

DOCUMENTATION

FOR A PUBLIC PROCUREMENT WITH SUBJECT MATTER:

**“DESIGN, PROCUREMENT AND CONSTRUCTION
OF THE NATURAL GAS INTERCONNECTOR GREECE – BULGARIA
(IGB PROJECT)”**

Sofia, 2018

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DEFINITIONS AND ABBREVIATIONS

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
AEFRCRJPTRPCTTAO	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 (promulgated SG, issue 1 of 03 January 2014, as subsequently amended and supplemented)
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
Contracting entity	The Executive directors of ICGB AD
Contractor	The awarded Participant in the Procedure for the selection of the Contractor with a decision of the Contracting entity and with which the Contracting entity concludes the Public procurement contract
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
Documentation/Documentation regarding the Public procurement	This documentation regarding the Public procurement
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
Procedure	This restricted Procedure for the award of a public procurement, opened with a Decision No of 2018 of the Contracting entity
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 11
Project/IGB Project	Interconnector Greece – Bulgaria Project
Profile of the buyer	Internet address of the Contracting entity http://www.icgb.eu/buyers-profile/public-procurement-procedures , where electronic documents regarding the Procedure are published
Public procurement	Public procurement with a subject matter “Design, procurement and construction of the natural gas Interconnector Greece-Bulgaria (IGB Project)”
PPA	The Public Procurement Act (promulgated SG, issue 13 of 16 February 2016, as subsequently amended and supplemented)

Public procurement contract	The contract for implementation of the Public procurement with a subject matter “Design, procurement and construction of the natural gas Interconnector Greece-Bulgaria (IGB Project)”, which is entered into by the Contracting entity and the Contractor
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
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
RAPPA	Rules on the application of the Public Procurement Act (promulgated SG, issue 28 of 08 April 2016, as subsequently amended and supplemented)
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
Subcontractor	Person which has given its consent to implement a specific part of the Public procurement, designated by the Candidate in the Request for participation and in the event that it is selected for a Contractor, it will conclude a Subcontract
Technical offer	Part of the Tender containing Proposal for implementation of the Public procurement according to the template in Appendix No 10 and authorization document
Tender	Offer submitted by a Participant to implement the Public procurement which contains the Technical offer and the Price offer
The law of the country where the Candidate/Participant/the selected Contractor is established	The applicable law, as follows: <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.

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

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.

(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.

PART ONE

GENERAL INFORMATION

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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 DN 800 (32") and a total length of about 182 km. The gas pipeline shall be designed for a total natural gas transportation capacity of 5 billion cubic meters/per year with a Maximum Operating Pressure (MOP) of 75 bars, and it should be able to operate at an initial capacity of approximately 3 billion cubic meters/per year. 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. Furthermore, for the Bulgarian section the Project has obtained Construction Permit No 48 dated 12.09.2017 published in the State Gazette No 76/2017 and for the Greek part an Installation Permit is in the process of approval.

EU provides grant financing for the Project up to EUR 45 million under the European Energy Program for Recovery (EEPR), which has been extended to 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 2018 access to an increased amount of state financial guarantee when negotiating loan facilities for the project of up to EUR 110 million.

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 Interconnector Greece-Bulgaria.

Upon assigning the present public procurement under the PPA and the RAPP the Executive directors who represent the Company act as contracting entity and apply the rules applicable to the contracting entities.

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

1. Subject matter

The Public procurement is a mixed one within the meaning of art. 11 of the PPA since it includes activities with more than one object – construction, supply and a service but it is awarded as construction (design and implementation) on the ground of art. 11, para. 1 of the PPA since this is the object which characterizes the activities – a main subject matter of the procurement.

The Executive directors of ICGB AD announce a restricted procedure for the award of a public procurement with a subject matter: **“Design, procurement and construction of the natural gas Interconnector Greece-Bulgaria (IGB Project)”**.

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 18 (in words: eighteen) months in accordance with the draft Public procurement contract ([Appendix No 13](#)).

The implementation shall be in accordance with the timetable for carrying out the activities where interim deadlines are specified. The timetable will be updated to the date of the beginning of the implementation of the public procurement contract.

