

NOTICE for participation  
in a direct negotiation  
procedure for

*Selection of an advisor for provision of legal services related to the development and implementation of the Project for Gas Interconnector Greece-Bulgaria in accordance with the final investment decision.*

ICGB AD

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**TO**

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United Kingdom

**TO**

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3 Noble Street TO  
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**TO**

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**TO**

Allen & Overy LLP  
One Bishops Square  
London, E1 6AD, United Kingdom

DEAR LADIES AND GENTLEMEN,

Hereby ICGB AD has the pleasure to invite you to participate in a direct negotiation procedure for ***Selection of an advisor for provision of legal services related to the development and implementation of the Project for Gas Interconnector Greece-Bulgaria in accordance with the final investment decision***

The direct negotiation procedure has been opened based on decision № P-01/09.12.2016, pursuant to art. 182, par. 1, item 5 of the Public Procurement Act, promulg. SG, issue. 13 of 16.02.2016, effective as of 15.04.2016 (PPA).

A contracting entity of this direct negotiation procedure for the selection of a contractor of a public procurement awarded pursuant to the procedure of Chapter twenty-five, Section III of the Public Procurement Act pursuant to art. 5, par. 4, item 1 of PPA are the representatives of ICGB AD .

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Contents

- I. SUBJECT-MATTER OF THE PROCUREMENT. ESTIMATED VALUE:..... 5
  - 1. Subject-matter:..... 5
  - 2. Scope of the procurement: ..... 5
  - 3. Estimated value: ..... 5
  - 4. Validity of the Expression of Interest ..... 5
- II. INFORMATION ON THE PROJECT: ..... 5
- III. REQUIREMENTS TO APPLICANTS ..... 6
  - 1. General requirements ..... 6
  - 2. Selection criteria..... 11
    - 2.1. Economic and financial status requirements ..... 11
    - 2.2. Technical and professional expertise requirements ..... 11
- IV. CONTRACTING ENTITY REQUIREMENTS FOR IMPLEMENTATION OF THE PROCUREMENT.  
TECHNICAL SPECIFICATION ..... 13
  - 1. Scope of the activities ..... 13
  - 2. Scope of Work ..... 13
    - 2.1. Activity 1 ..... 14
    - 2.2. Activity 2 ..... 14
    - 2.3. Activity 3 ..... 15
    - 2.4. Activity 4 ..... 15
    - 2.5 Activity 5 ..... 16
    - 2.6 Additional Services ..... 16
  - 3. Requirements to the Technical and price offer ..... 16**
  - 4. Term for implementation of the public procurement: ..... 17
- V. AWARD CRITERIA AND INTEGRATED ASSESSMENT PARAMETERS ..... 17
- VI. TERMS FOR CONDUCTING THE PROCEDURE ..... 17
  - 1. Place and date for holding negotiations ..... 17
  - 2. Term and procedure for submitting offers: ..... 17
  - 3. Clarifications on the notice and the application documentation..... 18
  - 4. Contents of the PACKAGING/ complete application:..... 19
  - 5. Actions post reception of the applications..... 19

Appendices .....	22
Appendix №1 – Methodology for setting the integrated assessment.....	22
Appendix №2 – Application template.....	22
Appendix №3 – European Single Procurement Document (ESPD) .....	22
Appendix №4 – Confidentiality declaration under art. 102 PPA .....	22
Appendix №5 – Technical offer template; .....	22
Appendix №6 – Price offer template; .....	22
Appendix №7 – Declaration for non-existence of relations with another applicant in the procedure..	22
Appendix №8– Declaration for the draft contract;.....	22
Appendix №9 – Draft contract .....	22

## I. SUBJECT-MATTER OF THE PROCUREMENT. ESTIMATED VALUE:

### 1. Subject-matter:

Selection of an advisor for provision of legal services related to the development and implementation of the IGB Project in accordance with the final investment decision

### 2. Scope of the procurement:

"Service" in the sense of art. 3, par. 1, item 3 of the Public Procurement Act included in the scope of Appendix № 2 to art. 11, par. 3 of PPA.

### 3. Estimated value:

**BGN 450 000 VAT excluded**

Offers must not exceed in no case the threshold applicable for this particular procedure as stipulated in art. 182, para 1, item 5 in conjunction with art. 20, para 2, item 2 of the Public Procurement Act.

### 4. Validity of the Expression of Interest

The invited Candidates shall be bound by their Expression of Interest Applications for a period of 6/six/ months as of the deadline for submission of applications for participation in the direct negotiation procedure.

## II. INFORMATION ON THE PROJECT:

The IGB Project, developed by ICGB AD (50% Bulgarian Energy Holding EAD and 50% IGI Poseidon SA, IGI Poseidon is controlled on an equal basis by DEPA SA of Greece and EDISON International) includes the engineering, financing, construction and operation on a long term basis of the natural gas Interconnector onshore pipeline between Greece and Bulgaria. It will interconnect the natural gas transmission systems of DESFA and TAP, both in Greece, with the one of BULGARTRANGAZ in Bulgaria. To this extent the IGB Project will connect the Southern corridor with the C-SEE gas markets and allow the supply of gas from multi sources (i.e. Caspian, Middle East, East Med and North Africa regions) through the existing and future interconnection of the Turkish, Greek and Italian gas networks and relevant LNG systems. Territorially the pipeline will start from the Municipality of Komotini in Greece where it will be linked to DESFA and TAP natural gas systems and will end in the Municipality of Stara Zagora in Bulgaria where it will be linked with the BULGARTRANGAZ system.

