

DOCUMENTATION

FOR A PUBLIC PROCUREMENT WITH

SUBJECT MATTER:

„LINE PIPES MANUFACTURE AND SUPPLY

FOR THE NEEDS OF GAS

INTERCONNECTOR GREECE-BULGARIA”

Sofia, 2017

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ABBREVIATIONS AND DEFINITIONS

Contracting entity	The Executive directors of ICGB AD
IGB	The gas pipeline connecting the Trans Adriatic Pipeline (TAP) & Greek National gas transmission system to the Bulgarian National gas grid
Public procurement contract	Public procurement contract with a subject matter: „Line Pipes Manufacture and Supply for the Needs of Gas interconnector Greece - Bulgaria“, concluded between the Contracting entity and the selected Contractor
Subcontract	Written contract for implementation of one or more activities of the awarded Public procurement concluded between the selected Contractor and the Subcontractor referred to in the Request for participation
Documentation/Documentation regarding the Public procurement	This documentation regarding the Public procurement
ESPD	European Single Procurement Document
The law of the country where the Candidate/Participant/the selected Contractor is established	<p>The applicable law, as follows:</p> <ul style="list-style-type: none"> (i) As regards the natural person – the national law within the meaning of art. 48¹ Private International Law Code; (ii) As regards the legal entity – the law of the country determined in accordance with art. 56² of the Private International Law Code;

¹ Art. 48. (1) Within the meaning of this Code the national law of the person is the law of the country whose citizen he/she is.

(2) The national law of a person with two or more citizenships, one of whom is Bulgarian, is Bulgarian law.

(3) The national law of a person who is a citizen of two or more countries is the law of the one where he/she has his/her habitual residence. When the person does not have a habitual residence in neither of the countries whose citizen he/she is, the law of the country with which he/she has the closest connection shall apply.

(4) Within the meaning of this Code the national law of a person without citizenship is the law of the country where his/her habitual residence is.

(5) Within the meaning of this Code the national law of a person having a refugee status and of a person who is granted asylum is the law of the country where his/her habitual residence is.

(6) When, in the cases under art. 3,4 and 5 the person does not have a habitual residence or such cannot be established, the law of the country with which the person has the closest connection shall apply.

(7) Within the meaning of this Code habitual residence of a natural person shall mean the place where he/she has settled predominantly without this leading to the need of registration or permission to reside or settle. In order to determine this place circumstances of personal or professional nature shall be particularly taken into account which stem from permanent relations of the person with this place or his/her intention to create such relations.

² Art. 56. (1) The legal entities shall be governed by the law of the country where they are registered.

(2) When, there is no need for registration in order to incorporate a legal entity or it is registered in several countries, the law of the country where its seat is located according to its incorporation act shall apply.

(iii) As regards the consortiums which are not legal entities – the law of the country where they are registered or established.

Request for participation	The Request for participation in a preliminary selection in the Procedure which is submitted by the Candidate according to the template in Appendix No 3
PPA	The Public Procurement Act (promulgated SG, issue 13 of 16 February 2016, last amended SG, issue 63 of 04 August 2017)
Contractor	Participant in the Procedure selected for a Contractor with a decision of the Contracting entity and with which the Contracting entity concludes Public procurement contract
Candidate	Natural person or a legal entity or their consortium (where the consortium is not a legal entity) which has submitted Request for participation in a preliminary selection in the procedure for the award of a Public procurement
Announcement on the Public procurement	A document with which the Contracting entity announces the opening of the Procedure in accordance with the requirements of the PPA and which is approved together with the Documentation regarding the Public procurement in the Decision for the opening
Public procurement	Public procurement with a subject matter „Line Pipes Manufacture and Supply for the Needs of a Gas interconnector Greece – Bulgaria“
Tender	Offer submitted by a Participant to implement the Public procurement which contains the Technical offer and the Price offer
Subcontractor	Person which has given its consent to implement a specific part of the Public procurement, designated by the Candidate in the Request or participation and in the event that it is selected for a Contractor, it will conclude a subcontract

(3) If, where under para. 2 the location of the seat according to the incorporation act does not coincide with the location of the actual management of the legal entity, the law of the country where its actual management is located shall apply.

(4) The branch of the legal entity shall be governed by the law of the country where it is registered.

RAPPA	Rules on the application of the Public Procurement Act (promulgated SG, issue 28 of 08 April 2016)
Project/ IGB Project	„Gas interconnector Greece - Bulgaria“ Project
Procedure	This restricted Procedure for the award of a public procurement, opened with a Decision NoP-07 dated 07.12.2017 of the Contracting entity
Profile of the buyer	Internet address of the Contracting entity http://www.icgb.eu/profil-na-kupuvacha/proceduri-za-vuzlagane-na-op , where electronic documents regarding the Procedure are published
Decision for opening	Act issued under the PPA by the Contracting entity for the opening of the procedure, approving the Announcement on the Public procurement and the Documentation regarding the Public procurement
PPR	Register of the public procurements constituting a single electronic data base with information for the circumstances which are subject to registration as regards the procedures for the award of public procurements
Technical offer	Part of the Tender containing Offer for implementation of the Public procurement according to the template in Appendix No 11, authorization document, , description of the products
Participant	Natural person or legal entity or their consortium (where the consortium is not a legal entity) which have been sent an invitation and which have submitted a Tender in this Procedure
Price offer	Part of the Tender containing the offer of the Participant regarding the price for implementation of the public procurement according to the template in Appendix No 12.

PART ONE

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SECTION I. INFORMATION REGARDING THE PROJECT

1. Project “Gas Interconnector Greece-Bulgaria” (IGB Project)

1.1. General information regarding the IGB Project

Project “Gas Interconnector Greece – Bulgaria” envisages the construction of a gas pipeline which will connect directly the national gas transmission networks of the Republic of Greece and the Republic of Bulgaria (“Gas pipeline” or “IGB”). The entry point of the Gas pipeline is within the region of the Komotini city (Greece), and the exit point – within the region of Stara Zagora city (Bulgaria). IGB will have an important strategic role, and the direct effects from its construction will be achieving actual diversification of the sources of natural gas supply for Bulgaria, for the market of natural gas in Southeastern Europe.

It is envisaged that IGB will have a diameter of the pipe 32” (~813 mm) and a total length of about 182 km. The transportation capacity of natural gas will be about 3 billion cubic meters/per year from Greece to Bulgaria, with a working pressure of 7,5 MPa. The gas pipeline shall be constructed in a way so as to ensure a reverse flow.

1.2. Current status of the IGB Project

At the beginning of 2016 investment planning of both sections of the Site (Bulgarian and Greek) was practically completed for the purposes of permitting construction and the Project has obtained for the Bulgarian section Construction Permit No48 dated 12.09.2017 published in the State Gazette No76/2017.

EU grant financing up to EUR 45 million under European Energy Program for Recovery (EEPR) has been extended until 2018. The recommendation of EC to Bulgarian and Greek authorities has been considered to investigate the options for additional grant financing of the Project through access to funds under European structural funds (ESIF in both countries. As of today, the process for being included into the ESIF financed program is launched.

The IGB project has the status of a Project of Common interest under Regulation 347/2013 and it is a main priority project under the CESEC initiative for gas interconnectivity in Central and Southern Europe. In this context, the European Investment Bank and other international credit institutions have expressed active interest in financing the Project, including through instruments from the new European Fund for Strategic Investments (EFSI). The Bulgarian government in turn has included in the state budget for 2017 access to an increased amount of state financial guarantee when negotiating loan facilities for the project of up to EUR 110 million.

According to the current schedule for realisation of the Project, the construction is expected to be commenced at the end of first half of 2018.

2. Information regarding the Contracting entity

Realization of the IGB Project is carried out by the investment company ICGB AD (the Company) in which shareholders with equal shares are the Bulgarian company Bulgarian Energy Holding EAD (50%) and the Greek company Interconnector Greece-Italy Poseidon SA (50%). ICGB AD has been incorporated as a project vehicle with the main purpose - to construct, to commission and to operate the Gas pipeline.

SECTION II. DESCRIPTION OF THE SUBJECT MATTER OF THE PUBLIC PROCUREMENT

1. Subject matter

Subject matter of the public procurement is supply of goods – line pipes with lining and with coating, where the supply is carried out through a purchase within the meaning of art. 3, para. 1, pt. 2 of the PPA.

The procurement is mixed and includes two activities: 1) manufacture of line pipes with external and internal coating and 2) delivery of the manufactured goods. That is why the Contracting Entity set specific requirements to the Candidates' capabilities and for the performance of the activities related to the manufacture of the pipes, as well as the laying internal and external coating. The manufactured pipes shall be delivered within the terms and conditions defined in the Public Procurement Contract.

Taking into consideration that all costs, including those for the manufacture will be included in the price of the supplied goods, no estimated value only for the manufacturing process is determined; the estimated value of the procurement is the total expected value of the supply. Thus and according to art. 11, comma 2 PPA the main activity of the subject matter of the public procurement is supply.

The executive directors of ICGB AD announce a restricted procedure for the award of a public procurement with a subject matter: „**Line Pipes Manufacture and Supply for the needs of Gas Interconnector Greece-Bulgaria**“.

2. Place of implementation

The place of implementation of the public procurement is the territory of the Republic of Greece and the Republic of Bulgaria.

3. Term for implementation

The term for implementation of the public procurement is 12 (twelve) months as of the receipt of an assignment order according to the conditions specified in the Public Procurement Contract.

4. Estimated value

The estimated value of the public procurement is EUR 60 000 000 **(in words: sixty million euro) VAT exclusive**.

The estimated value constitutes the maximum amount of the financial resource of the Contracting entity.

SECTION III. INFORMATION REGARDING THE AWARD PROCEDURE

1. Legal ground for the opening of the Procedure. Decision for opening. Announcement on the Public procurement.

The Procedure shall be opened on the ground of art. 134 in conjunction with art. 18, para. 1, pt. 2 of the PPA with a Decision No P-07/07.12.2017 of the Executive directors of the Company approving Announcement with outg. No P-07/08.12.2017 and the Documentation regarding the Public procurement.

Upon opening of the Procedure for awarding of the Public procurement the Contracting entity does not have the required financial resources in the full amount. This circumstance is not an obstacle to the convening of this procedure and to the conclusion of a contract for award of the Public procurement whose implementation shall commence upon provided financing.

2. Type of the Procedure and motives for its selection

Documentation for Public Procurement with Subject Matter: „Line Pipes Manufacture and Supply for the Needs of Gas Interconnector Greece-Bulgaria“

Pursuant to art. 132 of the PPA upon award of public procurements the contracting entities may freely opt for a restricted procedure where the tenders may be submitted only by Candidates which have received invitations following a preliminary selection.

The selection of a restricted procedure has been imposed by the complex nature of the subject matter of the Public procurement which includes production and supply of line pipes necessary for the construction of a large technical facility on the territory of the Republic of Bulgaria and the Republic of Greece for gas transmission in the two directions.

Due to this, through a preliminary selection the Contracting entity will assess and determine the Candidates which have the required financial and technical capacity to implement the subject matter of the Public procurement according to the set requirements.

The restricted procedure alleviates the administrative burden for the potential participants since the participation in the preliminary selection phase does not require preparation of tenders, but only submission of requests for participation and verification of the compliance of the Candidate with the requirements concerning personal standing and selection criteria.

In the course of the procedure for preliminary selection the Candidates shall not submit tenders. Following the preliminary selection performed by a commission designated by the Contracting entity a sufficient number of persons (5) among the Candidates will be determined in accordance with objective and clear criteria which will be invited to submit tenders and which are capable of implementing the Public procurement by guaranteeing the required competition.

Within the restricted procedure only the persons who meet the selection criteria and whom are sent invitation may submit tenders. In the course of the phase on submission, examination and assessment of tenders the Contracting entity assesses and ranks the technical and price offers under the selected criteria and determines a Contractor for the Public procurement.

3. Motives for the impossibility of dividing the procurement into lots

The purpose of awarding the procurement within a single subject matter without dividing it into lots is to achieve an optimum management process of the entire project and responsibility of one contractor for the activities to the fullest extent.