4. Estimated value

The estimated value of the Public procurement is **EUR 145 000 000 (one hundred forty five million euro) VAT excluded**.

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-09/30.04.2018 of the Executive directors of the Company approving Announcement with outg. No P-09/30.04.2018 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

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.

PART ONE. GENERAL INFORMATION

The selection of a restricted procedure has been imposed by the complex nature of the subject matter of the Public procurement which includes detailed design and construction of a big technical facility for gas transmission with forward flow from Greece to Bulgaria and capability for reverse flow from Bulgaria to Greece.

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 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 of 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. Lots – 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.

The subject matter of the current public procurement is engineering - design and execution of a construction³ under art. 3, para. 1, p. 1, l. "b" of the PPA. Dividing the Public procurement into lots is not feasible and would pose risks for the Contracting Entity. There is a correlation between the activities in the scope of the procurement which stems from the end goal of their implementation, namely construction of an onshore gas pipeline between Greece and Bulgaria. 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 activities and respectively, an unfounded delay in time of the completion of construction.

Assigning the preparation of a detailed design to a single Contractor and implementation of construction presupposes that the design which will be made by the designer team of the Contractor shall be compliant to the fullest extent with the technical capacity and resource, necessary for the complex implementation of the procurement and timely completion of construction.

Only awarding the procurement without division into lots guarantees the 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)

³ "Construction" is the result of public works or activities in the field of public works which is sufficient for itself to fulfill economic or technical function. (Paragraph 2, item 51 of the Additional Provisions of the PPA).

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 protocol and the results of its work shall be reflected in a report.

4.1.3. The decisions of the Commission shall be adopted by 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 chairperson 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 favor of a Candidate or Participant.

5. General requirements regarding participation in the Procedure

5.1. The Requests for participation and the Tenders shall be mandatory 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.

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.

PART ONE. GENERAL INFORMATION

5.6. Affiliated persons⁴ may not be independent Candidates or Participants in the Procedure for the award of Public procurement.

5.7. A branch of a foreign person may be an independent Candidate in the Procedure provided it is able to independently submit Requests for participation or Tenders and conclude contracts in accordance with the laws of its country of establishment.

5.8. In cases where the Candidate intends to use Subcontractors, if applicable⁵, 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.

5.9. 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 drafted in Bulgarian and English language. In the event of 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

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.

⁴ "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.

⁵ If the Contracting entity has not placed an explicit requirement to be carried out by the Participant itself in accordance with Part one, Section IV, pt. 3.

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

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 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

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

2. Project technical documentation

The implementation of the Public procurement should be in accordance with the Technical documentation for the Bulgarian and for the Greek part of the Gas pipeline. Regarding the Greek section, the Front End Engineering Design documentation required for the issue of the Installation Act is approved. For the Bulgarian territory a Technical design of the Gas pipeline is prepared according to the standards for the design of high pressure gas pipelines on the territory of Bulgaria, which is approved by the Minister of the Regional Development and Public Works.

3. Implementation of particularly important activities

3.1. Within the scope of the Public procurement there are activities which are of particular importance and which are decisive for the quality of the service which the Contracting entity needs. These are all activities relating to the installation of the main gas pipeline (installation, welding, pipe-laying), hydraulic tests, cleaning and drying of the gas pipeline and inspection of the pipe geometry after installation.

3.2. Based on art. 63, para. 5 of the PPA the Contracting entity requires that the activities under pt. 2.1. be carried out directly by the Participant itself, respectively by a member of the consortium.

3.3. The Contracting entity does not allow for the Candidates to envisage Subcontractors for the implementation of activities of particular importance under pt. 3.1. In case of violation of this condition the Candidates shall be excluded from participation in the Procedure.

3.4. There is no obstacle to the Candidates declaring the use of Subcontractors for the implementation of activities which do not constitute activities under pt. 3.1.

PART TWO

PRELIMINARY SELECTION (PHASE 1)

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SECTION I. SELECTION CRITERIA

The Selection Criteria, the requirements for declaration and proof, the possibility for using third parties capacity and Subcontractors are listed in Appendix No 7 to the Documentation.

