding the extract of the Commercial Register, we note that the attached extract of the Commercial Register cannot be older than six (6) months.
2.	Tender Guidelines, paragraph 2.3	[Our] registered office is situated outside the EU . Please advise what proof is required to demonstrate that the Tenderer fulfills the Tender criteria upon award.	The certificate of good conduct for procurements and/or the statement from the tax authorities stating that the Tenderer fulfilled its tax duties is not available in all countries, especially outside of the EER. Where a country in question does not issue such documents or certificates, or where these do not cover (i) all the exclusion grounds related to criminal convictions specified in article 57(1) of Directive 2014/24/EU (we also refer to Part III A of the ESPD for these exclusion grounds) and/or (ii) the grounds relating to payment of taxes or social security contributions as meant in article 57 (2) of Directive 2014/24/EU (we also refer to Part III B of the ESPD for these grounds), the documents may be replaced by a declaration on oath or, in a country where there is no provision for declarations on oath, by a solemn declaration made by the person concerned before a competent judicial or administrative authority, a notary or a competent professional or trade body, in the country of origin or in the country where the Tenderer is established. Below, we have included an example of the wording that can be used for such a declaration. ***** *"I,[NAME(S) OF AUTHORIZED REPRESENTATIVES(S)], authorized representative of [NAME*

			TENDERER], hereinafter "the Company" hereby declares: *A) that (i) the Company itself nor (ii) any person who is a member of its administrative, management or supervisory body or has powers of representation, decision or control therein has been the subject of a conviction by final judgment for one of the reasons listed below:* *1. Participation in a criminal organisation* *2. Corruption* *3. Fraud* *4. Terrorist offences or offences linked to terrorist activities* *5. Money laundering or terrorist financing* *6. Child labour and other forms of trafficking in human beings* *by a conviction rendered at the most five years ago or in which an exclusion period set out directly in the conviction continues to be applicable.* *B) that the Company met all its obligations relating to the payment of taxes or social security contributions, both in the country in which it is established and in the Netherlands.* **** Please note that such declaration can only be used of in the event that an equivalent of the certificate of good conduct for procurements and/or the statement from the tax authorities stating that the Tenderer fulfilled its tax duties is not available in country where the Tenderer is established.

3.	ESPD	Why is the emblem of the Dutch Ministry of Economic Affairs and Climate placed on the ESPD?	The emblem of the Dutch Ministry of Economic Affairs and Climate is placed on the ESPD, as the ESPD format that is used for this tender is issued by the Dutch Ministry of Economic Affairs and Climate. The ESPD format has been made available to all Dutch contracting authorities.
4.	CSO / Purchase Framework/ Tender Guidelines, paragraph 2.3	please clarify if 'tax duties' mentioned in the Framework are pertaining to direct or indirect taxes.	In the Framework Agreements (The CSO Framework, as well as the Purchase Framework) there is no mention of the term "tax duties". If the question relates to paragraph 2.3 of the Tender Guidelines, please note that with the term "tax duties" is meant all taxes (direct and indirect) and social security contribution.
5.	GTC - General	Which GTCs apply to the sale / purchase of tickets?	The GTC Sale apply to the sale of CSO Tickets by COVA. The GTC Purchase apply to the purchase of CSO Tickets by COVA.
6.	GTC Purchase, clause 5.2 (7)	Please define a "proper notice of default". Please also explain the legal interest rate set out in the Dutch Civil Code.	Whether or not a notice of default is proper shall always be depending on the specific circumstances of a certain case. In general, a notice of default – which must be in writing – shall at least contain: - A clear description of the default; - The consequences when the default is not restored; and - A reasonable term for restoring the default. Regarding the statutory interest rate set out in the Dutch Civil Code (article 6:119a of the Dutch Civil Code): the Dutch Civil Code stipulates that, unless agreed otherwise, a set interest percentage is owed in case a payment is not made timely. This statutory interest

			rate is set by the Dutch government and can change from time to time. The current set interest rate for commercial transactions is 12.5%.
7.	GTC Purchase, clause 6.1	Clause 6.1 - The clause places responsibility on the Seller for the transportation process and associated risks. Question: to ensure mutual understanding, could we include a clarification in writing regarding the scope of this clause? Specifically: - Does this clause apply only before the risk and title transfer to COVA? - Is the Seller's responsibility limited to activities before the COVA contract delivery point? - Does this clause remain in effect after the risk and title have passed to COVA? Additional to this we request the below is added: The Seller's responsibility outlined in this clause 6.1 applies exclusively to activities occurring before the risk and title transfer to COVA. Once the risk and title have passed to the COVA, the Seller's liability under this clause ceases.	COVA emphasizes that this clause is applicable to the transportation process (and its associated risks) for the transportation of the Product to COVA. This clause does not apply to any transportation of the Product by COVA, after the Product has been brought into the possession of COVA. The transfer of title and risk is laid down in clause 3, which is logically after the moment of the transportation of the Product to the Storage Facility/in Tank/ITT. For the sake of clarity, this clause does not apply to any transportation of the goods by COVA *after* the Product has been brought into the possession of COVA (at the Storage Facility/in Tank/ITT). Any risk related to the (transportation of the) Product before the Product is brought into the possession of COVA, is allocated at the seller. Therefore: - This clause applies until the moment the Product has been brought into the possession of COVA (see clause 3); - Unless otherwise agreed Seller is not responsible for risks relating to the transportation of the Product after the Product has been brought into the possession of COVA. - This clause shall remain in effect even after the Product has been brought into the possession of COVA. COVA will not amend its GTC's. According to COVA clause 3 and 6 are sufficiently clear.