The IGB Project consists of two phases: the construction of the 32", 180 km pipeline between Komotini (northern Greece) and Stara Zagora (central Bulgaria) with a commercial operation date approximately established by the 2H2019;

- the possible add on of a compression station in Bulgaria with a commercial operation date approximately established four years later and subject to market response.;

The first phase of the IGB Project comprises:

- A fiscal metering and pressure control station next to the 36” DESFA pipeline in Komotini, Greece,
- A fiscal metering and pressure control station to be designed next to the 48” TAP pipeline in Komotini, Greece.
- A receiving fiscal metering and pressure control station next to the 28” BULGARTRANGAZ pipeline in Stara Zagora, Bulgaria;
- A 32”, 180 km buried onshore pipeline including associated facilities;
- Associated SCADA and Telecommunication systems.

The IGB Project is now in the preparatory phase for starting the construction activities and it is completing the acquisition of the land rights for construction permits in Bulgaria and is following up the procedure for obtaining the construction permits in Greece. Among the other activities, the ICGB have recently launched the market test for completing the exemption procedure under the art. 36 of the 73/2009/EC gas Directive as endorsed by the Bulgarian and Greek regulatory frameworks.

The following activities, relevant to the scope of works of this request, either have been launched and are going to be launched:

- Procurement for construction purposes set up
- Market test – Gas Transportation Agreement set up
- Interconnection Agreements ICGB-DESFA / ICGB-BULGARTRANGAZ / ICGB-TAP set up
- Intergovernmental Agreement between Bulgaria and Greece set up

### III. REQUIREMENTS TO APPLICANTS

#### 1. General requirements

**1.1.** Any Bulgarian or foreign person that complies with art. 10, par. 1 of the Public Procurement Act and to which this notice has been addressed may submit an application in the procedure for public procurement award.

**1.2.** The grounds for exclusion pursuant to art. 54, par. 1, item 1, item 2, item 3, item 4, item 5, item 6 and 7 of PPA should not apply to applicants, i.e. an applicant to which at least one of the following circumstances applies may not participate in the procedure for public procurement award and shall be excluded:

- 1.2.1 Has been sentenced effectively, except if rehabilitated, for an offence pursuant to art.108a, art.159a-159d, art.172, art.192a, art.194-217, art.219-252, art.253-260, art.301 -307, art.321, 321a and art.352 -353 of the Penal Code;
- 1.2.2 Has been sentenced effectively, except if rehabilitated, for an offence analogical to these under item 1.2.1 in another member state or a third state;
- 1.2.3 Has liabilities to the state or to the municipality where the seat of the contracting entity and the applicant is located for taxes and mandatory social security contributions in the sense of art. 162, par. 2, par. 1 of the Tax-Insurance Procedural Code and interest on them or analogical payables established via a competent authority document in accordance with the legislation of the state where the applicant is based, except if rescheduling, deferment or providing security for the payables has been arranged or the payable is pursuant to a document that has not taken effect.  
**Note:** The requirement under the previous item does not apply in the case under art. 54, par. 3 of PPA, i.e. when: especially important state or public interests have to be defended; the amount of unpaid taxes and social security contributions due does not exceed 1 per cent of the total amount of the turnover for the latest financial year .
- 1.2.4 There is inequality in the cases under art. 44, par. 5 PPA

**1.3.** An applicant may not participate in the procedure for public procurement award and shall be excluded, if it has been established that:

- 1.3.1 a document has been submitted with false content related to certifying the non-existence of grounds for exclusion or compliance with the selection criteria;
- 1.3.2 required information has not been submitted related to certifying the non-existence of grounds for exclusion or compliance with the selection criteria ;
- 1.3.3 it has been established via an effective penal order or a court ruling that in the course of performing a public procurement contract art. 118, art. 128, art. 254 and art. 301- 305 of the Labour Code have been breached or similar obligations established via a document by a competent authority pursuant to the legislation of the state where the applicant is based;
- 1.3.4 There is a conflict of interest which may not be terminated;

Pursuant to §2, item 21 of PPA Supplementary provisions /SP/ there is „Conflict of interests “ *where the contracting entity, his employees or hired persons outside his structure, who participate in the preparation or awarding the public procurement or may influence the result of it, have interest, which may lead to benefit in the meaning of Art. 2, Para. 3 of the Act on Prevention and Finding Conflict of Interests and for which could be accepted that influences their impartiality and independence in relation to awarding the public procurement*

**1.4.** Applicants that are companies registered in jurisdictions with a preferential tax regime and persons related to them through a civil partnership/consortium also in which there is a company registered in a jurisdiction with a preferential tax regime may not participate in this public procurement award procedure. The non-existence of these circumstances shall be certified by filling in Part III, letter D of ESPD.