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

1. General guidelines

1.1. Requirements regarding the Request

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 original both in paper form and electronically.

The documents contained in the Request for participation shall be ordered in folders 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 it is stated:

- Name of the Candidate, including members in the consortium, if applicable;
- Address for correspondence, telephone and if possible – fax and email;
- Name of the procurement for which 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:

"Design, procurement and construction of the natural gas Interconnector Greece-Bulgaria (IGB

PART TWO. PRELIMINARY SELECTION (PHASE 1)

<p>Project)"</p> <p>Name of the Candidate:</p> <p>Members of the consortium: (when applicable)</p> <p>Correspondence address:</p> <p>Telephone:</p> <p>Fax:</p> <p>Email:</p>

2. Content of the package with the Request for participation – a list of the 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 a model form in <u>Appendix No 2</u>	
2.	Request for participation in accordance with a model 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 Candidate	
4.	ESPD for the Candidate in accordance with the statutory requirements and the conditions of the Contracting entity (the ESPD shall be provided exclusively in electronic form on an electronic data storage medium)	When applicable: <ul style="list-style-type: none"> - ESPD for each of the members of the consortium which is not a legal entity⁶ - 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, when applicable	

⁶ 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.

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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 a form in <u>Appendix No 5</u> ;
8.	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 consent to implement a specific part of the Public procurement in accordance with the form in <u>Appendix No 6</u> , contract, agreement or another document at the Candidate's discretion.

3. European Single Procurement Document (ESPD)

3.1. Declaring of personal situation

Upon submission of a Request for participation the Candidate shall declare the lack of the grounds for exclusion under pt. 3.1.1. of this section by submitting ESPD, respectively shall describe in the ESPD 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 pt. 3.1.1. of this section.

3.1.1. Grounds for exclusion related to the personal situation

The Contracting entity shall exclude from participation in a Procedure for award of Public procurement a Candidate or Participant for which the following 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 on this ground.
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;	
3.	The Candidate/Participant has: (i) obligations for tax and social security contributions within the meaning of art. 162, para. 2, pt. 1 of the Tax and Social Security	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

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	<p>Contributions Process Code⁷ 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</p> <p>(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>	<p>taken effect, the Candidate/Participant shall not be excluded from the Procedure on this ground.</p> <p>The Contracting entity shall not exclude a Candidate or Participant from the Procedure on this ground, when:</p> <p>(i) especially important government or public interests need to be protected;</p> <p>(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.</p>
4.	There is no equality in the cases under art. 44, para. 5 ⁸ of the PPA.	
5.	<p>It is established for the Candidate/Participant that it:</p> <p>(i) has submitted a document making a false statement concerning the establishment of lack of grounds for exclusion or meeting the selection criteria under pt. 1-3 of the table in <u>Appendix No 7</u>;</p> <p>(ii) has not submitted the required information concerning the establishment of lack of grounds for exclusion or meeting the selection criteria under pt. 1-3 of the table in</p>	

⁷ Taxes, including excise duties, as well as customs duties, mandatory social security contributions and other contributions for the treasury.

⁸ 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.

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	<u>Appendix No 7;</u>	
6.	A breach of the following legal provisions has been established with an effective penalty statement or court judgment: (i) art. 61, para. 1 ⁹ , art. 62, para. 1 ¹⁰ or 3 ¹¹ , art. 63, para. 1 or 2 ¹² , art. 118 ¹³ , art. 128 ¹⁴ , art. 228, para. 3 ¹⁵ , art. 245 ¹⁶ and art. 301 – 305 ¹⁷ of the Labour Code, or	A breach of art. 61, para. 1, art. 62, para. 1 or 3, art. 63, para. 1 or 2 and art. 228, para. 3 shall only lead to the exclusion of the Candidate where it had been in breach of the said provisions after 16

⁹ Art. 61. (1) The employment contract shall be concluded between the employee and the employer before the start of the work.

¹⁰ Art. 62. (1) The employment contract shall be concluded in writing.