Dividing the Public procurement into lots is not feasible and would pose risks for the Contracting entity. There is a correlation between the supplies which stems from the end goal of their implementation, namely construction of a pipeline for transmission of natural gas between Greece and Bulgaria. It is within the interest of the Contracting entity to receive the object of the procurement in its entirety from a single Contractor and not to be obliged to coordinate separate supplies carried out by various Contractors, since the timely implementation of the pipes supply contract determines the compliance with the schedule for commencing and implementation of the Gas pipeline construction. Hence, it is necessary to avoid the risks related to the division of responsibilities between various Contractors, possible deviations in the implementation, eventual impossibility for a consistent, related and coordinated implementation of the separate supplies, and respectively, an unfounded delay in time as regards the construction and putting the pipeline into operation.

Assigning the provision of the necessary types of pipes to a single Contractor presupposes a coordinated and timely performance of the supplies which, to the greatest extent possible, takes account of the technical capability and resources necessary for the quality and complex implementation of the procurement.

Only awarding the procurement without division of lots guarantees an optimum result and minimizes eventual risks.

4. Commission of the Contracting entity for the selection of Candidates (Phase 1) and for examining and assessment of the Tenders (Phase 2)

4.1. Appointment of the Commission

4.1.1. Following expiration of the time limit for receiving Requests for participation the Contracting entity by virtue of an order appoints a Commission for the selection of Candidates and for examining and assessment of the Tenders (the Commission). The Commission consists of uneven number of members.

4.1.2. The actions of the Commission shall be reflected in protocols and the results of its work shall be reflected in a report.

4.1.3. The decisions of the Commission shall be adopted by a simple majority. When a member of the Commission is against the adopted decision, it shall sign the protocol with a divergent view and shall set out its motives and arguments in writing.

4.2. Members of the Commission

4.2.1. The Contracting entity shall appoint the members of the Commission among its employees and may also appoint outside persons.

4.2.2. The Contracting entity shall designate one of the appointed members as a chair of the Commission who shall administer the work of the Commission.

4.2.3. The Commission and each of its members shall be independent in expressing their opinions and adopting decisions and their actions shall be governed solely by law.

4.2.4. There should be no conflict of interest of the members of the Commission with the Candidates or Participants. To this end, the members of the Commission shall submit to the Contracting entity declaration on the lack of conflict of interest following receipt of the list of the Candidates and at each stage of the Procedure upon change in the declared data.

4.2.5. The members of the Commission shall be obliged to keep confidential the circumstances which they have got knowledge of in relation to their work in the Commission.

4.2.6. Each member of a Commission shall be obliged to immediately report to the Contracting entity the cases in which he or she is put under pressure to adopt an illegal decision in favour of a Candidate or Participant.

5. General requirements regarding participation in the Procedure

5.1. The Requests for participation and the Tenders shall be mandatorily drawn up in Bulgarian language. For the purpose of optimizing the procedure for reviewing the documents and facilitating the work of the Commission, the Requests for participation and the Tenders shall be drawn up in one more copy in English. In the event of a discrepancy between the Bulgarian and English content, the Bulgarian texts shall prevail.

5.2. Until expiration of the time limit for submission of the Requests for participation or the Tenders each Candidate or Participant may change, supplement or withdraw the Request or Tender.

5.3. Each Participant shall have the right to submit only one Tender.

5.4. A person which participates in a consortium or which has given its consent to be Subcontractor of another Candidate or Participant may not submit independently Request for participation or Tender. (including as a member of consortium).

5.5. In the context of the Procedure for the award of Public procurement an individual or legal entity may participate only in one consortium.

5.6. Affiliated persons³ may not be independent Candidates or Participants in the Procedure for the award of Public procurement.

5.7. In cases where the Candidate intends to use Subcontractors, for the activities for which this is allowed⁴, they shall meet the respective selection criteria in accordance with the type and part of the procurement which they will implement, and no grounds for exclusion from the Procedure shall apply to them. The Contracting entity shall require a replacement of a Subcontractor which does not meet these conditions.

5.8. In the course of the preliminary selection the Candidate shall not have the right to submit a Tender.

6. Documentation regarding participation. Clarifications. Amendment of the conditions

6.1. Access to the Documentation

The Documentation of the Public procurement, including appendices to it, are in Bulgarian and English language. In the event of a discrepancies between the Bulgarian and English version, the Bulgarian version shall prevail.

As of the date of publishing the Announcement on the Public procurement in the Official Journal of the European Union the Contracting entity shall provide unlimited, full, free and direct access in an electronic manner to the Documentation regarding the Public procurement which is published on the Profile of the buyer of the Contracting entity.

6.2. Clarifications regarding the conditions of the Procedure

6.2.1. Right to request clarifications

Each person interested in participation in the Public procurement may request in writing from the Contracting entity clarifications regarding the Decision for the opening, the Announcement on the Public procurement and the Documentation regarding the Public procurement.

6.2.2. Time limits applicable to the request and to the provision of clarifications

³ "Affiliated persons" within the meaning of § 2, item 45 of the Additional provisions of the PPA are:

- a) persons one of whom controls the other person or his filial company;
- b) the persons whose activity is controlled by a third person;
- c) the persons who jointly control a third person;
- d) the spouses, the relatives on the direct line without restriction, the relatives on the collateral line up to fourth degree including and the relatives by marriage up to third degree including.

"Control" is present when a person:

- a) holds, including through a subsidiary company or by virtue of an agreement with another person over 50 percent of the number of votes in the general meeting of a company or other corporate body; or
- b) can determine directly or indirectly more than half of the members of the managing or the control body of a corporate body; or
- c) can, in another way, exercise a decisive influence on taking decisions in connection with the activity of a corporate body.

⁴ Activities for which the Contracting entity has not placed an explicit requirement to be carried out by the Participant itself in accordance with Section IV, pt. 2.

The clarifications may be requested within 10 days prior to expiration of the time limit for receipt of the Requests for participation, and the Candidates invited to submit Tenders may request clarifications within 10 days prior to expiration of the time limit for receipt of the Tenders.

The Contracting entity shall provide clarifications through publication on the Profile of the Buyer within 4 days as of receipt of the request but no later than 6 days prior to the time limit for receipt of Requests for participations or Tenders.

6.3. Amendment of the conditions of the Procedure

6.3.1. Initiation of amendments. Right of making amendments

The Contracting entity at its own initiative or at the request of an interested person may make one-off amendments in the Announcement on the Public procurement and in the Documentation regarding the Public procurement.

6.3.2. Terms for making suggestions and making amendments

The interested persons may make suggestions for amendments within 10 days as of publication of the Announcement on the Public procurement in the PPR which announces the opening of the Procedure.

The Contracting entity may make one-off amendments in the documents under pt. 6.3.1. regarding the conditions of the Procedure within 14 days as of publication in the PPR of the Announcement on the Public procurement which announces the opening of the Procedure.

The Contracting entity may make amendments several times following the expiration of the above term only when the announced terms are prolonged in the cases under pt. 6.3.5.

6.3.3. Limitations concerning amendments of the conditions of the Procedure

In any event the amendments of the conditions of the Procedure through amendments in the Announcement on the Public procurement and in the Documentation regarding the Public procurement may not lead to amendment in the scope of the interested persons.

6.3.4. Procedure for making amendments

The Contracting entity shall make the amendments by sending for publication in the PPR the announcement for amendment or additional information and the decision approving the announcement.

6.3.5. Extension of terms for receipt of Requests for participations and Tenders

The Contracting entity shall extend the terms for receipt of Requests for participation, respectively for receipt of Tenders when:

- a) in the cases of amendments carried out under pt. 6.3.4. considerable changes have been made to the conditions of the announced procurement which require a change to the Requests for participation of the Candidates, respectively to the Tenders of the Participants;
- b) clarifications regarding the conditions of the Procedure have been timely requested and they may not be provided within the 4-day term under pt. 6.2.2.;
- c) this is required in respect to the appeal procedure.

The Contracting entity may extend the announced term for receipt of Requests for participations and Tenders when within the initial term there are no Requests for participation/Tenders submitted or only one Request for participation/Tender has been submitted.

SECTION IV. REQUIREMENTS REGARDING IMPLEMENTATION

1. Technical specification

1.1. The technical instructions for implementation of the subject matter of the Public procurement, including required characteristics for the pipes supplied, functional requirements and work characteristics, as well as all requirements of the Contracting entity regarding the implementation of the Public procurement are set out in Appendix No 1 – Technical specifications.

1.2. Candidates shall not be allowed for review if the share of the products therein which are subject to the Public procurement originating in third countries with which the European Union or the Republic of Bulgaria does not have a multilateral or bilateral agreement providing comparable and effective access, exceeds 50 per cent of the total value of the products included in it.

The share of such products shall be determined in accordance with Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OB, L 269/1 dated 10 October 2013).

Pursuant to art. 60 of Regulation (EU) No 952/2013 the goods “originate” from a certain country or territory when they are wholly obtained in a single country or territory, or in which they underwent their last, substantial, economically-justified processing or working, in an undertaking equipped for that purpose, resulting in the manufacture of a new product or representing an important stage of manufacture.

PART TWO

PRELIMINARY SELECTION (PHASE 1)

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SECTION I. SELECTION CRITERIA

The selection criteria, the requirements regarding declaration and proof thereof, as well as the possibility to use the capacity of third parties and Subcontractors are set out in Appendix No 8 to the Documentation.

SECTION II. GUIDELINES REGARDING PREPARATION AND SUBMISSION OF REQUESTS FOR PARTICIPATION

1. General guidelines

1.1. Requirements regarding the Request for participation

The request for participation shall meet the requirements of the Contracting entity stated in the Announcement on the Public procurement, as well as in this documentation and to be formatted under the forms attached to it and under the guidelines of the Contracting entity. The conditions in the forms of the Documentation for participation shall be mandatory for the Candidates and may not be amended by them.

The Request for participation shall be submitted in the original both in paper form and electronically.

The documents contained in the Request for participation shall be ordered in a folder in the manner in which they are listed in the description of the submitted documents under the sample form in Appendix No 2, and the pages shall be numbered. They shall be signed on each page by the statutory representative of the Candidate, and if the latter is a consortium – by a representative designated by the partners, or by the person authorized with a power of attorney to represent the Candidate in the procedure.

The copies of the electronic documents shall be in Bulgarian and English language and shall be ordered in folders in the same sequence in which they are submitted on paper. The names of the folders and the files shall clearly indicate their content. The files shall be in a format which allows a complete text search and copying of parts of the content in view of facilitating the work of the Commission.

In the event of discrepancy between the paper text and the electronic copy, the paper one shall prevail.

1.2. Requirements regarding the package

The Request for participation containing the required documents shall be submitted in a sealed non-transparent package on which the following shall be stated:

- the name of the Candidate, including members in the consortium when applicable;
- address for correspondence, telephone and if possible – fax and email;
- the name of the procurement for which the documents are submitted.

The following notice shall be placed on the package:

To
ICGB AD
Sofia
No. 13, Veslets Str., fl. 2

REQUEST FOR PARTICIPATION

In a restricted procedure for the award of a public procurement with subject matter:

„Line Pipes Manufacture and Supply for the Needs of Gas Interconnector Greece-Bulgaria“

Name of the Candidate:

Members of the consortium: *(when applicable)*

Correspondence address:

Telephone:

Fax:

Email:

2. Content of the package containing the Request for participation – a list of required documents

The sealed non-transparent package shall contain the documents set out in Table 1:

Table 1

1.	List of the submitted documents in accordance with the form in <u>Appendix No 2</u>	
2.	Request for participation in accordance with the form in <u>Appendix No 3</u>	
3.	Document for authorization – notary certified, when the person submitting the Request for participation is not the statutory representative of the Participant	
4.	ESPD for the Candidate in accordance with the statutory requirements and the conditions of the Contracting entity	When applicable: <ul style="list-style-type: none"> - ESPD for each of the participants in the consortium which is not a legal entity⁵ - ESPD for each Subcontractor - ESPD for each person whose resources will be engaged in implementation of the procurement
5.	Documents used for proving the undertaken reliability measures under pt. 3.2. of this Section,	

⁵ In these cases the ESPD shall be submitted both for the consortium itself as a Candidate and for each of the members of the consortium.

	when applicable
6.	When the Candidate is a consortium – a document regarding the status of the consortium
7.	Declaration-list under art. 44, para. 1 of the Rules on the Application of the PPA of all obliged persons within the meaning of art. 54, para. 2 and art. 55, para. 3 of the PPA in accordance with the form in <u>Appendix No 5</u> ;
8.	Declaration under art. 6, para. 2 of the Money Laundering Act in accordance with the form in <u>Appendix No 6</u> ;
9.	Proof of the obligations undertaken by the Subcontractor regarding the implementation of a specific part of the Public procurement (if applicable) – Declaration by the Subcontractor expressing its consent to implement a specific part of the public procurement in accordance with the form in <u>Appendix No 7</u> , contract, agreement or another document at the Candidate's discretion.