**1.5.** An applicant whose real owner is a person that is or has been over the past twelve months at a high state position in the Republic of Bulgaria or in another country or a related person in the sense of art. 8a



of the Rules for implementation of the Measures against money laundering act may not participate in the procedure. The non-existence of these circumstances shall be certified by filling in Part III, letter D of ESPD.

**1.6.** Ground for excluding under art. 54, par. 1, item 1, item 2, item 3, item 4, item 5, item 6 and item 7 of PPA ( items 1.2.1-1.2.4 and item 1.3.1-1.3.4 of this section) shall be applied when they have arisen before or in the course of the procedure.

**1.7.** Grounds for exclusion shall be applied until the following periods expire:

- Five years after the sentence under art. 54, par. 1, item 1 and 2 PPA ( item 1.2.1 and 1.2.2 of this section) has taken effect, except if the sentence indicates a different term;
- Three years after the circumstances under art. 54, par. 1, item 5, letter „a” and item 6 PPA have occurred (item 1.3.1 и 1.3.2 of this section respectively), except if another term has been indicated in the document certifying the circumstance.

**1.8** A branch of a foreign entity can be an individual applicant in a public procurement if they can submit offers individually and conclude contracts in accordance with the legislation of the state in which it is established.

**1.9.** Related persons may not be individual applicants in one and the same procedure. Related persons are:

- a) persons one of which controls the other or its subsidiary;
- b) persons whose activity is controlled by a third person;
- c) persons who jointly control a third person;
- d) spouses, relatives in the direct line without limitation and in the collateral line up to fourth degree inclusive, and relatives by affinity up to the fourth degree inclusive.

"Control" shall be in effect where a person:

- a) holds including through a daughter company or under an agreement with another person more than 50 percent of the votes at the general meeting of a company or another legal entity; or
- b) may appoint, directly or indirectly, more than half of the members of the governing or the supervisory body of a legal entity; or
- c) may otherwise exercise a decisive influence on the decision-making in relation to the business of a legal entity.

**1.10.** Where for the applicant one of the grounds for exclusion under art. 54, par. 1, item 1, item 2, item 3, item 4, item 5, item 6 and item 7 (items- 1.2.1-1.2.4 and item 1.3.1-1.3.4 of this section respectively) applies, it has the right to submit evidence that it has undertaken measures which guarantee its reliability despite the existence of the respective grounds for exclusion. To this end the applicant may prove that:

- It has cleared its payables under art. 54, par. 1, item 3 ( item 1.2.3 of this section respectively ), including interest and/or fines accrued or that they have been rescheduled,deferred or secured;
- It has paid or is in the process of paying a compensation due for all damages arising as a result of the offence or breach committed by it;
- It has exhaustively clarified the facts and circumstances by actively having assisted competent authorities and having performed specific instructions, technical, organizational and personnel measures for preventing new offences or breaches.

Where by force of an effective sentence or another document pursuant to the legislation of the state in which the sentence has been pronounced or the document has been issued, it has been deprived of the right to participate in public procurement or concessions procedures the applicant may not be able to make use of the measure for certifying reliability provided for in art. 56, par. 1 PPA (item 1.10 of this section respectively) for the period set in the sentence or the document.

**Where the applicant has undertaken reliability measures, the latter shall be described in ESPD and the following documents shall be attached:** 1. As regards the circumstances under item 54, par. 1, item 1 and item 2 PPA (item 1.2.1 and 1.2.2 of this section respectively) – a document for payment made or an agreement or another document which makes it clear that the payables have been secured or that the parties have arranged for them to be deferred or rescheduled along with a payment schedule and/or dates for final payment of payables due or that the applicant is in the process of paying the compensation due; 2. And as regards the circumstances under art. 54, par. 1, item 3 PPA ( item 1.2.3 of this section respectively) – a document from the respective competent authority confirming the circumstances described.

**1.11.** When submitting the offer the applicant declares the non-existence of the grounds for exclusion by submitting an European Single Procurement Document (ESPD) – Part III Exclusion criteria

ESPD provides the respective information required by the contracting entity and indicates the national databases which contain the circumstances declared or competent authorities, which pursuant to the legislation of the state where the applicant is established, are obliged to submit information .

**1.12.** When the grounds pursuant to art. 54, par. 1, item 1, item 2 and item 7 PPA refer to more than one person, all persons sign one and the same ESPD.

If protection of personal data is required or in case of a difference in the circumstances related to personal status, the information is entered into a separate ESPD for each of the persons or for some of the persons.

**1.13.** The grounds under art. 54, par. 1, item 1, 2,5 and 7 PPA (item 1.2.1, 1.2.2, 1.3.1 and 1.3.4 of this section respectively) refer to the persons that represent the applicant, members of management and supervisory bodies or other persons that have the power to exercise control when decisions are taken by these authorities. These are:

- persons who represent the applicant;
- persons who are members of management and supervisory bodies of the applicant;

- Other persons with a status that allows them to affect directly the activity of the undertaking in a way equivalent to the one valid for the persons representing it, members of the management and supervisory bodies.