¹¹ Чл. 62. (3) Within three days after the conclusion or the amendment of the employment contract and within seven days after its termination the employer, or the empowered by him/her person shall be obliged to notify the respective territorial directorate of the National Revenue Agency. The National Revenue Agency shall grant persons authorized by Directorates "Labour Inspection" real-time electronic access to the register of employment contracts and, if requested, shall send a copy of the specified certified notification within three working days.

¹² Чл. 63. (1) The employer shall be obliged to concede to the worker or the employee before the start of the work a copy of concluded employment contract, signed by both of the parties and a copy of the notification of art. 62, para 3, certified by the territorial directorate of the National Revenue Agency.

(2) The employer shall not have the right to admit to work the worker or the employee before conceding to him the documents of para 1.

¹³ 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.

¹⁴Art. 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.

¹⁵ Art. 228. (3) The compensations under this section, due upon termination of the employment relationship, shall be paid not later than the last day of the month following the month, in which the legal relationship was terminated, unless another due date has been agreed in the collective agreement. Upon expiration of this term, the employer shall pay the due compensation together with the statutory interest.

¹⁶ Art. 245. (1) Upon performing in good faith their labour 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.

¹⁷ 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

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	(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.	February 2018.
7.	There is a conflict of interests ¹⁸ 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	

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 labour 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 labour inspection issued for each individual case.

(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 labour 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.

¹⁸ "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. 54 of the Act on counteracting corruption and on seizure of illegally acquired property 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).

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	<p>(iv) has concluded an out-of-court settlement with its creditors within the meaning of art. 740¹⁹ of the Commercial Act, or</p> <p>(v) has terminated its activity.</p> <p>In the event that the Candidate/Participant is a non-resident – 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 is deprived of the right to pursue activity as a designer and/or as a builder according to the laws of the country in which the deed was done.	
10.	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.	
11.	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.	<p>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 on this ground.</p> <p>If the Candidate is in the situation described herein, it shall provide detailed information evidencing the percentage of the value or volume of the contract affected by the breach.</p>
12.	<p>The Candidate/Participant has attempted to:</p> <p>(i) influence on the decision making on the part of the Contracting entity concerning exclusion,</p>	

¹⁹ 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 the 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.

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	selection or award, including through submission of untrue or misleading information, or (ii) receives information which may give it unfair advantage in the award procedure for the Public procurement.	
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3.1.2. Applicability of the grounds for exclusion

3.1.2.1. The grounds under pt. 1, 2, 7 and 12 of Table 2, shall refer to the persons who represent the Candidate or Participant, the members of management or supervisory bodies²⁰ and to other persons authorized to exercise control in the decision making of these bodies²¹.

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

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, if 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, 11 and 12 of Table 2, if the act certifying the circumstance states another time-limit, the conditions for the 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 it:

²⁰ 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;
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 company 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 non-resident – the persons who represent, manage or control the candidate or the participant in accordance with the laws of the country of establishment. (revise "foreign persons" as it is unacceptable term)

²¹ 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, persons for which the legal or incorporation act of the Candidate/Participant envisages to exercise control over the decision making of the persons which represent the Candidate/Participant, or the members of its management or supervisory bodies).

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- 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;
- d) has fully paid the amount due under art. 128, art. 228, para. 3 or art. 245 of the Labour Code.

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 7.

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 7 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 proven. 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 the Table 2 and the compliance with the selection criteria set out in Appendix No 7 solely by way of ESPD and when applicable, they also submit proof regarding the undertaken reliability measures under pt. 4.3. The Candidates shall not enclose to the 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 7.

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 the documents must be certified by the representative of the Candidate. The documents shall be submitted in Bulgarian and English.

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 benefit²² within the meaning of art. 54 of the Act on counteracting corruption and on seizure of illegally acquired property.

²² 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, receiving

Upon participation of consortiums which are not legal entities, compliance with the selection criteria shall be proven 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 procurement 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 7 or compliance with Appendix No 1 - Technical Specification 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 circumstances²³ with a certificate, as mentioned above, the latter is free not to submit some of the required documents for proving the 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.