3. ESPD

3.1. Declaring of personal standing

Upon submission of a Request for participation the Candidate shall declare the lack of the grounds for exclusion under Table 2 by submitting ESDP, respectively shall describe in the ESDP the reliability measures under pt. 3.2. of this section undertaken prior to submission of the Request for participation.

The Candidates and Participant shall be obliged to inform in writing the Contracting entity within a 3-day time limit as of occurrence of the circumstance under Table 2.

3.1.1. Grounds for exclusion related to the personal situation

The Contracting entity shall exclude from participation in the Procedure a Candidate or Participant for which the circumstances set out below in Table 2 are present:

Table 2

No	Ground for exclusion	Clarification
1.	The Candidate/Participant was convicted with an effective court judgment for a crime under 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 – 353f of the Criminal Code;	In the event that the Candidate/Participant was convicted with an effective court judgment but is rehabilitated, it shall not be excluded from participation in the Procedure.
2	The Candidate/Participant was convicted with an effective court judgment for a crime similar to those under pt. 1 in another member state or third country;	In the event that the Candidate/Participant was convicted with an effective court judgment but is rehabilitated, it shall not be

		excluded from participation in the Procedure.
3.	<p>The Candidate/Participant has:</p> <ul style="list-style-type: none"> (i) obligations for tax and social security contributions within the meaning of art. 162, para. 2, pt. 1 of the Tax and Social Security Contributions Process Code⁶ and the interests thereto towards the government or the municipality where the Contracting entity and the Candidate or the Participant have their registered address established in an act issued by a competent body, or (ii) similar obligations established in an act issued by a competent body in accordance with the laws of the country where the Candidate or the Participant is established. 	<p>If debt rescheduling, debt deferral or security of the obligations has been allowed or the obligation is pursuant to an act which has not yet taken effect, the Candidate/Participant shall not be excluded from the Procedure.</p> <p>The Contracting entity shall not exclude a Candidate or Participant from the Procedure, when:</p> <ul style="list-style-type: none"> (i) especially important government or public interests need to be protected; (ii) the amount of the outstanding and unpaid taxes or social security contributions is no more than 1 per cent of the amount of the annual total turnover for the last completed financial year.
4.	There is no equality in the cases under art. 44, para. 5 ⁷ of the PPA.	
5.	It is established for the Candidate/Participant that:	

⁶ Taxes, including excise duties, as well as customs duties, mandatory social security contributions and other contributions for the treasury.

⁷ This is the case where the Candidate has participated in the market consultations and/or in the preparation for the award of the Procurement, and despite the actions undertaken by the Contracting entity, it still cannot prove that its participation does not lead to violation of the equality principle.

	<ul style="list-style-type: none"> (i) has submitted an incorrect document concerning the establishment of lack of grounds for exclusion or meeting the selection criteria under pt. 1 and 2 of the Table in Appendix No 8; (ii) has not submitted the required information concerning the establishment of lack of grounds for exclusion or meeting the selection criteria under pt. 1 and 2 of the Table in Appendix No 8; 	
6.	<p>It has been established with an effective penalty statement or court judgment that in the course of implementation of a public procurement contract The Candidate/Participant has violated:</p> <ul style="list-style-type: none"> (i) art. 118⁸, art. 128⁹, art. 245¹⁰ and art. 301 – 305¹¹ of the Labor Code, or 	

⁸ Art. 118. (1) The Employer or the worker or the employee may not change unilaterally the content of the employment relationship save for the cases and under the conditions set out in the law.

(2) When the worker or employee has been transferred to a different work place within the same company, where the place of work, job title and the amount of the basic salary of the worker or employee are not changed, this shall not be considered as an amendment of the employment relationship.

(3) The employer may unilaterally increase the salary of the worker or the employee.

⁹Art. 128. The employer is obliged within the set time limits:

1. to calculate in the pay roll the salaries of the workers and employees for the work they did;

2. to pay the agreed salary for the work done;

3. to issue upon request by the worker or employee an excerpt from the pay roll regarding the paid or unpaid salaries or compensations.

¹⁰ Art. 245. (1) Upon performing in good faith their labor obligations the worker or employee shall be guaranteed payment of salary in the amount of 60 per cent of his/her gross salary but no less than the minimal salary for the country.

(2)The difference up to the full amount of the salary shall remain due and shall be paid additionally together with the statutory interest.

¹¹ Art. 301. (1) The minimal age for hiring is 16 years. Persons who have not turned 16 years old are forbidden from hiring.

(2) As an exception, persons between 15 and 16 years old may be hired to do jobs which are light and are not dangerous or harmful for the health or their physical, mental and moral development and whose performance would not be an obstacle to regular school attendance or participation in programs for professional orientation or training.

(3) As an exception, girls turned 14 years old and boys turned 13 years old may be hired for trainees in the circus, and for participation in movie making, preparation and deliverance of theatre and other performances may be hired also persons who have not turned 15 years old under relieved conditions and in accordance with the requirements for their normal physical, mental and moral development. The work conditions in such cases shall be determined by the Council of ministers.

Art. 302. (1) The persons turned 16 years old shall be hired following a detailed medical check and medical conclusion that they are capable of doing the respective job and it will not harm their health or interfere with their normal physical and mental development.

(2) The persons who have not turned 16 years old shall be hired following permission by the labor inspection issued for each individual case.

Art. 303. (1) Hiring persons between 16 and 18 years old to do heavy, dangerous or harmful for their health and normal physical, mental and moral development shall be forbidden.

(2) Persons between 16 and 18 years old shall be hired following a detailed medical check and medical conclusion certifying their fitness to do the respective job.

(3) Persons between 16 and 18 years old shall be hired following permission by the labor inspection issued for each individual case.

	(ii) similar obligations established in an act issued by a competent body in accordance with the laws of the country where the Candidate or the Participant is established.	
7.	There is a conflict of interests ¹² which cannot be remedied.	
8.	The Candidate/Participant: (i) has been declared insolvent, or (ii) is undergoing insolvency proceedings, or (iii) is undergoing liquidation procedure, or (iv) has concluded an out-of-court settlement with its creditors within the meaning of art. 740 ¹³ of the Commercial Act, or	

(4) The conditions and procedure for issuing work permission under para. 3, work permission for persons who have not turned 16 years old, as well as the obligations of the employer for providing healthy and safe work conditions for the persons who have not turned 18 years old shall be governed in a regulation issued by the minister of labor and social policy and minister of healthcare.

Art. 304. (1) The minors shall be forbidden to do work which is:

1. outside their physical or mental capabilities;
 2. related to exposure to harmful physical biological or chemical impact, particularly toxic agents, carcinogenic agents causing hereditary genetic or intrauterine damage;
 3. related to harmfulness which causes permanent adverse impact over the health in any other way whatsoever;
 4. in radiation conditions
 5. in extremely low or high temperatures, noise or vibrations;
 6. related to risk from job accidents for which are deemed to not be realized or avoided by the minor due to his/her physical or mental immaturity.
- (2) (repealed)

Art. 305. (1) The employer shall exercise special care for the persons who have not turned 18 years old by ensuring relieved work conditions for them and conditions for obtaining professional qualification and its increasing.

(2) The employer shall be obliged to inform the minor workers and employees and their parents or custodians of the possible job risks and the measures undertaken for ensuring health and safety work conditions.

(3) The working hours of the workers and employees who have not turned 18 years old is 35 hours per week and 7 hours per day for a five-day work week. The daily and weekly working hours shall also include the time for obtaining professional qualification and its increasing when the latter takes place in the course of work.

(4) The workers and employees who have not turned 18 years old have the right to a basic paid yearly leave of no less than 26 days including for the calendar year they turn 18 years old.

¹² "Conflict of interests" is present when the contracting entity, its employees or persons hired by it outside its structure who participate in the preparation or the award of the public procurement or may influence the result of it, have an interest leading to benefit within the meaning of art. 2, para. 3 of the Act on Prevention and Establishment of Conflict of Interests and for which it can be assumed that it influences their impartiality and independence in relation to the award of the public procurement (§ 2, pt. 21 of the Additional provisions of the PPA).

¹³ Art. 740. (1) At any stage of the insolvency proceedings the debtor may enter into a contract for settlement of payments of monetary obligations with all creditors which have their receivables recognized. In this case the insolvency administrator does not represent the debtor as a party.

(2) If the concluded contract meets the statutory requirements, the court by way of decision terminates the insolvency proceedings on condition that there are no claims asserted under art. 694, para. 1 relating to establishment of non-existence of recognized receivables. The decision is subject to appeal within a 7-day time limit as of its registration in the Commercial Register.

(3) The contract shall be concluded in writing.

	<p>(v) has terminated its activity.</p> <p>In the event that the Candidate/Participant is a foreign person – it must be in a similar position stemming from a similar procedure in accordance with the laws of the country where it is established.</p>	
9.	The Candidate/Participant has concluded an agreement with other persons in view of violating competition rules when the violation has been established with an act by a competent body.	
10.	It has been proved that the Candidate/Participant is guilty of breaching a public procurement contract or concession contract for construction or service, which has led to its premature termination, payment of compensations or other similar sanctions.	When the breach affects less than 50 per cent of the value or volume of the contract the Candidate/Participant shall not be excluded from participation in the Procedure.
11.	<p>The Candidate/Participant has attempted to:</p> <p>(i) influence on the decision making on the part of the Contracting entity concerning exclusion, selection or award, including through submission of untrue or misleading information, or</p> <p>(ii) receive information which may give it unfair advantage in the award procedure for the Public procurement.</p>	

3.1.2. Applicability of the grounds for exclusion

3.1.2.1. The grounds under pt. 1, 2, 7 and 11 of Table 2 shall refer to the persons who represent the Candidate or Participant, the members of management or supervisory bodies¹⁴ and to other persons authorized to exercise control in the decision making of these bodies¹⁵.

¹⁴ These are as follows:

1. for general partnership – the persons under art. 84, para. 1 and art. 89, para. 1 of the Commercial Act;
2. for limited partnership – the unlimitedly responsible shareholders under art. 105 of the Commercial Act;
3. for limited liability company – the persons under art. 141, para. 1 and 2 of the Commercial Act, and for single-member private limited liability company – the persons under art. 147, para. 1 of the Commercial Act;
4. for joint stock company – the persons under art. 241, para. 1, art. 242, para. 1 and art. 244, para. 1 of the Commercial Act;
5. for limited partnership with shares – the persons under art. 256 in conjunction with art. 244, para. 1 of the Commercial Act;

3.1.2.2. The grounds for exclusion shall apply also when the Request for participation or Tender are submitted by consortium, where the stated circumstances apply to some of its members.

3.1.2.3. The grounds for exclusion shall apply until expiration of the following time-limits:

- a) five years as of entry into force of the conviction – as regards the circumstances under pt. 1 and 2 of Table 2 the conviction states another time limit, the conditions for exclusion shall apply until its expiration
- b) three years as of the date of occurrence of the circumstances under pt. 5, sub point (i) and points 6, 9, 10 and 11 of Table 2 if the act certifying the circumstance states another time-limit, the conditions for exclusion shall apply until its expiration.

3.2. Reliability measures

3.2.1. A Candidate or Participant to which the circumstances set out in Table 2 apply may submit evidence that it has undertaken measures which guarantee its reliability despite the presence of the respective ground for exclusion. To this end the Candidate or Participant may prove that:

- a) has paid out its obligations under pt. 3 of Table 2 including the accrued interest and/or fines or that they have been rescheduled, deferred or secured;
- b) has paid out or is in the process of paying out an outstanding compensation for all damage sustained as a result of the crime or violation committed by it;
- c) has clarified in an exhaustive manner the facts and circumstances by actively cooperating with the competent bodies and has complied with concrete instructions, technical, organizational and recruitment measures in view of preventing new crimes or violations.

3.2.2. The Candidate or the Participant may not prove its reliability through the measures under pt. 3.2.1. when, by effective court judgment or another act in accordance with the laws of the country where the judgment was rendered or the act was issued, has been deprived of the right to participate in public procurement procedures or concessions. In this case the impossibility to employ reliability measures lasts for the period set out in the court judgment or the act.