As per the organizational structure of the applicant these persons are:

a) in case of a general partnership- persons under art. 84, par. 1 and art. 89, par. 1 of the Commerce Act;

b) in case of a limited partnership – general partners under art. 105 of the Commerce Act,

c) in case of a limited liability partnership- persons under art. 141, par. 1 and par. 2 of the Commerce Act and in case of a single person limited liability company – the persons under art. 147, par. 1 of the Commerce Act;

d) in case of a shareholding company- persons under art. 241, par. 1, art. 242, par. 1, art. 244, par. 1 of the Commerce Act;

e) in case of a partnership limited by shares – the persons under art. 256 with regard to art. 244, par. 1 of the Commerce Act;

f) in case of a sole trader- for the natural person- trader;

g) in case of a branch of a non-resident ,the person that manages and represents the branch or has similar rights pursuant to the legislation of the state where the branch is registered;

h) in the cases of a-h- procurators where there are such.

When the person has more than one procurator, the declaration is filed only by the procurators whose representative power includes the territory of the Republic of Bulgaria.

i) in all other cases , non-residents included- for persons that represent , manage and control the applicant pursuant to the legislation of the state where they are established.

***Documents required by the Contracting entity to certify the non-existence of the circumstances under art. 54, par. 1 PPA***

In order to certify the non-existence of grounds for exclusion **before a contract is signed, the entity selected for contractor** shall submit:

1. for the circumstances under art. 54, par. 1, item 1 PPA- a conviction status certificate;
2. for the circumstances under art. 54, par. 1, item 3 PPA- a certificate from revenue authorities and a certificate from the municipality where the seat of the contracting entity and the applicant is;
3. for the circumstances under art. 54, par. 1, item 6 PPA- a certificate from General Labour Inspectorate Executive Agency;

When the certificate under art. 54, par. 1, item 3 PPA contains information for an effective penal order or a court judgment for a violation under art. 54, par. 1, item 6 PPA, the applicant submits a declaration that the violation has not been committed when performing a public procurement contract.

When the applicant nominated for a contractor is a non-resident, they submit the respective document issued by a competent authority pursuant to the legislation of the state where the applicant is based. When the respective state does not issue documents for the said circumstances or where the documents do not include all circumstances, the applicant shall submit a declaration if such a declaration has legal relevance pursuant to the legislation of the respective state. Where the declaration has no legal relevance, the applicant submits a formal request made to a competent authority in the respective state.

The contracting entity shall not require documents to be submitted evidencing the non-existence of grounds for exclusion when the circumstances in them are accessible through a public free-of-charge register or the information or access to it is provided by the competent authority to the contracting entity officially.

## 2. Selection criteria

### 2.1. Economic and financial status requirements

The contracting entity has provided for the following economic and financial status requirements (pursuant to art. 61, par. 1, item. 2 PPA):

The applicant is required to have a valid Professional liability insurance pursuant to art. 50 of the Bar Act or equivalent in accordance with legislation of the state where it is established.

**Proof:** In order to prove compliance with this criterion, the applicant shall fill in field 5 of Section B: Economic and Financial Standing in Section IV: Selection criteria of ESPD. At the stage of Contract pre-signing, compliance with the requirement set shall be evidenced with a copy of a Professional liability insurance. When submitting the bid, the applicant shall only fill in the respective ESPD section.

### 2.2. Technical and professional expertise requirements

The contracting entity has provided for the following technical and professional expertise requirements:

**2.2.1.** Over the past three years as of the date of the application, the applicant must have performed activities with subject-matter and scope equivalent to or similar to the ones in the procurement, namely:

- Experience for executing of at least one consultancy service in the field of energy law and in particular including drafting of gas transportation agreement and interconnection agreement as well as at least one service performed for drafting, revision or other type of consulting of intergovernmental agreement or host government agreement or project development agreement for a transboundary project for realization of gas infrastructure.
- Experience drafting and consulting clients in the field of drafting and implementing an EPC contract under FIDIC practice and subject to English substantial law – at least two services with identical or similar scope.

**Evidence:** in order to prove compliance with the said criterion the applicant fills in field 1b of Section C: technical and professional ability in Part IV: Selection criteria of ESPD. The requirement set is evidenced with documents under art. 64, par. 1, item 2 PPA- a list of the services which are identical or similar to subject-matter of the public procurement by indicating the amounts, dates and recipients as well as proof of services provided which the applicant nominated for contractor submits before a public procurement contract is concluded. When submitting an offer applicants fill in only the respective ESPD section.

**2.2.2.** The applicant shall have at least the following team of experts which will be in charge of implementation of the public procurement:

**Team leader**

*Qualifications and skills:*

- Higher education with at least a master's degree in law in accordance with the Classifier of the areas of higher education and the professional fields ratified with Decree № 125 of the Council of Ministers of 24.06.2002 for ratification of a classifier of the areas of higher education and the professional fields (referred to as Decree № 125/ 24.06.2002) or equivalent;

*Specific professional experience*

- To have at least 5 years experience in the energy sector or application of the European legal framework in the energy sector or national legislation in any of the member states in the energy sector.