3.5. Guidelines on the filling and filing of an ESPD

3.5.1. 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 person whose resources will be engaged in the implementation of the Procurement.

3.5.2. The Candidates/Subcontractors/third parties shall provide an ESPD in electronic form on a electronic data storage medium (USB flash drive).

For this purpose the ESPD shall be filled in via the information system for electronic ESPD (eESPD) of the European Commission available at <https://ec.europa.eu/tools/espd> by following the steps below:

- 1) Select "economic operator";
- 2) Choose "import ESPD";
- 3) Using the system, load the xml file - Appendix No 4 (espd-request.xml);
- 4) Fill in the necessary data;

privilege or honor, 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.

²³ Such circumstances could be either (i) the circumstances under pt. 3.1.1 of this section or (ii) the circumstances concerning compliance with the selection criteria under Appendix No 7 or compliance with Appendix No 1 - Technical Specification.

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- 5) After review of the ESPD download it both as xml and pdf files;
- 6) Sign the ESPD as a pdf file with an electronic signature of the respective obliged persons;
- 7) Upload both ESPD files – xml and pdf (signed) – on an electronic data storage medium which shall be presented as part of the Request for participation.

3.5.3. The table below sets out the information which needs to be filled in the ESPD and specifically, in which part/section 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		
1	2	3	4	5
1.	II (second)	A	Identification of the Candidate/Subcontractor/Third party	N/A
			General information regarding the Candidate/Subcontractor/Third party	N/A
			Type of participation of the Candidate	N/A
		B	Information regarding the representatives of the Candidate/Subcontractor/Third party	N/A
		C	Information regarding reliance by the Candidate on the capacity of other entities	N/A
		D	Information regarding delegating activities to Subcontractors whose capacity will not be used by the Candidate	N/A
2.	III (third)	A	Information regarding convictions as regards the following crimes: (i) participation in a criminal organization – under art. 321 and 321a of the Criminal Code (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 labour 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	Information regarding fulfilled obligations relating to payment of taxes or social security contributions or similar	pt. 3 of Table 2, column

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			obligations to the government or municipality where the seat of the Contracting entity and Candidate or Participant is, established in an act by a competent body.	"Ground for exclusion"
		C	Information regarding breaches in the field of environmental law: convictions as regards crimes under art. 352-353f 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: (i) date of entry into force of the conviction and the factual and legal ground for its imposition; (ii) term of the imposed punishment.	pt. 1 and 2 of Table 2, column "Ground for exclusion"
			Information regarding breaches in the field of labour law: (i) convictions for crimes under art. 172 of the CC and of similar crimes in case of a conviction in another member state or third country; (ii) of art. 61, para. 1, art. 62, para. 1 or 3, art. 63, para. 1 or 2, art. 118, art. 128, art. 228, para. 3, art. 245 and art. 301-305 of the Labour 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 or Participant is established.	pt. 6 of Table 2, column "Ground for exclusion"
			Information as to whether the Candidate/Subcontractor/third party: (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.	pt. 8 of Table 2, column "Ground for exclusion"
			Information that the Candidate/Subcontractor/third party is not deprived of the right to pursue activity as a designer and/or as a builder according to the laws of the country in which the deed was done.	pt. 9 of Table 2, column „Ground for exclusion“
			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.	pt. 10 of Table 2, column "Ground for exclusion"

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			Information regarding the presence of a conflict of interests which cannot be remedied and which is related to participation in the Procedure.	pt. 7 of Table 2, column "Ground for exclusion"
			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"
			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. 11 of Table 2, column "Ground for exclusion"
			Information that the Candidate/Subcontractor/Third party/Participant: <ul style="list-style-type: none"> (i) has not submitted false 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 12 Table 2, column "Ground for exclusion"
			Information that the Candidate/Subcontractor/Third Party/Participant is not deprived of the right to pursue activity as designer and/or builder in accordance with the laws of the country where the deed was done.	pt. 9 of the Table 2, column "Ground for exclusion"
		D	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	pt. 1 and 2 of Table 2, column "Ground for

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			state or third country.	exclusion"
			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 (ii) Whether the Candidate/Subcontractor/the third party is controlled by persons registered in jurisdictions with a preferential tax regime, where the controlling persons and the place of their registration shall be stated. (iii) Whether the Candidate/Subcontractor/the third party falls or does not fall within the exceptions under art. 4 of the AEFRCRJPTRPCTTAO ²⁴ . In the	N/A

²⁴ Art. 3. (amend. – SG 48/16, in force from 01.07.2016) The companies registered in preferential tax regime jurisdictions and the related with the controlled thereby persons shall be prohibited directly or indirectly:

[...]