3.3. Declaration of compatibility with the selection criteria

Upon submission of a Request for participation the Candidate shall declare in ESPD the compliance with the selection criteria set out in – Appendix No 8.

6. for sole trader – the physical person-trader;

7. for branch of a foreign person – the person who represents and manages the branch or has similar rights in accordance with the laws of the country where the branch is registered;

8. in the cases under pt. 1 - 7 – and the procurators, when there are such; when the person has more than one procurator, the declaration shall be submitted only by the procurator whose representative powers include the territory of the Republic of Bulgaria;

9. in the remaining cases including for the foreign persons – the persons who represent, manage or control the candidate or the participant in accordance with the laws of the country of establishment.

¹⁵ Persons having a status which allows them to influence directly the activity of the company in a way equivalent to the one applicable to the persons representing it, members of the management or supervisory bodies (for instance, the members of the general shareholder's meeting or the sole owner of the capital, respectively the persons who represent them, or other persons or members of bodies where the by-laws, the incorporation act or another such act of the Candidate/Participant envisages certain decisions related to the activity of the company, that should be taken by such persons).

The respective information required by the Contracting entity shall be submitted to the ESPD and the national databases shall be stated which contain the declared circumstances, or the competent bodies, which, in accordance with the laws of the country where the Candidate is established, shall be obliged to provide information.

When the Candidate has stated that it will rely on the capacity of third parties in order to prove compliance with the selection criteria set out in Appendix No 8 or that it will rely on Subcontractors, for each of these persons a separate ESPD shall be submitted.

3.4. Circumstances which need to be proved. Manner of proof

3.4.1. Circumstances declared in the ESPD

Upon submission of a Request for participation the Candidates certify the lack of grounds for exclusion set out in Table 2 and their compliance with the selection criteria set out in Appendix No 8 solely by way of ESPD. When applicable, they also submit proof regarding the undertaken reliability measures under pt. 4.3. The Candidates shall not enclose to ESPD other documents proving the lack of grounds for exclusion under Table 2 and their compliance with the selection criteria set out in Appendix No 8.

In the course of examining the Requests for participation the Contracting entity may at any given moment require from the Candidates to submit all or part of the documents with which to prove the information set out in the ESPD when this is necessary for the lawful conduct of the Procedure. The Contracting entity shall not require documents of which it is aware ex officio. The submitted copies of documents shall be certified by the representative of the Candidate. The documents in a foreign language shall be also submitted with a translation in Bulgarian.

The Contracting entity may not accept evidence regarding technical and professional capabilities when it is produced by a person having interest which may lead to benefit¹⁶ within the meaning of art. 2, para. 3 of the Act on Prevention and Establishment of Conflict of Interests.

Upon participation of consortiums which are not legal entities, compliance with the selection criteria shall be proved by the consortium-participant, and not by each of the persons included in it, apart from the respective registration, submission of a certificate or other condition necessary for implementation of the procumbent in accordance with a statutory or administrative act and in accordance with the distributing of participation of the persons in the implementation of the activities envisaged in the contract on the establishment on the consortium.

3.4.2. Proof with certificate of origin by the Republic of Bulgaria or another member state

In order to prove the personal situation under pt. 3.1.1. of this section, the compliance with the selection criteria under Appendix No 8 or compliance with the technical specifications the Candidate or Participant may submit certificate for registration in an official list of approved economic operators or a certificate issued by bodies established in the Republic of Bulgaria or another member state where the Candidate or Participant is registered.

When the Candidate or Participant has proved certain circumstances with a certificate, as mentioned above, the latter is free not to submit some of the required documents for proving the

¹⁶ Benefit is any revenue in money or in property including acquisition of shares, as well as provision, transfer or waiver of rights, grant of privilege or honors, obtaining goods or services free of charge or at prices lower than the market ones, help, voice, support or influence, advantage, getting a job or promise of a job, position, gift, reward, or promise to avert loss, liability, sanction or any other adverse event.

same circumstance,. In such cases, the Contracting entity may not exclude it from the Procedure or refuse to conclude a contract with it on this ground.

The Contracting entity may require additional certificate concerning payment of social security contributions and taxes, regardless of the certificate submitted by the Candidate regarding registration in an official list of approved economic operators apart from the cases where such documents have already been submitted to it or of which it is aware ex officio.

The Contracting entity shall not require the Candidates or Participants from other member states to go through the process of registration or certification in order to participate in the public procurement. The Contracting entity shall recognize equivalent certificates issued by bodies established in other member states.

3.4.3. Check of the technical capabilities of the Candidate by the Contracting entity

The subject matter of the public procurement is complicated due to the fact that the pipelines which are subject to supply shall be specially designed and manufactured for the Contracting entity. Requirements shall be met for high-grade material, heat treatment and mechanical properties.

For ensuring the interests of the Contracting entity, there are also high requirements for the production capacity, compliance with the construction schedule. The implementation of the pipeline supply is of critical importance for the Project realization, its costs and commissioning time.

There is a need also for a sufficient quantity, type and quality of equipment suitable for the Project types of pipe, its size, material and way of production. Gas pipelines systems and facilities are identified as risky installations and mistakes in the material and pipeline manufacturing process may lead to serious incidents

The Contracting entity is entitled to check the technical capabilities of the Candidate and if necessary, the testing and checking equipment and the capability to provide quality. The Contracting entity may demand this check also of a competent state body in the country where the Candidate is established, if this body agrees to carry out the check on behalf of the Contracting entity. The Candidate is obliged to cooperate and provide access so that the check can be carried out.

3.5. Guidelines on the filling of ESPD

The ESPD shall be presented for the Candidate in accordance with the statutory requirements and the conditions of the Contracting entity and where applicable – for each of the participants of the consortium which is not a legal entity, as well as for each Subcontractor and for each third party whose resources will be engaged in implementation of the Procurement.

The table below sets out the information which needs to be filled in the ESPD and namely, in which part/section/point the Candidate/Subcontractor/third person needs to declare the respective circumstances related to the personal standing and selection criteria.

Table 3

No	ESPD			Circumstances subject to declaration	Reference text
	Part	Section	Point		
1	2	3	4	5	6

1.	II (second)	A	N/A	Identification of the Candidate/Subcontractor/Third party	N/A
			N/A	General information regarding the Candidate/Subcontractor/Third party	N/A
			N/A	Type of participation of the Candidate	N/A
		B	N/A	Information regarding the representatives of the Candidate/Subcontractor/Third party	N/A
		C	N/A	Reliance by the Candidate on the capacity of someone else	N/A
		D	N/A	Delegating to subcontractors whose capacity will not be used by the Candidate	N/A
2.	III (third)	A	N/A	Information regarding convictions as regards the following crimes: (i) participation in a criminal organization – under art. 321 and 321a of the CC; (ii) corruption – under art. 301 – 307 of the CC; (iii) fraud – under art. 209 – 213 of the CC; (iv) terrorist crimes or crimes related to terrorist activities – under art. 108a, para. 1 of the CC; (v) money laundering or financing of terrorism – under art. 253, 253a or 253b of the CC and under art. 108a, para. 2 of the CC; (vi) child labor and other forms of traffic of people – under art. 192a or art. 159a – 159d of the CC.; (vii) crimes similar to the ones stated above upon presence of a conviction in another member state or third country.	pt. 1. and 2. of Table 2, column “Ground for exclusion”
		B	N/A	Information regarding fulfilled obligations relating to payment of taxes or social security contributions or similar obligations to the government or municipality where the seat of the Contracting entity and Candidate (the Subcontractor/the third person) or Participant is, established in an act by a competent body.	pt. 3. of Table 2, column “Ground for exclusion”
		C	N/A	Information regarding convictions as regards crimes under art. 172 and art. 352-	pt. 1. and 2. of Table 2, column “Ground for

			<p>353f of the CC and similar to the ones mentioned upon presence of a conviction in another member state or third country. Upon reply “yes” the following shall be stated:</p> <p>(i) the date of entry into force of the conviction and the factual and legal ground for its imposition; (ii) the term of the imposed punishment.</p>	exclusion”
		N/A	<p>Information regarding violation in the course of implementation of a public procurement contract of art. 118, art. 128, art. 245 and art. 301-305 of the Labor Code established in an effective penalty statement or court judgment, or of similar obligations established in an act of a competent body in accordance with the laws of the country where the Candidate (the Subcontractor/the third person) or Participant is established.</p>	pt. 6. of Table 2, column “Ground for exclusion”
		N/A	<p>Information as to whether the Candidate/Subcontractor/Third party:</p> <p>(i) has been declared insolvent, or (ii) is undergoing insolvency proceedings, or (iii) is undergoing liquidation procedure, or (iv) has concluded an out-of-court settlement with its creditors within the meaning of art. 740 of the Commercial Act, or (v) has terminated its activity, or (vi) in case of a foreign person – it must be in a similar position stemming from a similar procedure in accordance with the laws of the country where it is established.</p>	pt. 8. of Table 2, column “Ground for exclusion”
		N/A	<p>Information as to whether the Candidate/Subcontractor/Third party has concluded an agreement with other persons in view of violating the competition where the violation has been established in an act issued by a competent body.</p>	pt. 9. of Table 2, column “Ground for exclusion”
		N/A	<p>Information regarding the presence of a conflict of interests which cannot be remedied and which is related to participation in the Procedure.</p>	pt. 7. of Table 2, column “Ground for exclusion”

			N/A	Information regarding inequality in the cases under art. 44, para. 5 of the PPA in connection to provision of consultant services to the Contracting entity or participation in another manner in the preparation of the Procedure.	pt. 4. of Table 2, column "Ground for exclusion"
			N/A	Information regarding faulty breach of a public procurement contract or concession contract for construction or service which led to its premature termination, payment of compensation or other similar sanctions.	pt. 10. of Table 2, column "Ground for exclusion"
			N/A	Information that the Candidate/Subcontractor/Third party/: (i) has not submitted untrue document related certifying the lack of grounds for exclusion or meeting the selection criteria; (ii) has not concealed required information certifying the lack of grounds for exclusion or meeting the selection criteria; (iii) has not attempted to influence the decision making on the part of the Contracting entity related to exclusion, selection or awarding, including through provision of untrue or misleading information; (iv) has not attempted to obtain information which could give it unfair advantage in the procedure for the award of a public procurement	pt. 5. and 11. of Table 2, column "Ground for exclusion"
		D	N/A	Information regarding convictions for the crimes under art. 194 – 208, art. 213a – 217, art. 219 – 252 and art. 254a – 260 of the CC and crimes similar to the ones mentioned herein upon presence of a conviction in another member state or third country.	pt. 1. and 2. of Table 2, column "Ground for exclusion"
			N/A	Information regarding: (i) Whether the Candidate/subcontractor/the third party is registered or not in a jurisdiction with a preferential tax regime and in the event it is registered, it shall be stated where	N/A

			<p>(ii) Whether the Candidate/subcontractor/the third party is affiliated or not with persons registered in jurisdictions with a preferential tax regime, where the affiliated persons and the place of their registration shall be stated.</p> <p>(iii) Whether the Candidate/subcontractor/the third party falls or does not fall within the exceptions under art. 4 of the Act on the economic and financial relations with the companies registered in jurisdictions with a preferential tax regime, the persons controlled by them and their actual owners (AEFRCRJTRPCTTAO). In the event that it falls within one of the applicable hypothesis of this provision, the concrete point of art. 4 shall be stated.</p> <p>(iv) The Candidate/subcontractor/third person is acquainted with the powers of the Contracting entity under art. 5, pt. 3 and art. 6, para. 4 of Act on the economic and financial relations with the companies registered in jurisdictions with a preferential tax regime, the persons controlled by them and their actual owners (AEFRCRJTRPCTTAO) in conjunction with § 7, para. 2 of the Final provisions of this Act.</p> <p>The terms “company”, “control”, “actual owner” and “jurisdictions with a preferential tax regime” shall have the meaning under § 1 of the Supplemental provisions of AEFRCRJTRPCTTAO.</p>	
		N/A	Information as to whether the Candidate is an affiliated person with another independent candidate in the Procedure	N/A

