

NOTICE for participation in  
a direct negotiation  
procedure for

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

ICGB AD

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**TO**

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1303 Sofia, Bulgaria

**TO**

Price Waterhouse Coopers  
9-11 Maria Luiza Blvd., floor 7, 1000 Sofia, Bulgaria

**TO**

KPMG  
45/A Bulgaria blvd, 1404 Sofia, Bulgaria

**TO**

Earnst & Young Bulgaria  
47 Tsarigradsko shoes Blvd.  
1124 Sofia, Bulgaria

DEAR LADIES AND GENTLEMEN,

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

The direct negotiation procedure has been opened based on decision № P-03/06.04.2017, pursuant to art. 182, par. 1, item 5 of the Public Procurement Act, promulg. SG, issue. 13 of 16.02.2016, effective as of 15.04.2016 (PPA).

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

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Main address of the assigning authority/contracting entity: <http://www.icgb.eu/>

Buyer's profile address: <http://www.icgb.bg/profil-na-kupuvacha/proceduri-za-vuzlagane-na-op>

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

### 1. Subject-matter:

*Selection of a Tax Legal Consultant for provision of services related to the development and implementation of the Project for Gas Interconnector Greece-Bulgaria in accordance with the final investment decision.*

### 2. Scope of the procurement:

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

### 3. Estimated value:

**BGN 300 000 VAT excluded**

Offers must not exceed the estimated forecast value.

### 4. Validity of the Expression of Interest

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

## II. INFORMATION ON THE PROJECT:

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



The IGB Project consists of two phases: the construction of the 32", 182 km pipeline between Komotini (northern Greece) and Stara Zagora (central Bulgaria) with a commercial operation date approximately established by the end of 2019 - beginning of 2020;

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

The first phase of the IGB Project comprises:

- Fiscal metering and pressure control next to the 36" DESFA pipeline and next to the 48" TAP pipeline in Komotini, Greece;
- A receiving fiscal metering and pressure control station next to the 28" BULGARTRANGAZ pipeline in Stara Zagora, Bulgaria;
- A 32", 182km buried onshore pipeline including associated facilities;
- Associated SCADA and Telecommunication systems.

The IGB Project is now in the preparatory phase for starting the construction activities and it is completing the acquisition of the land rights for construction permits in Bulgaria, and is following up the procedure for obtaining the construction permits in Greece. Among the other activities, the ICGB have recently launched the market test for completing the exemption procedure under the art. 36 of the 73/2009/EC gas Directive as endorsed by the Bulgarian and Greek regulatory frameworks. ICGB has obtained a grant up to 45 m€ under the EPR and is applying for obtaining additional grant from the Regional Structural Funds and programs of Greece and Bulgaria.

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

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



### III. REQUIREMENTS TO APPLICANTS

#### 1. General requirements

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

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

- 1.2.1 Has been sentenced effectively, except if rehabilitated, for an offence pursuant to art.108a, art.159a-159d, art.172, art.192a, art.194-217, art.219-252, art.253-260, art.301 -307, art.321, 321a and art.352 -353 of the Penal Code;
- 1.2.2 Has been sentenced effectively, except if rehabilitated, for an offence analogical to these under item 1.2.1 in another member state or a third state;
- 1.2.3 Has liabilities to the state or to the municipality where the seat of the contracting entity and the applicant is located for taxes and mandatory social security contributions in the sense of art. 162, par. 2, par. 1 of the Tax-Insurance Procedural Code and interest on them or analogical payables established via a competent authority document in accordance with the legislation of the state where the applicant is based, except if rescheduling, deferment or providing security for the payables has been arranged or the payable is pursuant to a document that has not taken effect.

**Note:** The requirement under the previous item does not apply in the case under art. 54, par. 3 of PPA, i.e. when: especially important state or public interests have to be defended; the amount of unpaid taxes and social security contributions due does not exceed 1 per cent of the total amount of the turnover for the latest financial year.

- 1.2.4 There is inequality in the cases under art. 44, par. 5 PPA

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

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



- 1.3.4 There is a conflict of interest which may not be terminated;

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

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

**1.5.** An applicant whose real owner is a person that is or has been over the past twelve months at a high state position in the Republic of Bulgaria or in another country or a related person in the sense of art. 8a of the Rules for Implementation of the Act on Measures Against money Laundering may not participate in the procedure. The non-existence of these circumstances shall be certified by filling in Part III, letter D of ESPD.

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

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

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

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

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

- a) persons one of which controls the other or its subsidiary;
- b) persons whose activity is controlled by a third person;

- c) persons who jointly control a third person;
- d) spouses, relatives in the direct line without limitation and in the collateral line up to fourth degree inclusive, and relatives by affinity up to the fourth degree inclusive.