8. to participate in public procurement procedures under the Public Procurement Act and the statutory documents for its application, notwithstanding the nature and the value of the public order, including through a civil law company/consortium, in which a company, registered in a preferential tax regime jurisdiction participates;

[...].

Art. 4. (amend. – SG 48/16, in force from 01.07.2016) The provisions of Art. 3 [...] shall not apply, where:

1. (amend. – SG 48/16, in force from 01.07.2016) Shares of the company in which the company registered in preferential tax regime jurisdictions participates directly or indirectly are being traded at a regulated market or multilateral commercial system in a European Union Member State, or in another state which is a party to the Agreement on the European Economic Area or at an adequate regulated market, determined in an ordinance of Financial Supervision Commission, and to the company shall apply the requirements of the European Union laws for transparency in terms of issuers' information, the securities of whom are permitted to be traded on a regulated market or of a multilateral commercial system, or equivalent international standards and the beneficial owners – natural persons, are disclosed subject to compliance with the provisions of the respective special act;

2. (suppl. – SG 48/16, in force from 01.07.2016) The company registered in preferential tax regime jurisdictions is a part of a business group, the parent company of which is a resident entity for tax purposes of a state, with which the Republic of Bulgaria has got an enforced double taxation avoidance agreement or an enforced information exchange agreement and their beneficial owners – natural persons are registered in the register under Art. 6;

3. (amend. and suppl. – SG 48/16, in force from 01.07.2016) The company registered in preferential tax regime jurisdictions is a part of a business group, the parent company or a subsidiary of which is a Bulgarian resident entity or its beneficial owners who are natural persons, registered in the register under Art. 6 or is traded at a regulated market or multilateral commercial system in a European Union Member State, or in another state which is a party to the Agreement on the European Economic Area

4. The company, in which the company registered in preferential tax regime jurisdictions participates directly or indirectly is a publisher of periodic printed media or has provided information of the beneficial owners who are natural persons, subject to compliance with the provisions with the Act on the Obligatory Deposit of Printed and Other Media.

5. (new – SG 48/16, in force from 01.07.2016) the company registered in a jurisdiction with a preferential tax regime is a local entity for tax purposes of the state which is a party to the Government Procurement Agreement of the World Trade Organization, and also of the state, with which the European Union and their beneficial owners who are natural persons, are registered in the register under Art. 6 – for the activities to which the agreement applies;

6. (new – SG 48/16, in force from 01.07.2016) the company registered in a jurisdiction with a preferential tax regime is a local entity for tax purposes of overseas country or territory according to Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union ("Overseas Association Decision") (OJ, L 344/1 of 19 December 20) and its beneficial owners who are natural persons are registered in the register under Art. 6 for the activities, to which the decision applies;

7. (new – SG 48/16, in force from 01.07.2016) the company registered in a jurisdiction with a preferential tax regime is a local entity for tax purposes of a state with which Republic of Bulgaria has got a concluded international treaty and/or economic agreement, including obligations under the General service trade agreement of the World Trade Organization and its beneficial owners who are natural persons are registered in the register under Art. 6;

8. (new – SG 48/16, in force from 01.07.2016) the company registered in a jurisdiction with a preferential tax regime is a part of a business group the parent company of which is a local person for tax purposes of a state, with which Republic of Bulgaria

PART TWO. PRELIMINARY SELECTION (PHASE 1)

			<p>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 AEFRCRJPTRPCTTAO²⁵ in conjunction with § 7, para. 2 of the Final provisions²⁶ 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 AEFRCRJPTRPCTTAO²⁷.</p>	
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has got a concluded international commercial and/or economic agreement, including obligations under the General service trade agreement of the World Trade Organization and its beneficial owners who are natural persons are registered in the register under Art. 6.