3.	IV (fourth)	B	1a), 2a)	Information regarding the annual turnover for the last three completed financial years (2014, 2015 and 2016) depending on the date on which the Candidate was established or commenced its activity	pt. 1.1. and 1.2. of the Table in Appendix No 8 - <i>Selection criteria, column "Minimum requirements"</i>
		C	1b)	Supplies with a scope and volume identical or similar to those of the Procurement, with stating of the supplies rendered for the last five years as of the date of submission of the Request, the amounts, dates and recipients	pt. 2.1. of the Table in Appendix No 8 - <i>Selection criteria, column "Minimum requirements"</i>
			2)	Technical persons responsible for quality control	pt. 2.2. of the Table in Appendix No 8 - <i>Selection criteria, column "Minimum requirements"</i>
			3)	Technical tools and facilities for ensuring quality including for research and development, as well as application of certain measures for ensuring quality	pt. 2.3. of the Table in Appendix No 8 - <i>Selection criteria, column "Minimum requirements"</i>
			9)	Tools, facilities and technical equipment necessary for implementation of the Procurement.	pt. 2.5. of the Table in Appendix No 8 - <i>Selection criteria, column "Minimum requirements"</i>
			12)	Goods shall be certified by accredited persons for quality control certifying their compliance with specifications or standards.	pt. 2.6. of the Table in Appendix No 8 - <i>Selection criteria, column "Minimum requirements"</i>
D	N/A	System/s for quality management certified in accordance with EN ISO 9001:2008 standard (or equivalent) with a scope: a) production of pipes for transmission of petrol and/or natural gas and production of external and internal coating of such pipes b) pipe supply for transmission of oil and/or natural gas.	pt. 2.4. of the Table in Appendix No 8 - <i>Selection criteria, column "Minimum requirements"</i>		
4.	V (fifth)	N/A	N/A	The Candidate states the information necessary for application of the rules on reducing the number of Candidates in accordance with Appendix No 9.	Appendix No 9 – Rules and criteria for reducing the number of Candidates to be invited to submit Tenders

4. Requirements regarding the documents in the Request for participation

4.1. Declarations

The Candidate shall submit a Declaration-list under art. 44, para. 1 of the RAPPAs of all obligated persons within the meaning of art. 54, para. 2 and art. 55, para. 3 of the PPA, in a form in Appendix No 5, which shall be signed by the statutory representative of the Candidate. It shall state the names of all individuals, irrespective of the name of the bodies in which they participate or the positions they occupy.

The Candidate shall submit a Declaration under art. 6, para. 2 of the Money Laundering Act against money laundering on the basis of a form in Appendix No 6 which shall be signed by the statutory representative of the Candidate.

The Declaration of consent for implementation of a specific part of the Public procurement on the basis of a form in Appendix No 7 shall be signed by the Subcontractor stated by the Candidate in the Request for participation and in the ESPD, in the event that a contract, agreement or other proof has not been submitted, relating to the obligation undertaken by the Subcontractor for implementation of a specific part of the Public procurement.

4.2. Availability of confidential information

The Candidates may state in the Requests for participation information which they consider confidential in connection to the availability of a trade secret. The information with regard to which the Candidates have stated as confidential shall not be disclosed by the Contracting entity.

4.3. Documents regarding proof of the undertaken reliability measures

In view of proving the undertaken reliability measures under pt. 3.2. of this section, the Candidate shall submit:

- a) a document regarding made payment or agreement, or another document evidencing that the obligations have been secured or that the parties have agreed their rescheduling or deferral, together with a timetable for repayment and/or stated dates regarding a final payment of the due obligations or is in the process of payment of a due compensation – as a proof that it has paid out its obligations under pt. 3 of Table 2 including the accrued interests and/or fines or that they have been rescheduled, deferred or secured;
- b) a document regarding made payment or agreement, or another document evidencing that the obligations have been secured or that the parties have agreed their rescheduling or deferral, together with a timetable for repayment and/or stated dates regarding a final payment of the due obligations or is in the process of payment of a due compensation – as a proof that it has paid out or is in the process of payment of a due compensation for all damage sustained as a result of the crime or violation committed by it;
- c) a document by the respective competent body for confirmation of the described circumstance – as a proof that it has clarified in an exhaustive manner the facts and circumstances by actively cooperating with the competent bodies and has complied with concrete instructions, technical, organizational and recruitment measures through which new crimes or violations have been prevented.

4.4. Document regarding the establishment of a consortium – a Candidate in the Procedure

When the Candidate is a consortium, which is not a legal entity, it shall submit a document evidencing the status of the consortium, for instance: consortium contract (which is not a company), civil

association contract, etc. The document shall contain the legal ground for establishment of the consortium, as well as the following information in relation to the public procurement:

- a) a specific partner representing the consortium for the purposes of the Public procurement;
- b) agreed joint and several liability of the participants in the consortium for the implementation of the Public procurement contract when such is not envisaged in accordance with the applicable law;
- c) the rights and obligations of the participants in the consortium;
- d) the distribution of liability between the members of the consortium;
- e) the activities which each member of the consortium shall implement.

4.5. Proof regarding the obligations undertaken by the Subcontractors

The Candidates shall state in the Request for participation the Subcontractors and the part of the public procurement which will be delegated to them if they intend to rely on such for the activities for which this is allowed¹⁷. In this case they shall submit proof of the obligations undertaken by the Subcontractors for implementation of a specific part of the Public procurement – declaration by the Subcontractor in a format in Appendix No 7, contract, agreement or another document at the Candidate's discretion.

4.6. Signing of the documents

4.6.1. The Request for participation shall be signed by the statutory representative of the Candidate or by a person explicitly authorized for this. If the Candidate-consortium is not a legal entity, the Request for Participation shall be signed by the statutory representative of the partner which is designated to represent the consortium.

4.6.2. ESPD shall be signed by the persons stated in pt. 3.1.2.1¹⁸ of this section. When the requirements for the lack of grounds for exclusion under pt. 1, 2, 7 and 11 of Table 2 refer to more than one person, all persons shall sign one and the same ESPD.

4.6.3. When some of the obligated persons must declare different circumstances related to the personal standing, they shall fill a separate ESPD.

When it is necessary for some of the obligated persons to protect personal data, the information regarding the lack of grounds for exclusion under pt. 1, 2, 7 and 11 of Table 2 u shall be filled in a separate ESPD.

4.6.4. In the cases where more than one ESPD shall be submitted, due to presence of circumstances under pt. 4.6.3. the data related to the selection criteria shall be filled only in ESPD signed by a person who can independently¹⁹ represent the respective economic operator.

¹⁷ Activities for which the Contracting entity has not placed an explicit requirement to be implemented by the Participant itself in accordance with Section IV, pt. 2 of Part one.

¹⁸ The persons which represent the Candidate, members of management and supervisory bodies and other persons which have powers to exercise control in the decision-making process by such bodies.

¹⁹ When the Candidate is represented by more than one person, they sign ESPD in which the data related to the selection criteria is filled.

5. Submission of Request for participation

5.1. Manner, place and deadline for submission of Requests

The Request for Participation shall be submitted by the Candidate or a representative authorized by it in one of the following ways:

- a) in person, against a signature, or
- b) by post service by way of a registered mail and acknowledgment of receipt, or
- c) other courier service with registered letter with acknowledgment of receipt

The Request for participation shall be submitted by the Candidate at the address of the Contracting entity: in the city of Sofia, No 13 Veslets Str., fl. 2, ICGB AD.

The deadline for submission of the Requests for Participation shall be stated in the Announcement of the Public procurement and shall be extended/may be extended by the Contracting entity in the cases under *pt. 6.3.5., Section III: Information regarding the award Procedure, Part one. General provisions.*

In the event that the Candidate sends the Request for participation by way of registered mail or courier, it shall send it in a manner so as to ensure its receipt by the Contracting entity until expiration of the deadline. The risk in delay or loss shall be borne by the Candidate.

5.2. Manner for receipt of requests

5.2.1. Upon receipt of the Request for Participation on the package under *pt. 1.2.* of this section the number, date and time of receipt shall be stated for which the bearer shall be issued a document.

5.2.2. Requests for Participation which have been submitted after expiration of the deadline for receipt or are in a non-sealed package or in a damaged package shall not be accepted.

5.2.3. When, at the time of expiration of the deadline for receipt of Requests for Participation at the place designated for their submission there are still persons waiting, they shall be included in a list which shall be signed by a representative of the Contracting entity and by the persons present. The Requests for Participation of the persons in the list shall be filed in the register of the Contracting entity. In such cases no acceptance of Requests for Participation by persons who are not included in the list shall be allowed.

5.3. Referral of the Requests for participation for review

The received Requests for participation shall be referred to the chair of the Commission for which a protocol shall be drawn up and signed. The protocol contains data as regards the senders of the Requests for participation, number, date and hour of receipt.

SECTION III. PERFORMING A PRELIMINARY SELECTION

1. Actions of the Commission in the preliminary selection

1.1. The Requests for Participation shall be opened publicly on the date, time and place stated in the Announcement for the Public procurement. Upon change in the date, time or place for opening of the Requests for Participation the Contracting entity shall notify the Candidates through a message published on the Profile of the buyer and sent on the emails stated by them, no later than 24 hours prior to the initially announced time and at least 72 hours prior to the newly stated time.

1.2. At the public hearing the Candidates in the Procedure or their authorized representatives may be present as well as representatives of the media.

1.3. The Commission shall open the sealed non-transparent packages by order of their submission and announces their content thus completing the public phase of the hearing.

1.4. The Commission shall continue its work in a closed hearing where it shall review the documents under pt. 2 of *Section II. Guidelines on preparation and submission of Requests for Participation* for their compliance with the requirements regarding the personal standing and selecting criteria imposed by the Contracting entity and shall issue a protocol containing statements.

1.5. When it establishes omission, incompleteness or discrepancy of the information, including irregularity or a factual mistake, or non-compliance with the requirements regarding the personal standing or the selection criteria, the Commission shall state them in the protocol under pt. 1.4. and shall send the protocol to all Candidates on the date of its publishing in the Profile of the buyer.

1.6. Within 5 working days as of receipt of the protocol under pt. 1.4. the Candidates, regarding which discrepancy or lack of information has been established, may submit to the Commission a new ESPD and/or other documents containing amended and/or supplemented information. The additionally submitted information may encompass facts and circumstances occurred after the deadline for receipt of Requests for Participation. The Candidate shall submit the additional documents under pt. 5.1., *Section II. Guidelines on preparation and submission of Requests for participation*.

1.7. The possibility under pt. 1.6. shall apply also to the Subcontractors and the third persons stated by the Candidate. The Candidate may replace a Subcontractor or a third person when is the Commission has established that the Subcontractor or third person do not meet the conditions of the Contracting entity.

1.8. When the amendments refer to circumstances different from the grounds for exclusion under pt. 1, 2, 7 and 11 of Table 2, the new ESPD may be signed only by one of the persons which may independently represent the Candidate.

When the amendments refer to the grounds for exclusion under pt. 1, 2, 7 and 11 of Table 2, the new ESPD shall be signed by the persons to whom the amendments refer.

1.9. Following expiration of the time limit under pt. 1.6. the Commission shall review the additionally submitted documents as regards the compliance of the Candidates with the requirements regarding the personal standing and selection criteria.

Documents which the Candidates submit following expiration of the term under pt. 1.6 shall not be reviewed by the Commission.

1.10. Upon performing the preliminary selection and at every stage of the procedure the Commission may, if necessary, require clarifications regarding data stated by the Candidates or Participants and/or check the stated data including by requiring information by other bodies and persons. The Candidates shall submit clarifications/proof within time limit set by the Commission in accordance with pt. 5.1., *Section II. Guidelines on preparation and submission of Requests for participation*.

2. Reducing the number of Candidates

2.1. Minimum number of Candidates which shall be invited to submit Tenders

The number of Candidates which shall be invited to submit tenders shall be limited to five in accordance with art. 144, para. 5 in conjunction with art. 105 of the PPA.

2.2. Applicable criteria and rules on reducing the number of Candidates

2.2.1. Upon performing the preliminary selection, when the number of Candidates meeting the requirements is more than five, the Rules and criteria on reducing the number of candidates which shall be invited to submit tenders shall apply – Appendix No 9.

2.2.2. When the number of Candidates which meet the requirements is less than five, an invitation to submit tenders shall be sent to each Candidate which has submitted Request and meets the selection criteria and the minimum requirements.

3. Decision on preliminary selection

3.1. The Commission shall issue a protocol with the results of the preliminary selection and shall present it to the Contracting entity.

3.2. Within 5 working days as of the date of acceptance of the protocol the Contracting entity shall declare in a decision the Candidates which will be invited to submit Tenders. The decision shall include also the motives for exclusion of the Candidates which do not meet the requirements stated by the Contracting entity.