"Control" shall be in effect where a person:

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

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

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

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

**Where the applicant has undertaken reliability measures, the latter shall be described in ESPD and the following documents shall be attached:**

1. As regards the circumstances under item 54, par. 1, item 1 and item 2 PPA (item 1.2.1 and 1.2.2 of this section respectively) – a document for payment made or an agreement or another document which makes it clear that the payables have been secured or that the parties have arranged for them to be

deferred or rescheduled along with a payment schedule and/or dates for final payment of payables due or that the applicant is in the process of paying the compensation due;

2. And as regards the circumstances under art. 54, par. 1, item 3 PPA (item 1.2.3 of this section respectively) – a document from the respective competent authority confirming the circumstances described.

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

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

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

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

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

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

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

- a) in case of a general partnership- persons under art. 84, par. 1 and art. 89, par. 1 of the Commerce Act;
- b) in case of a limited partnership – general partners under art. 105 of the Commerce Act,
- c) in case of a limited liability partnership- persons under art. 141, par. 1 and par. 2 of the Commerce Act and in case of a single person limited liability company – the persons under art. 147, par. 1 of the Commerce Act;



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

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

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

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

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

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

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

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

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

1. for the circumstances under art. 54, par. 1, item 1 PPA - a conviction status certificate;

2. for the circumstances under art. 54, par. 1, item 3 PPA- a certificate from revenue authorities and a certificate from the municipality where the seat of the contracting authority and the applicant is;

3. for the circumstances under art. 54, par. 1, item 6 PPA- a certificate from General Labour Inspectorate Executive Agency;

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

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

The contracting entity shall not require documents to be submitted evidencing the non-existence of grounds for exclusion when the circumstances in them are accessible through a public free-of-charge



register or the information or access to it is provided by the competent authority to the contracting entity officially.

## 2. Selection criteria

### 2.1. Economic and financial status requirements

The contracting entity has provided for economic and financial status requirements:

- o Average Annual Turnover. The Applicant shall have an average annual turnover over the last 3 years of not less than 200 000 EUR depending on the date on which the Applicant has been established.

Evidence: in order to prove compliance with the said criterion the applicant fills in field 1b of Section B: Economic and Financial Standing, in Part IV: Selection criteria of ESPD. The requirement set is evidenced with documents under art. 62, par. 1, item 1 or 3 PPA- bank' certifications or copy of financial statement, which the applicant nominated for contractor submits before a public procurement contract is concluded. When submitting an offer, applicants fill in only the respective ESPD section.

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

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

Experience in at least one consultancy service in the area of provision of tax legal services related to elaboration and drafting of specific mechanism of weighted taxation applicable to the overall income of the operation of a gas pipeline and realization of such mechanism through "one stop shop" payment in the country of incorporation, or services similar or related to these.

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

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

#### **Team leader**

*Qualifications and skills:*



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

**Specific professional experience:**

- To have at least 5 years' experience in double taxation and in tax due diligence of major infrastructure transnational projects, tax restructuring, tax legislation in the area of energy and natural resources, specialized tax advice and assistance on an ongoing basis in the area of VAT, VAT compliance.

**Key experts – minimum 3**

*Qualifications and skills:*

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

**Specific professional experience:**

- To have at least 3 years' experience in double taxation and or international taxation including from the midstream oil and gas industry, corporate tax issues including withholding taxation on dividends, royalties interest payments and services, thin capitalisation issues, deductibility test, CFC rules, tax planning projects.

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

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

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

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

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



accordance with the procedure compliant with law.

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

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

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

##### 1. Scope of the activities

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

The participation of the Contractor in a kick-off meeting to take place in Sofia shall be considered as included in the prices quoted.

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

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

##### 2. Scope of Work

The scope of work comprises the performance of tax advisory services (tasks) set forth below. The Company shall have the option to require the Contractor, at its own discretion, the performance of one or more of the Tasks.