**Law experts – minimum 3**

*Qualifications and skills:*

- Higher education with at least a master's degree in law in accordance with the Classifier of the areas of higher education and the professional fields ratified with Decree № 125 of the Council of Ministers of 24.06.2002 for ratification of a classifier of the areas of higher education and the professional fields (referred to as Decree № 125/ 24.06.2002) or equivalent;

*Specific professional experience*

- To have at least 4 years experience in the energy sector or application of the European legal framework in the energy sector or national legislation in any of the member states in the energy sector.

In order to prove compliance with the respective criterion, the applicant fills in ESPD.

*\*in case of participation of subcontractors the latter have to meet the selection criteria in accordance with the type and share of the procurement which they are to perform and no grounds for exclusion from the procedure should apply to them.*

*\*if the applicant refers to the expertise of third parties, the latter should meet the respective selection criteria, in order to prove them, the applicant refers to their expertise and no grounds for exclusions should apply for them.*

*\*applicants that do not have all required certificates and documents shall not be admitted to further examination of the offers.*

*\*the contracting entity may require from applicants at any time to submit all or part of the documents evidencing the information in ESPD when this is required for conducting the procedure in accordance with the procedure compliant with law.*

*\*the contracting entity may not accept the evidence submitted for technical and professional expertise when it comes from a person who has an interest that may lead to benefit in the sense of art. 2, par. 3 of the Conflict of Interest Prevention and Ascertainment Act.*

Before a public procurement contract is concluded, the contracting entity requires from the applicant nominated for contractor to provide up-to-date documents certifying the non-existence of the grounds for exclusion from the procedure as well as compliance with the selection criteria set. The documents are submitted for subcontractors and third parties if there are such.

#### IV. CONTRACTING ENTITY REQUIREMENTS FOR IMPLEMENTATION OF THE PROCUREMENT. TECHNICAL SPECIFICATION

##### 1. Scope of the activities

The Contractor shall become acquainted with the status of and the framework upon which the IGB Project is developed by ICGB AD (the “Company” or “ICGB”) in all material respects. In particular, among the activities launched and on-going, the IGB Market Test, the procurement, the fiscal and interconnection issues are of paramount importance. In coordination with the Company and its advisory team, the Contractor shall provide ICGB with the legal services outlined under the Scope of Work.

The participation of the Contractor in a kick-off meeting to take place in Sofia shall be considered as included in the prices quoted. Each activity will have its own lump sum price.

The Contractor shall participate in meetings and/or calls upon ICGB demand for the purpose of this Contract.

Meetings may occur in Athens, Milan, Brussels and Sofia. The latter is the most probable destination as the legal address and headquarter of ICGB.

##### 2. Scope of Work

The scope of work comprises the performance of legal activities and services (the “Activities”) set forth below. The Company shall have the option to require the Contractor, at its own discretion, the performance of one or more of the Activities .

## 2.1. Activity 1

Legal review of the preliminary IGB Project Risk Matrix (“Risk Matrix”) prepared by the Company and relevant finalization to include the related mitigation strategy/measures that will allow reducing the overall risk to be borne by the Company and its Shareholders to be born during procurement, construction and operation of the pipeline.

### Time Schedule of Activity 1

The Risk Matrix shall be finalised by the Contractor together with ICGB and its other advisors (as required) within 7 days from the relevant notification by ICGB to perform such activity and delivery of the cited materials.

**The finalized Risk Matrix will be subject to ICGB approval for allowing the relevant payment on a lump sum basis.**

## 2.2. Activity 2

Drafting first quality agreements based on instructions and materials (where applicable) by ICGB:

- i. For Line Pipe Supply
- ii. For EPIC (Engineering Procurement Installation and Commissioning)

Relevant to the procurement and construction phase of the IGB Project

The contracts above shall be assessed in complementary basis for what the scope of works is concerned, in accordance with the Risk Matrix and contracting strategy expressed thereof, they shall assure the full implementation of the IGB project from procurement up to the end of commissioning and in accordance with the technical documentation provided by ICGB on purpose as necessary. In addition a “notice to proceed” clause shall be embodied in order to allow ICGB (i) to freeze prices and commitments by suppliers upon execution of the contracts; and (ii) to make the contracts effective upon delivery by ICGB of the notice to proceed with limited liabilities (possibly zero) by ICGB before notice to proceed issue.

The draft agreements shall be governed by the English law and follow the FIDIC practices, where applicable, but it must contain provisions that oblige the contractor to comply with special legal requirements for acquiring supplies and perform works in accordance to Bulgarian and Greek legislations. Most possibly dedicated sections to special Bulgarian and Greek Provisions should be included as attachment to the body of the agreement. The body of the agreement shall contain attachments and section in accordance to usual practice such as bond templates, time schedule, performance guarantee and so forth.

This activity 2 requires particular attention and resources for being sped up to the maximum extent as the procurement phase is on the critical path of IGB schedule realization.