SECTION IV. APPENDICES AND FORMS FOR PHASE 1

Table 4

Appendix No 1 Technical specifications
Appendix No 2 Sample form of a List of the submitted documents in the package containing the Request for participation
Appendix No 3 Form of a Request for participation
Appendix No 4 Form of a European Single Procurement Document
Appendix No 5 Form of a Declaration-list under art. 44, para. 1 of the Rules on the Application of the PPA of all obligated persons under art. 54, para. 2 and art. 55, para. 3 of the PPA
Appendix No 6 Form of a Declaration under art. 6, paragraph 2 of the Act Money Laundering
Appendix No 7 Form of a Declaration by the Subcontractor regarding its consent to implement a specific part of the Public procurement
Appendix No 8 Selection Criteria
Appendix No 9 Rules and criteria for reducing the number of Candidates to be invited to submit Tenders

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PART THREE

SUBMISSION, REVIEW AND ASSESSMENT

OF TENDERS (PHASE 2)

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SECTION I. SENDING OF INVITATIONS

1. Addressees and content of the invitation

1.1. The Contracting entity shall send simultaneously written invitations to the Candidates selected to submit Tenders and shall publish the approved invitation on the Profile of the buyer.

1.2. The invitation shall be approved by the Contracting entity with the decision on preliminary selection and shall contain:

- a) deadline for receipt of the Tenders, the address at which they shall be sent and the language in which they shall be drawn up;
- b) date, time and place of opening of the Tenders;
- c) referral to a published invitation for participation in the Procedure;
- d) statement of the documents which are attached to the invitation.

2. Time limit for sending the invitations

The written invitations to the selected Candidates for submission of Tenders shall be sent within 3 days as of:

- a) expiration of the time limit for appeal – when the decision regarding the preliminary selection has not been appealed, as well as when it has been appealed but the appeal did not contain request under art. 203 of the PPA for imposition of a temporary measure “suspension of the procedure”;
- b) entry into force of the injunction under art. 204 of the PPA declining the request for a temporary measure “suspension of the procedure”;
- c) entry into force of the decision regarding the preliminary selection when a temporary measure “suspension of the procedure” has been imposed.

SECTION II. GUIDELINES ON PREPARATION AND SUBMISSION OF TENDERS

1. General guidelines

1.1. Right to submit a Tender

The Candidates which have received written invitations for submission of Tenders shall submit Tenders within the time limit set out in the invitation. This time limit may not be shorter than 30 days as of the date of sending the invitation. The persons and the consortiums which submit Tenders in the set time limit shall acquire the capacity of Participants in the Procedure.

1.2. Requirements regarding the Tender

The Tender shall meet the requirements of the Contracting entity set out in the Announcement on the Public procurement and this Documentation. The Tender shall be formatted in accordance with the forms and the guidelines of the Contracting entity. The conditions in the forms of the Documentation for participation shall be mandatory for the Participants and may not be amended by them.

The Tender shall be submitted in the original both in paper form and electronically.

The documents contained in the Tender shall be ordered in a folder in the manner in which they are listed in the description of the submitted documents under the form in Appendix No 10, and the pages shall be numbered. Each page shall be signed by the statutory representative of the Participant, and if

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the latter is a consortium – by a representative designated by the partners, or by the person authorized with a notarized power of attorney to represent the Participant in the procedure.

The copies of documents to be submitted shall be certified by the representative of the Participant. The documents in a foreign language shall be submitted also with Bulgarian translations.

The copies of the electronic documents shall be in Bulgarian and English language and shall be ordered in folders in the same sequence in which they are submitted on paper. The names of the folders and the files shall clearly indicate their content. The files shall be in a format which allows a complete text search and copying of parts of the content in view of facilitating the work of the Commission.

In the event of a discrepancy between the paper texts and the electronic text, the paper type of the document shall prevail.

1.3. Requirements regarding the package

The Tender containing the required documents shall be submitted in a sealed non-transparent package on which the following shall be stated:

- the name of the Participant, including the members of the consortium when applicable;
- address for correspondence, telephone and if possible – fax and email;
- the name of the procurement for which the documents are submitted.

The following note shall be placed on the package:

To ICGB AD Sofia No. 13 Veslets, Str., fl.2
TENDER For participation in a restricted procedure for the award of a public procurement with subject matter: „Line Pipes Manufacture and Supply for the Needs of Gas Interconnector Greece-Bulgaria“
Name of the Participant: Members of the consortium: <i>(when applicable)</i> Correspondence address: Telephone: Fax: Email:

2. Preparation of Tenders

2.1. Content of the package containing the Tender – a list of the required documents

2.1.1. The package containing the Tender shall contain:

- a) A list of the submitted documents on the basis of a form in Appendix No 10;

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- b) Technical offer;
- c) Price offer on the basis of a form in Appendix No 12.

2.1.2. The Technical offer of the Tender shall contain:

- a) A notarized document for authorization when the person submitting the Tender is not the statutory representative of the Participant;
- b) Offer for implementation of the procurement in accordance with the Technical specifications and the requirements of the Contracting entity on the basis of a form in Appendix No 11, which contains also:
 - (i) Declaration regarding the validity term of the Tender;
 - (ii) Declaration regarding consent with the provisions of the suggested draft contract;
 - (iii) Declaration under art. 102, para. 1 of the PPA regarding confidential information contained in the Tender(if applicable);
- c) Description of the goods which shall be supplied (catalogues).

2.2. Guidelines on preparation of the Technical offer

2.2.1. The offer for implementation of the procurement (Technical offer) shall be drawn up on the basis of a form in Appendix No 11. The Tender shall contain information on each of the points in the form. If a certain part of the mandatory information is missing the Tender shall be excluded from participation.

2.2.2. The Participant shall attach to its Offer for implementation the procurement documents, evidencing the origin of the offered goods in accordance with the current rules on origin in the country or on the territory of receipt or in any other manner for determining the country where the goods were wholly obtained or underwent their last substantial processing.

2.2.3. The validity term of the Tender which the Participant shall state in the Offer for implementation of the Procurement (Technical offer), shall be at least 6 (six) months as of the deadline for receipt of Tenders. A Participant which submits a Tender of a shorter validity shall be excluded from participation in the Procedure.

The Contracting entity may require from the Participants to extend the validity term of the Tenders until a contract is concluded.

A Participant which refuses to extend the validity term of its Tender following an invitation on the part of the Contracting entity within the time limit set out in the invitation, shall be excluded from participation in the Procedure.

2.2.4. The Participants may state which part of the submitted information in their Tender they deem to be confidential due to trade secret. The information as to which the Participants have invoked confidentiality shall not be disclosed by the Contracting entity to third parties and shall not be published on the Profile of the buyer.

The Participants may not invoke confidentiality as regards the proposals in their Tenders which are subject to assessment.

2.2.5. Participants are not allowed to offer options in their Tenders.

2.3. Guidelines on the preparation of the Price offer

The Price offer shall be prepared on the basis of a form in Appendix No 12.

The Price offer shall contain prices for all type of pipes specified in *Appendix 01 - Bill of Quantities* of the Technical specifications. The Price offer with missing price positions will be not further evaluated and the Participant shall be excluded from the Procedure.

The Price offer shall be placed in a separate sealed non-transparent envelope inside the package and shall bear the note: "Offered price parameters".

The total price offered by the Participant may not exceed the estimated value of the Public procurement which is the maximum admissible price. Tenders exceeding the amount of the estimated value shall be removed from the Procedure.

Information as regards certain elements of the price may not be contained in other documents (e.g. catalogues). Upon non-performance of this requirement the Tender shall be excluded from the Procedure.

3. Submission of Tenders

3.1. Manner, place and deadline for submission of a Tender

The Tender shall be submitted by the Participant or a representative authorized by it in one of the following ways:

- a) in person against a signature, or
- b) by post service by way of registered mail with acknowledgment of receipt, or
- c) other courier service with registered letter with acknowledgment of receipt

The Tender shall be submitted by the Participant at the address of the Contracting entity: in the city of Sofia, No 13 Veslets Str., fl. 2, ICGB AD.

The deadline for submission of the Tenders shall be stated in the invitation for submission of tenders and may not be shorter than 30 days as of sending of the invitation. The Contracting entity shall extend/may extend the deadline for submission in the cases set out in *pt. 6.3.5. of Section one, General provisions, Section III: Information regarding the award Procedure*.

In the event that the Participant sends the Tender by way of registered email or courier, it has to send it in a manner so that to ensure its receipt by the Contracting entity until the expiration of the deadline. The risk in delay or loss shall be borne by the Participant.

3.2. Procedure for receipt of Tenders

3.2.1. Upon receipt of the Tender the number, date and time of receipt shall be stated on the package under *pt. 1.3.* of this section for which the bearer shall be issued a document.

3.2.2. Tenders which have been submitted following expiration of the deadline for receipt or are in a non-sealed package or in a damaged package shall not be accepted.

3.2.3. When at the time of expiration of the deadline for receipt of Tenders at the place designated for their submission there are still persons waiting to submit Tenders, they shall be included in a list which shall be signed by a representative of the Contracting entity and by the persons present. The Tenders of the persons in the list shall be filed in the register of the Contracting entity. In such cases no acceptance of Tenders by persons who are not included in the list shall be allowed.

3.3. Referral of the Tenders for review

The received Tenders shall be referred to the chair of the Commission for which a protocol shall be drawn up and signed. The protocol contains data as regards the senders of the Tenders, name, date and hour of receipt.

SECTION III. REVIEW AND ASSESSMENT OF THE TENDERS. AWARD CRITERION

1. Actions of the Commission in the review and assessment of the Tenders

1.1. The Tenders shall be publicly opened on the date, time and place stated in the invitation to submit Tenders. Upon change in the date, time or place for opening of the Tenders the Participants shall be notified through the Profile of the buyer, no later than 24 hours prior to the time initially announced and at least 72 hours prior to the newly stated time.

1.2. At the public hearing the Participants in the Procedure or their authorized representatives may be present as well as representatives of the media.

1.3. The Commission shall perform during the public hearing the following actions:

- a) opens by order of submission the sealed non-transparent packages, announces their content and checks whether there is a separate sealed envelope bearing the note: "Offered price parameters";
- b) at least three members of the Commission shall sign the Technical offer and the envelope bearing the note: "Offered price parameters" of each of the submitted Tenders;
- c) suggests that one of the present representatives of the other participants sign the Technical offer and the envelope bearing the note: "Offered price parameters" of the remaining Participants.

After performing the actions under letters a) – c) the public phase of the hearing shall be completed.

1.4. The Commission shall continue its work in a closed hearing where it shall review the submitted Technical offers and shall check for their compliance with the conditions stated beforehand. Upon reviewing the Technical offers, when necessary, the Commission may conduct checks of the data stated by the Participants, including by requiring information from other bodies and persons. The Participants may be required to submit clarifications or additional evidence regarding data stated by the Participant. The check and the clarifications may not lead to amendments in the Technical offer of the Participants.

The Participants shall submit the clarifications/proof within the time limit set by the Commission in accordance with pt. 3.1., *Section II. Guidelines on preparation and submission of Tenders*.

1.5. The Commission shall perform assessment of the admitted Technical offers according to the indicators stated in Appendix No 13 – Indicators under the award criterion and Complex assessment methodology.

1.6. Following completion of assessment of the Technical offers the Commission shall announce at least by a message in the Profile of the buyer the date, time and place of opening of the Price offers. The announcement shall be carried out no later than two working days prior to the date of opening.

1.7. Opening of the price offer shall be done in a public hearing at which the Participants or their authorized representatives may be present, as well as representatives of the media.

1.8. The Commission shall announce the results from the assessment of the Technical offers in accordance with the indicators set out in Appendix No 13, shall open the Price offers and shall announce them in the public hearing.

The Price offer of a Participant whose Technical offer does not meet the requirements of the Contracting entity, shall not be opened.

1.9. Following announcement of the Price offers The Commission continues its work in a closed hearing where it shall check the compliance of the Price offers with the preliminary declared conditions.

The Commission shall perform assessment of the Price offers and shall determine the complex assessment of each of the admitted Tenders in accordance with Appendix No 13 – Indicators under the award criterion and Complex assessment methodology.

1.10. The Commission shall rate the Participants in descending order according to the received complex assessments. The Participant with the highest complex assessment shall be ranked first.