##### 2.1. OBJECTIVES OF THE SERVICES

- Provide advice to ICGB AD (the Company), incorporated in the Republic of Bulgaria, related to the taxes applicable to it in connection with the realization of the gas transportation project “Gas Interconnector Greece-Bulgaria” (IGB Project) and the commercial operation of the IGB Pipeline, taking into consideration its Greek-Bulgarian “cross-border” nature;



- In the context of the existing Treaty for the Avoidance of Double Taxation between Republic of Bulgaria and Hellenic Republic, and considering the cross-border location of the future IGB Pipeline (151km in Bulgarian territory and 31km in Greek territory):
  - confirm relevant obligations and level of taxation on the Company income that may be expected to be due in Greece under applicable national legislation;
  - deriving from expected obligations towards Bulgarian and Greek tax authorities, to develop a specific mechanism of “due” weighted taxation applicable to the overall income from the operation of the whole pipeline, expected level of overall taxation over the Company income, and realization of such mechanism through “one stop shop” payment in the country of incorporation;
- Propose appropriate legally binding instrument at intergovernmental level, in particular to ensure: the implementation of the above cited suggested mechanism for the taxation of the Company income and the functioning of such mechanism throughout the duration of the Company business plan; a “one stop shop” tax declaration mechanism; a streamlined process of Value Added Tax (VAT) re-imburement to the Company in both countries, in compliance with applicable EU law, and in order to avoid undue burden on the Company cash flows taking into consideration also the exempted nature of the project under article 36 of the 2009/73/EC gas directive and the use of the grants;
- Advise on VAT treatment in Bulgaria and Greece of supplies of goods / services / construction from EU and non-EU suppliers, including cash optimization related to recovery / refund of input VAT; VAT reverse charge on services / supplies/construction made by foreign entities;
- Ensure that Company will include bankable taxation assumptions in its business plan to be proposed to its Shareholders and/or external finance providers, Ensure their bankability in the subsequent implementation of the business plan during the construction and operation of the IGB pipeline; Include the resulting tax model characteristics in an Intergovernmental Agreement. Tax costs arising during the life cycle of the project need to be estimated as precisely as possible, as they impact its overall profitability. The Company will need to be assured that the tax assumptions in its financial model are correct and that no material unexpected tax costs and relevant cash outflows may arise during the development, construction and operation of the IGB pipeline.

## 2.2. KEY AND SUPPORTING TASKS:

### 2.2.1. Key tasks

The Company shall have the option to require the Contractor, at its own discretion, the performance of one or more of the Tasks:

#### **Key Task 1**





- Confirm relevant legal obligations and level of taxation on the Company income that may be expected from obligations towards Bulgarian and Greek tax authorities; propose a specific mechanism of “due” weighted taxation on a long-term basis applicable to the overall income from the operation of the whole pipeline, expected maximum level of overall taxation over the Company income, and realization of such mechanism through “one stop shop” payment in Bulgaria;
- Propose in a term sheet form appropriate legally compliant and legally binding instrument at intergovernmental level, in particular to ensure: the implementation of the above cited suggested mechanism for the taxation of the Company income and the functioning of such mechanism throughout the duration of the Company business plan; a streamlined process of Value Added Tax (VAT) re-imburement to the Company in both countries, in compliance with applicable EU law, and in order to avoid undue burden on the Company cash flows taking into consideration also the exempted nature of the project under art. 36 of the 2009/73/EC gas directive and the use of the grants;

### **Key Task 2**

- Assess tax treatment and associated tax risks and their implications on the company’s tax liabilities in relation to specific services and/or supply and/or construction contracts, concluded by the Company;
- Advise on VAT treatment in Bulgaria and Greece of supplies of goods / services / construction from EU and non-EU suppliers, including cash optimization related to recovery / refund of input VAT, VAT reverse charge on services / supplies/construction made by foreign entities;
- Analysis of tax aspects with respect to impairment of assets or receivables, and provisions for liabilities;
- Review and provide comments on the taxation and depreciation rates and calculation methodologies (in compliance with IFRS and Greek and Bulgarian Fiscal policy) applicable to ICGB AD and impacting the Company business plan.
- Review and provide comments on the thin capitalization rules and their potential applicability to ICGB AD.
- Provide comments on Bulgarian withholding tax implications, including double tax treaty application, in relation to services/supplies/construction under contracts concluded with third parties;

### **Key Task 3**

- Prepare a tax memorandum to be provided to prospective finance providers summarising key fiscal assumptions applicable to the Project in order for them to perform due diligence on the projected economics of the project;



- Provide general tax advice to ICGB AD in relation any contemplated financing to be provided for the realization of the Project until completion of construction by: equity injections, and/or project financing from third party finance provides, and/or shareholder loans.
- Legal Tax advice necessary to achieve financial close for the Project (including in connection with the satisfaction of conditions precedent etc.);
- Advise on legal and statutory reserves and constraints of cash distributions to the Company Shareholders.
- **2.2.2. Supporting Tasks to be conducted on a case by case basis ad hoc if explicitly requested by ICGB AD** Provide expert advice and support to the Company in its interaction with the competent national authorities of Republic of Bulgaria and Hellenic Republic (notably tax authorities), including in the process of concluding above cited legally binding instrument/s under Key Task 1;
- Provide relevant legal and tax advice to the Company Shareholders on shareholder loan agreements;
- Provide periodic updates on tax regulation changes under the Republic of Bulgaria and/or the Hellenic Republic fiscal /legal policy, applicable for ICGB Project as of specific dates, as requested by ICGB AD;
- Reviewing and comment on the tax provisions in a draft finance term sheet, or any tax-related matter that may emerge during negotiations with prospective finance providers, including the tax implications of possible financing, guarantee and security package structures;
- Any other legal consultations and analyses related to the impact of taxation on the project economics and financing structure, as may be requested by the Company.