### Time Schedule of Activity 2

The delivery of the drafts which constitutes the subject matter of this activity shall be completed within 15 days from the relevant notification by ICGB to perform the activity and delivery of the cited materials. This first round of drafting will be subject to ICGB approval for allowing the relevant payment on a lump sum basis.

The Agreements shall be finalised on the basis of the outcome of the consultation with the Stakeholders involved (i.e., when applicable, Structural Fund Agencies, National Procurement Authorities, Financial Institutions in coordination with ICGB, within [1] week from receiving ICGB instructions. The relevant services will be paid based on unit rates.

### 2.3. Activity 3

Drafting a first quality gas transportation agreement (“GTA”) for all system users, to apply also to users of exempted capacity, in accordance with the Risk Matrix and the IGB market test procedures, as jointly approved by the Regulatory Authority for Energy (“RAE”) of Greece and the Energy and Water Regulatory Commission (“EWRC”) of Bulgaria (both as National Regulatory Authorities, “NRAs”), as well as with any relevant requirements/measures, which may be expressed during the environmental-social due diligence and/or financial due diligence; [the draft GTA will be subject to an iterative refinement with the NRAs, and/or the financial institutions, as applicable.

#### Time Schedule of Activity 3

A first draft GTA shall be prepared for ICGB review within 1 month from the relevant notification by ICGB to perform such activity. This first round of drafting will be subject to ICGB approval for allowing the relevant payment on a lump sum basis.

The GTA shall be finalised on the basis of the outcome of the consultation with the Stakeholders involved (i.e., when applicable, National Regulatory Authorities, Financial Institutions in coordination with ICGB, within 1 week from receiving ICGB instructions. The relevant services will be paid based on unit rates.

### 2.4. Activity 4

Drafting a first quality draft Inter-Governmental Agreement focused mainly on taxation/ fiscal cross-border purposes. The draft will be subject to an iterative refinement as per Governments Institutions instructions as applicable.

#### Time Schedule of Activity 4

A first draft of the agreement which constitutes the subject matter of this activity, shall be completed within 1 (one) month from the relevant notification by ICGB to perform the activity.

Delivery of a final draft of the above mentioned agreement shall take place within 1 month from receiving comments by ICGB and its advisors on the first draft/s. **The first draft approved by ICGB is a ground for relevant payment on a lump sum basis**

The IGA shall be finalised on the basis of the outcome of the consultation with the Stakeholders involved (i.e., when applicable, National Regulatory Authorities, Fiscal Institutions, Governmental Institutions in



coordination with ICGB, within 1 week from receiving ICGB instructions. The relevant services will be paid based on unit rates.

## 2.5 Activity 5

Drafting first quality Interconnector Agreements with the relevant natural gas transmission system operators - DESFA, BULGARTRANGAZ and TAP (Trans-Adriatic Pipeline) in accordance with applicable regulations, Alternatively, reviewing and finalizing the interconnector agreements proposed by the above mentioned transmission system operators.

### Time Schedule of Activity 5

The drafting and/or the review, as applicable, of a first draft of the agreements, which constitutes the subject-matter of this activity shall be completed within 1 (one) month from the relevant notification by ICGB to perform the activity. This first round of drafting will be subject to ICGB approval for allowing the relevant payment on a lump sum basis.

The IAs shall be finalised on the basis of the outcome of the consultation with the Stakeholders involved (i.e., when applicable, National Regulatory Authorities, Financial Institutions in coordination with ICGB, within 1 week from receiving ICGB instructions. The relevant services will be paid based on unit rates.

## 2.6 Additional Services

In addition to the above, the Contractor shall also provide hourly rates applicable for any other support of legal nature as requested by ICGB, in conjunction with the IGB Project. The Contractor may propose a threshold amount of hours upon which discounted hourly rates shall apply.

### 3. Requirements to the Technical and price offer

The Technical Offer shall contain information on:

- a) knowledge of the IGB Project and the approach for performance of services in the context of transboundary gas pipeline project, connecting the national gas transpiration systems of two EU Member states;
- b) Experience and proposals in structuring trans-boundary oil and gas pipeline projects and in performing activities as described in Section 2 “Scope of Work”;
- c) Proposal for performance of services in the light of the Bulgarian, Greek and EU legal and regulatory framework;
- d) Organization of your proposed team and other personnel that will be involved in performance of services and their personal experiences/curricula;
- e) Organization and involvement of the Bulgarian and/or Greek law firms (as subcontractors, if any) you would be associated with for the execution of this mandate;
- f) Commitment to carry out the scope of work detailed in Section 1 within the time schedule shown thereof.

The Financial offer shall contain prices in EUR for the activities in the Scope of Works based on a Lump Sum for each Activity from 1 to 5 and hourly rates for the additional services for each member of the Team - key and non – key expert.

The Technical and the Financial Offer shall be in the Templates provided as Appendices to the Invitation.

#### 4. Term for implementation of the public procurement:

4.1. The public procurement award contract shall be concluded until all activities covered by the Scope of the services is entirely executed but not more than 5 (five) years as of the date of signing of the Contract.