1.11. When the complex assessments of two or more Tenders are equal, the Tender which shall be rated higher is the one containing more beneficial offers, assessed in the following order:

- a) lower offered price;
- b) more beneficial offer in accordance to indicators outside those under letter a) compared in a descending order in accordance with their weight.

1.12. In the event that the Participants cannot be ranked in accordance with pt. 1.11, the Commission shall publicly draw a lot for determining a Tender, which shall be ranked with advantage, respectively, for determining a Contractor between those Tenders ranked first .

1.13. The Commission shall prepare a report for the results of its work and shall attach all documents prepared in the course of its work, such as protocols, assessment tables, motives for the divergent views, if any, etc. The report of the Commission shall be signed by all members and shall be delivered to the Contracting entity together with the entire documentation.

2. Award criterion

2.1. Type of award criterion

The public procurement shall be awarded based on the economically most beneficial Tender.

The economically most beneficial Tender shall be determined based on the criterion “optimal ratio quality/price”.

2.2. Indicators included in the award criterion

The assessment indicators included in the criterion under pt. 2.1. shall be stated in Appendix No 13 – Indicators under the award criterion and the Complex assessment methodology Complex assessment methodology.

2.3. Relative weight of the indicators

The relative weight of each of the indicators is set out in Appendix No 13 - Indicators included in the award criterion and the Complex assessment methodology.

2.4. Complex assessment methodology

The manner for determining the assessment under each indicator and the complex assessment methodology are set out in Appendix No 13 – Indicators included in the award criterion, and in the Complex assessment methodology, and the Complex assessment methodology.

3. Completion of the Procedure

3.1. The Procedure shall be completed with a decision for:

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- a) determining a Contractor under a Public procurement contract;
- b) termination of the Procedure;

3.2. Decision on selection of a Contractor

By way of decision under pt. 3.1., letter a) the Contracting entity shall select a Contractor of the procurement this Participant which meets the following conditions:

- a) there are no conditions for exclusion from the Procedure set out in Table 2 (as an exception the ground under pt. 3 of Table 2 when (i) especially important government interests or public interests need to be protected; (ii) the amount of the unpaid due taxes or social security contributions is no more than 1 per cent of the amount of the annual total turnover for the last completed financial year);
- b) meets the selection criteria set out in Appendix No 8 and the non-discrimination rules and criteria regarding reducing the number of candidates in accordance with Appendix No 9;
- c) the Tender of the Participant has received the highest grade under the conditions preliminary declared by the Contracting entity and the selected award criterion.

3.3. Termination of the Procedure

3.3.1. The Contracting entity shall mandatorily terminate the procedure with a reasoned decision under pt. 3.1., letter b) when:

- a) no Tender or Request for participation has been submitted;
- b) none of the Tenders or Requests for participation meet the conditions for submission, including regarding form, manner or time limit, or are inappropriate²⁰;
- c) the first or second ranked Participants refuse to conclude a contract;
- d) established violations upon opening or conducting the Procedure which cannot be remedied without changing the conditions under which it has been announced;
- e) due to breach of any of the conditions under art. 112, para. 1 of the PPA²¹ a Public procurement contract is not concluded²²;

²⁰ „Inappropriate Tender“ is a tender which does not meet the technical specifications and the requirements for implementation of the procurement or has been submitted by a participant which does not meet the set selection criteria or to which any of the grounds for exclusion from the procedure applies (§ 2, pt. 25 of the Additional Provisions of the PPA).

“Inappropriate Request for participation” is a request submitted by a candidate which does not meet the set selection criteria or to which any of any of the grounds for exclusion from the procedure applies (§ 2, pt. 26 of the Additional Provisions of the PPA).

²¹ Art. 111 of the PPA:

“The Contracting entity shall conclude with the selected Contractor written public procurement contract on condition that upon signing of the contract the selected Contractor:

submits document for registration in accordance with the requirement under art. 10, para. 2 of the PPA;

performs the obligation under art. 67, para. 6 of the PPA;

submits the performance guarantee;

carries out the respective registration, submits a document or fulfils another requirement which is necessary for implementation of the procurement according to the requirements of a statutory or administrative act and is placed by the contracting entity in the conditions of the public procurement.”

²² The condition shall apply when the first and second ranked Participants have not submitted the documents necessary for conclusion of a contract.

- f) all Tenders which meet the conditions preliminary declared by the Contracting entity exceed the financial resource which it is able to provide;
- g) the necessity to conduct the procedure or to award the contract is no longer present as a result of a considerable change in circumstances or impossibility to provide financing for the implementation of the procurement due to reasons which the Contracting entity has been unable to foresee;
- h) considerable changes²³ in the conditions of the announced procurement are necessary which would change the scope of the interested persons.

3.3.2. The Contracting entity at its own discretion may terminate the Procedure with a reasoned decision under pt. 3.1., letter b) when:

- a) only one Tender or Request for participation has been submitted;
- b) there is only one appropriate Request for participation or one appropriate Tender
- c) The Participant ranked first:
 - (i) refuses to conclude a contract;
 - (ii) does not comply with one of the conditions under art.112, para. 1 of the PPA, or
 - (iii) does not prove that there are no grounds for exclusion from the procedure.

3.3.3. The Contracting entity at its own discretion may repeal an effective decision regarding the selection of a Contractor and may issue a decision for termination of the Procedure when prior to conclusion of the contract a circumstance under pt. 3.3.1., letter c), e) and g) or pt. 3.3.2., letter c) arises.

SECTION IV. APPENDICES AND FORMS FOR PHASE 2

Table 5

Appendix No 10 – Sample form of a List of the submitted documents in the package containing the Tender
Appendix No 11 Form of an Offer for implementation of the procurement (Technical offer)
Appendix No 12 Form of a Price Offer
Appendix No 13 Indicators under the award criterion and Complex assessment methodology
Appendix No 14 Draft Public Procurement Contract

²³ Changes in the subject matter or the activities included in the scope of the Public procurement in view of ensuring implementation which meets the needs of the contracting entity, as well as a change to the requirements towards the Candidates and Participants which would not provide quality implementation of the subject matter of the procurement.

PART FOUR

EXCLUSION FROM THE PROCEDURE. APPEAL

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SECTION I. GROUNDS FOR EXCLUSION FROM THE PROCEDURE

Apart from the grounds set out in Table 2, the Contracting entity shall exclude from the Procedure also:

- a) Candidate which has no right to participate in public procurements on the ground of art. 3, pt. 8 in conjunction with art. 5, para. 1, pt. 3 of the Act on the economic and financial relations with the companies registered in jurisdictions with a preferential tax regime, the persons controlled by them and their actual owners (AEFRCRJPTRPCTTAO), except for the cases when the conditions under art. 4 of this act are present;
- b) Candidate which does not meet the set selection criteria or does not fulfil some other condition set out in the Announcement on the Public procurement or in the Documentation;
- c) Participant which has submitted a Tender which does not meet the preliminary determined conditions of the Procurement;
- d) Participant which has not submitted timely the justification under art. 72, para. 1 of the PPA or whose justification/tender has not been accepted in accordance with art. 72, para. 3-5 of the PPA²⁴;
- e) Candidates or Participants which are affiliated persons
- f) Participants in whose Tender the share of the products originating in third countries with which the European Union or the Republic of Bulgaria does not have a multilateral or bilateral agreement providing comparable and effective access, exceeds 50 per cent of the total value of the products included in it.

²⁴ Art. 72. (1) When a proposal in the tender of a participant related to price or expenses which is subject to assessment, is 20 per cent more advantageous than the average value of the proposals of the other participants under the same indicator for assessment, the contracting entity shall demand a detailed written justification as to the manner of its formation which shall be submitted within 5 days as of receipt of the demand;

(2) The justification under para. 1 may refer to:

1. the economic particularities of the production process, of the services rendered or of the construction method;
2. selected technical solutions or the availability of extremely advantageous conditions for the participant for the provision of the products or the services or for the implementation of the construction;
3. originality of the solution proposed by the participant as regards the construction, supplies or services;
4. compliance with the obligations under art. 115 of the PPA;
5. the possibility for the participant to receive state aid.

(3) The justification received shall be assessed as to its completeness and objectivity regarding the circumstances under para. 2, on which the participant relies. If necessary, clarifying information may be required from the participant. The justification may not be accepted and the participant shall be excluded only when the submitted evidence is not sufficient to justify the proposed price or expenses.

(4) A tender shall not be accepted when it is established that the price or expenses proposed in it are 20 per cent more advantageous than the average values of the respective proposals in the remaining tenders due to norms and rules related to environmental protection, social and labor law, applicable collective agreements and/or provisions of the international environmental, social and labor law set out in appendix No 10 which have not been complied with.

(5) A tender shall not be accepted when it is established that the price or expenses proposed in it are 20 per cent more advantageous than the average value of the respective proposals in the remaining tenders due to received state aid, when the participant cannot prove within the set time limit that the aid is compatible with the internal market within the meaning of art. 107 of the TFEU.

(6) The contracting entities are obliged to notify the European Commission for all cases under para. 5.

(7) All bodies are obliged upon request and within their competence to provide to the contracting entities, including those from other member states, information related to statutory provisions and regulations, applicable collective agreements or national technical standards relating to the evidence and documents submitted in connection to the data under para. 2.

SECTION II. APPEAL

1. Appeal regarding the opening of the Procedure and performing the preliminary selection (Appeal in Phase 1)

1.1. Acts subject to appeal:

- a) the decision for opening of the Procedure under pt. 1 of *Part one. General information, Section III. Information regarding the award Procedure*, and/or the decision for approval of the announcement for amendment or additional information under pt. 6.3.2. of *Part one. General provisions, Section III. Information regarding the award Procedure*;
- b) the decision regarding the preliminary selection under pt. 3.2. of *Part two. Preliminary selection (Phase 1), Section III. Performing a preliminary selection*;
- c) actions or omissions of the Contracting entity preventing the access or participation of persons in the Procedure. The actions of the Contracting entity in the issuance of the decisions under letter a) and b) are not subject to independent appeal.

1.2. Right to appeal

1.2.1. Appeal may be submitted by:

- a) each interested person²⁵ - in the cases under pt. 1.1., letters a) and c);
- b) each interested candidate²⁶ in the Procedure - in the cases under pt. 1.1., letter b) and c).

1.2.2. The appeal shall be submitted to the Commission for the protection of competition with a copy to the Contracting entity.

1.3. Time limit for appeal

1.3.1. Appeal against the decision under pt. 1.1., letter a) may be submitted within 10 days as of expiration of the 14-day term within which the Contracting entity may make amendments or supplementations in the Documentation and send for publication in the PPR an announcement for amendment or additional information. (see pt. 6.3. of *Part One, General information, Section III. Information regarding the award Procedure*).

1.3.2. Appeal against the decision under pt. 1.1., letter b) may be submitted within 10 days as of receipt of the decision regarding preliminary selection.

1.3.3. Appeal against action or omission of the Contracting entity under pt. 1.1., letter c) may be submitted within 10 days as of notification of the respective action, and if the person has not been notified – within 10 days as of the date of expiration of the time limit for performing the respective action.

2. Appeal regarding the review, assessment and ranking of the Tenders and in cases where the Procedure is terminated (Appeal in Phase 2)

2.1. Acts subject to appeal:

²⁵ "Interested person" is each person which has or has had interest in being awarded a specific public procurement and which has sustained or may sustain damage resulting from the alleged violation (§ 2, pt. 14 of the Additional provisions of the PPA).

²⁶ "Interested candidate" is a candidate which has not been ultimately excluded from participation at the preliminary selection stage since it has not been notified of the exclusion or the appeal procedure regarding the decision by which it is excluded has not been completed yet (§ 2, pt. 12 of the Additional provisions of the PPA).

- a) the decision for selecting a Contractor under pt. 3.1., letter a) of *Part three. Submission and assessment of Tenders (Phase 2), Section III. Review and assessment of the Tenders. Award criterion*;
- b) the decision for termination of the Procedure for selection of a Contractor under pt. 3.1., letter b) of *Part three. Submission and assessment of Tenders (Phase 2), Section III. Review and assessment of the Tenders. Award criterion*;
- c) actions or omissions of the Contracting entity preventing the access or participation of persons in the Procedure. The actions of the Contracting entity in the issuance of the decisions under letter a) and b) are not subject to independent appeal.