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

#### 3.1. The Technical Offer shall contain information on:

- a) knowledge of the IGB Project and the approach for performance of services in the context of transboundary gas pipeline project, connecting the national gas transpiration systems of two EU Member states;
- b) risks for cross-border gas projects and measures in respect with its tax and fiscal legal framework
- c) experience in structuring trans-boundary oil and gas pipeline projects and in performing activities as described in Section 2 "Scope of Work";
- d) knowledge in dealing with the Bulgarian, Greek and EU legal and fiscal legislations;
- e) the members of proposed team and their personal experiences/curricula; organization, distribution of roles and tasks in the team considering expertise and qualifications

#### 3.2. The Financial offer shall provide:



- ✓ The financial offer shall be comprised of prices in EUR based on lump sum for key tasks in point 2.2.1 Tasks from 1 to 3;
- ✓ The financial offer shall be comprised of prices in EUR based on hourly Rates, excluding VAT for the performance of the supporting Tasks listed in point 2.2.2. The offer should include hourly rates of each team member by positions and by seniority)

A threshold number of hours upon which discounted hourly rates shall apply will be appreciated.

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

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

4.1. The public procurement award contract shall be concluded when all tasks provided by the Scope of Work are entirely executed but not more than 5 (five) years as of the date of signing of the Contract.

4.2. The terms for implementation of particular Task shall be determined upon assignment of the particular Task/s.

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

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

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

#### VI. TERMS FOR CONDUCTING THE PROCEDURE

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

Negotiations for awarding the public procurement will be held on **16.05 and 17.05.2017** in the premises of ICGB AD at the following address: 13 Veslets str., Sofia 1000.

The notice approved by Decision № P-03/06.04.2017 shall be sent to the persons referred to in it.

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

Application offers (complete application in accordance with the requirements of the contracting entity) shall have to be submitted by **02.05.2017, within the working hours of the Company – 18 h.**

The complete application in accordance with the requirements shall be submitted both as a written hard copy and in electronic file. In the event of discrepancy between electronic and hard copies of the documents, the hard copy shall prevail.



The application and all ancillary documents shall have to be submitted in both Bulgarian and in English (bilingual or bilingual two columns or separate documents). Documents and appendices prepared by applicants may be submitted in bilingual format and in the event of discrepancy of English and Bulgarian text, the English text shall prevail. Documents submitted as translations into Bulgarian shall have to be non-certified translations.

Both copies in Bulgarian and English must be properly signed.

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

The packaging shall bear:

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

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

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

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

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

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

Applicants may provide in their offers information which they consider confidential with respect to business secret. When applicants have requested confidentiality, the respective information is not disclosed by the contracting entity to third parties except where legal grounds arise for this. For the



existence of confidential information, the applicant files a declaration under art. 102, par. 1 and par. 2 of the Public Procurement Act.

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

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

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

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

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

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

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

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

1. A list of documents submitted;

2. Application- as per template enclosed;

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

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

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

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

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



7. Initial price offer of the applicant- as per template enclosed.
8. Declaration for non-existence of relations with another applicant in the procedure.
9. Declaration on the draft contract.

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

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

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

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

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

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

The lots containing the names of the invited candidates to fix the sequence of negotiations shall be cast **on 09.05.2017 in the ICGB AD premises, 13 Veslets str., Sofia 1000.**

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

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

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



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

The justification may refer to:

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

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

An application is not accepted when it is established that the price or costs in it are more than 20 per cent more advantageous than the average values of the respective offers in the rest of the offers because norms and rules related to environmental protection, social and labour law, applicable collective agreements and/or provisions of international environmental, social and labour law listed in Appendix № 10 PPA have not been complied with<sup>2</sup>.

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

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

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



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

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

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

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

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





## Appendices

Appendix №1 – Methodology for setting the integrated assessment

Appendix №2 – Application template

Appendix №3 – European Single Procurement Document (ESPD)

Appendix №4 – Confidentiality declaration under art. 102 PPA

Appendix №5 – Technical offer sample;

Appendix №6 – Price offer template;

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

Appendix № 8– Declaration for the draft contract;

Appendix №9 – Draft contract