8.	GTC Purchase, clause 11.2	A party's right to rely on a trade controls clause should be absolute. What would happen if the Affected Party notified the other party of an inability to perform more than 7 days after publication of the relevant rule.	If a party would notify the other party later than 7 days after the publication of the relevant rule, this constructs a breach of contract. If that other party is subject to damages as a consequence of this breach of contract, that party shall be entitled to reimbursement of those damages. The entitlement to claim damages comes in addition to the remedies provided in clause 11.4.
9.	GTC Purchase, clause 13	The Force Majeure definition is not the market standard definition seen under international general terms and conditions. Has this been taken from the Dutch civil code?	For the purpose of this agreement "Force Majeure" shall be regulated in accordance with the Dutch Civil Code. Although the definition of Force Majeure in the GTC Purchase does not follow from the Dutch Civil Code literally, the definition is based on article 6:75 of the Dutch Civil Code that reads: *a shortcoming cannot be attributed to the debtor if it is not due to his fault, nor for his account under the law, legal act or generally accepted practice.*
	GTC Purchase, clause 14	Please explain the meaning of "every effort.. to act to the best of it's ability in COVA best interests". Is this a requirement of the Dutch Stockpiling Act?	COVA must perform in line with the Dutch Stockpiling Act. This Act aims to establish an oil crisis stock system that implements international obligations and strikes a good balance between the level of security of supply and the associated costs for the Netherlands. Clause 14 includes the obligation for Seller to perform in line with the Dutch Stockpiling Act and in the best interest of COVA in case of an oil crisis. For example, Seller must make every effort (and act to the best of its ability) that the stocks purchased by COVA are actually available in case of an oil crisis despite of the market tensions.
10.	GTC Sale, clause 4.1 (3)	Please can you clarify the meaning of "government-imposed measures"	The government-imposed measures referred to in this context are measures such as (but not limited to) taxes and excise duties.

11.	CSO-ticket Purchase Contract Specimen, clause 2.4	Clause 2.4 refers to specs in Annex III, though in the specimen there are no specs attached. Question: can we infer that specs will be added when the actual tender is requested?	This is correct, specifications will be added when the Purchase-tender is issued.
12.	CSO-ticket Purchase Contract Specimen, clause 2.5	Clause 2.5 states that ''delivery will be made to truck, rail, barge or vessel as appropriate for the location in their option''. There are no specific rights for us to object to a nominated vessel/barge. Question: can we interpret that the word 'appropriate' means that we have the right to reject a vessel that does not meet our company policy?	No, this means that COVA shall indicate in the Purchase-tender which means of transport is deemed appropriate by COVA. Tenderers in the Purchase-tender will need to comply with the means of transport that is deemed appropriate for that Purchase-tender by COVA.
13.	CSO-ticket Purchase Contract Specimen, clause 2.8	Clause 2.8 states that delivery will be on an CIF basis. However, the purchase GTCs are based on DAT delivery and place the obligations in respect of transportation on Seller and specify where measurement will take place at the discharge terminal and where risk and title pass. There are no equivalent provisions in the CSO- ticket contract specimen. Question: assuming COVA won't accept our own GTCs can we suggest that the GTCs are to be logically amended and that there is a specific statement to highlight that the nominated means of transport be acceptable to Seller (with such acceptance not to be unreasonably withheld).	Clause 2.8 is amended as follows: *Delivery of the requested quantity of the Productkeuze shall take place in [country] DAT at the location specified in clause 1.3 of this CSO-Ticket Purchase Contract.*
14.	CSO-ticket Purchase Contract Specimen, clause 3.3	Clause 3.3 – additional to this we request the below is added: To the above price the Parties shall mutually agree a Premium / Discount in USD per MT. In the event that the Parties have failed to reach agreement within 3 working days of the Delivery Notice, each Party shall appoint an independent broker to assess the applicable premium/discount on the basis of the prevailing market rate for the quantity and quality to be supplied.	COVA shall not amend this clause.

		The applicable premium/discount shall be the arithmetic average of the broker assessments.	