4.2. The terms for implementation of particular activities are indicated in Section IV, item 2 Scope of services.

#### V. AWARD CRITERIA AND INTEGRATED ASSESSMENT PARAMETERS

The public procurement will be awarded based on the 'economically most advantageous tender'. The economically most advantageous tender will be set based on 'best price-quality ratio' award criterion, under art. 70, par. 2, item 3 PPA .

The methodology for setting the integrated assessment of the offers is provided in Appendix № 1 to this notice and is an integral part of it.

#### VI. TERMS FOR CONDUCTING THE PROCEDURE

##### 1. Place and date for holding negotiations

Negotiations for awarding the public procurement will be held **on 30<sup>th</sup> and 31<sup>st</sup> of January .2017** in the premises of ICGB AD at the following address: 13 Veslets str., Sofia 1000.

The notice approved by **Decision №P-01/09.12.2016** shall be sent to the persons referred to in it.

##### 2. Term and procedure for submitting offers:

Application offers (complete application in accordance with the requirements of the contracting entity) shall have to be submitted by **16<sup>th</sup> of January 2017.**

The complete application in accordance with the requirements is submitted as a written hard copy.

The application and all ancillary documents shall have to be submitted in Bulgarian and in English (bilingual/two columns). Documents and appendices prepared by applicants may be submitted in bilingual format and if there is a contradiction between the English and the Bulgarian text, the English text shall prevail. Documents submitted as translations into Bulgarian shall have to be non-certified translations.

Application offers prepared in accordance with the contracting entity's requirements are submitted in a sealed non-transparent packaging by the applicant or an authorized representative or via registered mail with acknowledgement of receipt at the following address: , 13 Veslets Street, Sofia 1000, Sofia district, Republic of Bulgaria.

The packaging shall bear:

- The applicant's name;

- Contact address, telephone number and if possible a fax number and e-mail;
- Title of the procurement for which documents are submitted.

When preparing the documents, applicants shall be obliged to comply with the requirements of the contracting entity. The templates provided in the application documentation, the notice included, and the terms and conditions described therein shall be mandatory for applicants. Documents of the applicants shall be in full compliance with these templates. Submitting an application means that the applicant is informed of all terms and conditions in the documentation and the document templates and accepts them.

**2.1.** The applicant setting conditions and requirements that do not meet the ones published by the contracting entity leads to this applicant being excluded from the procedure.

**2.2.** Costs related to preparation and submission of the offer shall be borne by the applicant.

The application is signed by the person representing the applicant or by a duly authorized person/s and a power of attorney by the person/s represented is attached to the offer.

All documents that are not in the original and for which no notary certification is required shall have to be certified by the applicant with 'True copy of the original' and the signature of the person representing the applicant.

Applicants may provide in their offers information which they consider confidential with respect to business secret. When applicants have requested confidentiality, the respective information is not disclosed by the contracting entity to third parties except where legal grounds arise for this. For the existence of confidential information, the applicant files a declaration under art. 102, par. 1 and par. 2 of the Public Procurement Act.

All costs related to the preparation and submission of the complete application shall be borne by the applicant. The contracting authority shall not be held liable for costs incurred by the applicant on preparation of the offer in case the applicant is not ranked or in case the procedure is terminated.

If the applicant sends the complete application via registered mail or by courier service, costs for them shall be borne by the applicant. In this case the applicant shall have to ensure that the complete application arrives within the term indicated by the contracting entity. The risk of the offer being delayed or lost shall be borne by the applicant.

### **3. Clarifications on the notice and the application documentation**

**3.1.** Applicants may request in writing from the contracting entity clarification on the public procurement documentation up to 10 days before the term for receiving applications expires.

**3.2.** The contracting entity provides the clarifications within 4 days of receiving the request but not later than 6 days before the term for receiving application expires.

3.3. The contracting entity does not provide clarifications when the request has been submitted after the term in item 3.1.

3.4. Clarifications shall be provided in a publication on the buyer's profile.

#### 4. Contents of the PACKAGING/ complete application:

1. A list of documents submitted;

2. Application- as per template enclosed;

3. **European Single Procurement Document (ESPD)** – as per template enclosed- for the applicant in accordance with the contracting entity's requirement- in Bulgarian and in English;

4. Documents for evidencing the reliability measures undertaken /where applicable/

5. Confidentiality declaration under art. 102 PPA- as per template enclosed if applicable;

6. Technical offer for implementation of the procurement- as per template enclosed;

6.1. Document for authorization when the person who submits the offer is not the legal representative of the applicant;

7. Initial price offer of the applicant- as per template enclosed.

8. Declaration for non-existence of relations with another applicant in the procedure.

9. Declaration on the draft contract.

#### 5. Actions post reception of the applications

When applications are received, they are given a number, date and time of reception and the said data are entered into an incoming register for which a document is issued to the person submitting them.

The contracting entity does not accept for participation in the procedure and shall immediately return to applicants applications that have been submitted after the deadline or not in a sealed packaging or in packaging whose integrity has been tampered with. These circumstances are noted in the incoming register of the contracting entity.