2.2. Right to appeal

2.2.1. Appeal may be submitted by each interested candidate or participant²⁷ in the Procedure.

2.2.2. The appeal shall be submitted to the Commission for the protection of competition with a copy to the Contracting entity.

2.3. Time limit for appeal

2.3.1. Appeal against the decisions under pt. 2.1., letters a) and b) may be submitted within 10 days as of receipt of the decision for selecting a Contractor or the decision for termination of the Procedure

2.3.2. Appeal against action or omission of the Contracting entity under pt. 2.1., letter c) may be submitted within 10 days as of notification of the respective action, and if the person has not been notified – as of the date of expiration of the time limit for performing of the respective action.

²⁷ "Interested participant" is a participant which has not been ultimately excluded from the procedure. Exclusion is ultimate when the participant is notified of the decision for exclusion and this decision has entered into force. An interested participant is also a participant which was ranked but is not selected for a contractor (§ 2, pt. 13 of the Additional provisions of the PPA).

PART FIVE

PUBLIC PROCUREMENT CONTRACT.

SUBCONTRACT

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SECTION I. CONCLUSION OF PUBLIC PROCUREMENT CONTRACT. PERFORMANCE GUARANTEE

1. Conclusion of the Public Procurement Contract

1.1. Time limit for conclusion

The Contracting entity shall conclude a Public Procurement Contract within one month as of entry into force²⁸ of the decision for determining a Contractor for the Public procurement under the conditions of art. 112²⁹ of the PPA.

Following entry into force of the decision for the selection of a Contractor the parties shall set the date and manner for conclusion of the Contract.

1.2. Conditions for conclusion

²⁸ The decision shall enter into force following expiration of the time limit for appeal – in the event that there is no complaint submitted, or following entry into force of the decision of the Commission on the protection of completion or of the Supreme Administrative Court confirming the decision for selecting of a contractor – in the event that a complaint has been submitted.

²⁹ Art. 112. (1) The contracting entity shall conclude with the selected contractor a written public procurement contract on condition that upon signing of the contract the selected contractor:

1. submits a document for registration in accordance with the requirement under art. 10, para. 2;
2. performs the obligation under art. 67, para. 6;
3. provides the set performance guarantee;
4. carries out the respective registration, submits a document or provides some other requirement which is necessary for implementing of the procurement in accordance with the requirements in a statutory or administrative act and has been placed by the contracting entity in the conditions of the announced procurement.

(2) The contracting entity shall not conclude a contract when the participant ranked first:

1. refuses to conclude a contract;
2. does not fulfil some of the conditions under para. 1, or
3. does not prove that there are no conditions for exclusion from the procedure.

(3) In the cases under para. 2 the contracting entity may amend the effective decision in the part concerning selecting a contractor and with a motivated decision determine that the second ranked participant becomes a contractor;

(4) The contract shall comply with the draft contract attached to the Documentation, supplemented with all proposals from the tender of the participant based on which the latter has been selected a contractor of the procurement. Amendments to the draft contract shall be allowed as an exception when the condition under art. 116, para. 1, pt. 5 is met and are imposed by the circumstances occurred during or after convening of the procedure.

(5) The mandatory minimal content of the contract shall be determined in the rules on application of the act.

(6) The contracting entity shall conclude the contract within a month as of entry into force of the decision for selecting a contractor or the ruling allowing for a preliminary enforcement of this decision but not prior to expiration of 14-day time limit as of notification of the interested candidates and/or interested participants of the decision for selecting a contractor.

(7) The contracting entity may conclude a public procurement contract before expiration of the 14-day time limit as of notification of the interested candidates and/or interested participants of the decision for selecting a contractor in the following cases:

1. the contractor is determined as a result of:

- a) procedure under art. 18, para. 1, pt. 8-10 and 13 and there is only one invited participant, or
 - b) procedure under art. 18, para. 1, pt. 8-10 and 13 opened on the ground of art. 79, para. 1, pt. 4, art. 138, para. 1, art. 164, para. 1, pt. 3 or 4, or art. 182, para. 1, pt. 1 and there are more invited participants;
2. the selected contractor is the only one interested participant and there are no interested candidates, or
 3. the contract is concluded on the basis of a framework agreement with one participant.

(8) The contracting entity shall not have the right to conclude a contract with the selected contractor before entry into force of all decisions concerning the procedure save for the cases when there is a preliminary enforcement or when the procedure is open on the ground of art. 79, para. 1, pt. 4, art. 138, para. 1, art. 164, para. 1, pt. 3 or 4, or art. 182, para. 1, pt. 1.

1.1.1. Conditions for conclusion of the Contract is submission of the following documents by the selected Contractor:

- a) updated documents certifying the lack of the grounds for exclusion from the Procedure under Table 2, as well as the compliance with the set selection criteria under pt. 1 and pt. 2 of the Table.in Appendix No 8; the documents shall be submitted also for the Subcontractors and the third persons, if there are such;
- b) performance guarantee under pt. 2 of this section;
- c) when the selected Contractor is a consortium which is not a legal entity - certified copy of a certificate of tax registration and BULSTAT registration or equivalent documents in accordance with the laws of the country where the consortium is established.

1.1.2. In view of proving lack of grounds for exclusion under Table 2 the Participant selected for Contractor shall submit:

Table 6

No	Reference text	Circumstance whose lack shall be proved	Proof
1.	Points 1 and 2 of Table 2	Conviction for a crime under art. 108a, art. 159a-159d, art. 172, art. 192a, art. 194-217, art. 219-252, art. 253-260, art. 301-307, art. 321, art. 321a and art. 352-353f of the Criminal Code	Judicial record certificate
2.	Point 3 of Table 2	Obligations regarding tax and mandatory social security contributions within the meaning of art. 162, para. 2, pt. 1 of the Tax and Social Security Contributions Process Code or similar obligations pursuant to the law of the country where the selected contractor is established.	Certificate issued by the revenue bodies and certificate issued by the municipality where the seat of the Contracting entity and selected Contractor is
3.	Point 6 of Table 2	Violation in the implementation of the public procurement of art. 118, art. 128, art. 245 and art. 301-305 of the Labor Code or similar obligations pursuant to the law of the country where the selected contractor is established.	Certificate issued by the Executive Agency "Chief Labor Inspection"
4.	Point 8 of Table 2	Insolvency of the selected contractor or insolvency proceedings or liquidation procedure, or concluded out-of-court settlement with the creditors within the meaning of art. 740 of the Commercial Act, or the activity of the selected contractor	Certificate issued by the Registry Agency For a foreign person - contractor - certificate by a similar body

		was terminated. For a contractor – foreign person – similar position stemming from a similar procedure in accordance with the laws of the country where it is established.	
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1.1.3. When the certificate under pt. 3 of Table 6 above information is contained regarding effective penalty statement or court judgment for violation the Participant shall submit a declaration that the violation has not been committed in the course of implementation of a public procurement contract.

1.1.4. When the Participant selected for a Contractor is a foreign person it shall submit the respective document under pt. 1.1.2. issued by the competent body in accordance with the laws of the country where the participant is established.

When in the respective country documents regarding the stated circumstances are not issued or when the documents do not include all circumstances the Participant shall submit a declaration, if such declaration is of legal significance in accordance with the laws of the respective country. When the declaration is not of legal significance the Participant shall submit an official statement made before a competent body in the respective country.

1.1.5. The Contracting entity shall not require submission of the evidence of Table 6 when the circumstances in them are accessible through a public free register or the information or access to it is submitted by the competent body of the Contracting entity ex officio.

2. Performance guarantee

2.1. Amount of the guarantee

The selected Contractor of the Public procurement shall submit a guarantee securing the performance of the contract. The guarantee shall be in the amount of 5% of the value of the contract.

2.2. Form of the guarantee

The guarantee shall be submitted in one of the following forms:

- a) money;
- b) bank guarantee;
- c) insurance securing performance by covering the liability of the Contractor.

Whether the guarantee is in the form under a) or b), it may be submitted on behalf of the Contractor at the expense of a third person – guarantor.

The participant selected for a Contractor shall choose the form of the performance guarantee.

2.3. Requirements regarding the guarantee

2.3.1. When the selected Contractor constitutes a consortium which is not a legal entity, each of the partners in it can be an initiator under the bank guarantee, respectively deposit the amount of money under the guarantee in the bank account, or can be a party to the insurance contract.

2.3.2. The guarantee in the form of money shall be deposited into a bank account of the Contracting entity in bank „Bulgarian Development Bank“, IBAN: BG07NASB96201410249402; BIC: NASBBGSF

2.3.3. The performance bank guarantee, respectively the insurance, shall be issued in favor of the Contracting entity and shall contain the following conditions:

- a) a statement of the issuing bank, respectively statement of insurer, that it will pay within 5 working days to the Contracting entity the sum of the due payment or part thereof as stated by the Contracting entity in a written request;
- b) assuming a non-revocable and unconditional engagement for payment upon receipt of a written request by the Contracting entity, regardless of the objections of the Contractor or third persons.

2.4. Terms and conditions regarding retention or release of the guarantee

The terms and conditions regarding retention or release of the performance guarantee shall be set out in the Public Procurement Contract.

3. Suspended performance of the Public procurement contract due to financing not provided in full amount

3.1. Due to financing which is not provided in full amount at the moment of opening of the procedure, the implementation of the Contract has been suspended and commences when financing is provided. The Contractor shall be notified in writing by the Contracting entity regarding provision of financing in full amount and from this moment onwards the time-limit for implementation of the activities within the scope of the public procurement starts to run.

3.2. In compliance with art. 114, sentence two of the PPA, in the event that within 3 (three) months as of conclusion of the Contract, financing is not provided, each of the Parties to it shall have the right to terminate the Contract unilaterally without notice and without owing any financial or other compensation to the other Party.

4. Specifics of the Public procurement contract performance

After the signing of the Public procurement contract the Contracting entity is entitled, if permitted by the law – to be replaced as Party by the EPC contractor where the EPC contractor will substitute entirely the Contracting entity in all its rights and obligations under the Contract – by novation of the Public procurement contract.

Notwithstanding the application of novation, all terms and conditions for the performance of the Public procurement contract including but not limited to the prices will remain as it is agreed and determined in the Procedure.

SECTION II. SUBCONTRACT

1. Conclusion of Subcontract

1.1. The Contractor may conclude a Subcontract only with the Subcontractors stated in the Request for participation.

1.2. Following conclusion of the Public procurement contract and prior to commencing its implementation at the latest, the Contractor shall notify the Contracting entity of contact details and the representatives of the Subcontractors stated in the Request for participation. The Contractor shall notify the Contracting entity of any changes in the submitted information in the course of implementation of the procurement.

1.3. Within 3 days as of conclusion of a Subcontract the Contractor shall send a copy of the contract to the Contracting entity.

1.4. Regardless of the possibility to use Subcontractors the liability for implementation of the Public procurement contract lies with the Contractor.

2. Rules on direct payments to Subcontractors

Implementation of a part of the procurement by a Subcontractor, including making separate deliveries by demand, shall not be a separate object within the meaning of art. 66, para. 4 of the PPA³⁰. Hence, no rules for direct payments to a Subcontractor are envisaged, i.e. the Contracting entity may not pay remuneration directly to the Subcontractor for a part implemented by it.

3. Replacement of Subcontractors

3.1. Replacement or inclusion of a Subcontractor in the course of implementation of the public procurement contract shall be allowed as an exception when the need for this arises, if the following conditions are met simultaneously.

- a) no grounds for exclusion from the Procedure apply to the new Subcontractor;
- b) the new Subcontractor meets the selection criteria which were also met by the previous Subcontractor, including regarding the part and type of activities which it will implement corrected in accordance with the activities implemented to date.

3.2. Within 3 days as of conclusion of the additional agreement for replacement of a Subcontractor stated in the Request for participation the Contractor shall send a copy of the additional agreement to the Contracting entity together with evidence that the conditions under pt. 3.1. have been met.

4. Prohibition for re-delegation

The Subcontractors shall not have the right to re-delegate one or more of the activities included in the subject matter of the Subcontract. The supply of goods, materials or equipment necessary for implementation of the Public procurement when such supply does not include installation, as well as conclusion of services contracts which are not part of the Public Procurement Contract, respectively of the Subcontract shall not be considered a violation of the prohibition.

³⁰ Art. 66, para. 4 of the PPA: „When part of the procurement, which is implemented by a subcontractor, may be provided as a separate object to the contractor, or the contracting entity, the contracting entity shall pay a remuneration for this part to the subcontractor.“