After the term for receiving applications expires, the contracting entity appoints committee to carry out selection.

The committee appointed by the contracting entity shall consider the applications with a view to establishing compliance with the criteria and requirements of the contracting entity.

Negotiations shall be held with each of the applicants that meet the selection criteria separately. The sequence of holding the negotiations at which representatives of the applicants invited may be present shall be decided by the committee by casting lots (art. 67, par. 1 of PPA Implementation rules ).

The lots containing the names of the invited candidates to fix the sequence of negotiations shall be cast **on 24<sup>th</sup> of January 2017** in the ICGB AD premises, 13 Veslets str., Sofia 1000.

The committee holds negotiations with all applicants individually strictly following the terms and conditions initially set for implementation of the procurement. During negotiations the legal representative of the applicant shall have to present an identification document and when they are to be held with an authorized representative – also a special written power of attorney (original or a copy certified by a notary). The committee negotiates the terms and conditions of the contract, including the price of the procurement. The results of the negotiations shall be reflected in a protocol signed by both the committee and the applicant.

The committee shall not have the right to disclose arrangements achieved with an applicant to the rest of the applicants except when it is with their express agreement.

The committee shall have to hold the negotiations with each of the applicants in the same way also providing them the same information and asking the same questions.

If the offer (related to a price) of any of the applicants achieved in the course of the negotiations is more than 20 per cent more advantageous than the average value of the offers of the rest of the applicants as per the same assessment parameter, the contracting entity shall require a detailed written justification for the way it has been formed which shall be submitted within 5 days after the request has been received.

The justification may refer to:

1. economic features of the production process, of services to be rendered or the construction method;
2. the technical solutions selected or the existence of exceptionally favourable conditions for the applicant to render the services;
3. originality of the solution offered by the applicant with respect to the services;
4. compliance with the obligations under art. 115 PPA<sup>1</sup>;
5. the option for the applicant to receive state aid.

The justification received shall be assessed with respect to its completeness and objectivity as regards the circumstances 1-5 which the applicant refers to. If necessary, clarifying information may be required from the applicant. The justification may not be accepted and the applicant be excluded only when the evidence submitted is not sufficient to justify the price or costs offered.

An application is not accepted when it is established that the price or costs in it are more than 20 per cent more advantageous than the average values of the respective offers in the rest of the offers

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<sup>1</sup> **Article 115.** When performing public procurement contracts, contractors, suppliers or service providers and the subcontractors thereof shall be obliged to comply with all applicable rules and requirements in the fields of environmental, social and labour law, applicable collective agreements and/or international environmental, social and labour law provisions listed in Annex 10 hereto.

because norms and rules related to environmental protection, social and labour law, applicable collective agreements and/or provisions of international environmental, social and labour law listed in Appendix № 10 PPA have not been complied with<sup>2</sup>.

An offer is not accepted when it is established that the price or costs in it are more than 20 per cent more advantageous than the average values of the respective offers in the rest of the offers due to state aid received where the applicant cannot prove within the term indicated that the aid is compatible with the internal market in the sense of art. 107 TFEU. Contracting entities shall be obliged to notify the European Commission for all cases under the previous sentence.

All authorities shall be obliged upon request and within their competence to provide to the contracting entities, from other member states included , information related to law and by-law provisions, applicable collective agreements or national technical standards related to the evidence and documents submitted in connection with the data under item 1-5.

Following the negotiations the committee shall prepare a report which contains information under art . 60, par. 1 PPA:

1. members of the committee, including changes in the course of the committee's work ;
2. number and date of the order for appointing the committee as well as orders amending its terms, tasks and members;
3. a short description of the working process;
4. applicants and participants in the procedure;
5. actions related to opening, considering and evaluating each of the offers, applications and negotiations held where applicable;
6. applicants ranking where applicable;
7. a proposal for exclusion of applicants or participants where applicable;
8. grounds for admitting or excluding each applicant or an applicant;
9. a proposal for concluding a contract with the applicant ranked first or for termination of the procedure with the respective legal grounds where applicable;
10. a description of the samples and/or pictures provided where applicable.

The contracting entity will conclude a contract only if there are at least three applicants/participants ranked. The Contract shall be executed In English language.

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<sup>2</sup> Appendix № 10 PPA transposes and is analogical to appendix X to Directive Directive 2014/24/EU of the European Parliament and the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

**For issues not settled in this documentation the provisions of the Public Procurement Act. The rules for implementation of the Public Procurement Act and effective Bulgarian and European legislation shall apply.**

## Appendices

Appendix №1 – Methodology for setting the integrated assessment

Appendix №2 – Application template

Appendix №3 – European Single Procurement Document (ESPD)

Appendix №4 – Confidentiality declaration under art. 102 PPA

Appendix №5 – Technical offer template;

Appendix №6 – Price offer template;

Appendix №7 – Declaration for non-existence of relations with another applicant in the procedure.

Appendix № 8– Declaration for the draft contract;

Appendix №9 – Draft contract