²⁵ Art. 5. (1) (prev. Art. 5 – SG 48/16, in force from 01.07.2016) Where based on incorrect information an exception under Art. 4 has been applied in cases referred to in:

[...]

3. Art. 3, item 8:

a) The candidate shall be suspended from participation in a public procurement procedure;

b) The public procurement contract shall be terminated without previous notice, without being liable to pay back the deposit, neither any payment for the accomplished works, and the received payments shall be subject to immediate reimbursement together with the legally fixed interest thereon;

c) all received money together with the legally fixed interest shall be reimbursed provided that public procurement has been accomplished, and the public procurement employer shall not be liable to pay any compensations or remunerations.

[...]

Art. 6. (amend. - SG 48/16, in force from 01.07.2016) (1) In the Trade Register referred to in Art. 3, par. 1 of the Trade Register Act shall be registered particulars and information about the companies registered in jurisdictions with preferential tax regime carrying out directly and/or indirectly or will carry out activity under Art. 3, and also information about their beneficial owners.

[...]

(3) (amend. – SG 27/18) The particulars referred to in Art. 4, items 2, 3, 5 – 8 shall be registered in the register under par.1, as well as:

1. the details of the company registered in a jurisdiction with a preferential tax regime, identification information about the beneficial owners and information about the legal persons or other legal entities through which, directly or indirectly, control is exercised, in accordance with the Money Laundering Act;

2. any change of particulars under Art. 4, items 2, 3, 5 – 8 and the information under item 1.

(4) (amend. – SG 27/18) The particulars under Art.4, items 2, 3, 5 – 8 and the information under par. 3 shall be registered in the register under par. 1 before participating in a procedure under Art. 3, respectively within 30 days after the occurrence of the change under par. 3, item 2.

²⁶ § 7. (1) Entities, to which the prohibitions under Art. 3 apply, shall bring their activity in compliance with the provisions of the Act within 6 months after its entering into force.

(2) Upon expiration of the term referred to in par. 1 the provision of par. 5 shall apply to the persons failing to bring their activity in compliance with the provisions of this Act.

²⁷ § 1. Within the meaning of this Act:

1. "Company" means any legal entity, non-personalized company and any other structure, obtaining their status under the legislation of the state, where they are registered, irrespective of the form of association, incorporation, registration or any other similar criterion.

2. (suppl. – SG 48/16, in force from 01.07.2016) "Preferential tax regime jurisdictions" means jurisdictions within the meaning of § 1, item 64 of the Supplementary Provisions of the Corporate Income Tax Act, except for Gibraltar (Brit) and the states which are parties to the Agreement on the European Economic Area.

[...]

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			Information as to whether the Candidate is an affiliated person ²⁸ with another independent candidate in the Procedure	N/A
3.	IV (fourth)	A	Registration in the respective professional or commercial register	pt. 1 of the Table in <u>Appendix No 7</u> - Selection criteria, column "Minimum requirements"
		B	Information regarding the general yearly turnover for the last three completed financial years (2015, 2016 and 2017) depending on the date on which the Candidate was established or commenced its activity	pt. 2.1 of the Table in <u>Appendix No 7</u> - Selection criteria, column "Minimum requirements"
			Information regarding the specific yearly turnover (turnover in the field falling within the scope of the Public procurement) for the last three completed financial years	pt. 2.2 of the Table in <u>Appendix No 7</u>

5. (new – SG 48/16, in force from 01.07.2016) "Control" is a term within the meaning of § 1c of the Supplementary provisions of the Commercial Act. Control within the meaning of this act is present also where the companies registered in a preferential tax regime jurisdiction are involved directly or indirectly in the management or the equity of another person or persons and terms and conditions others than the typical ones are being agreed upon by and between them.

6. (new – SG 48/16, in force from 01.07.2016) "Actual owner" is a natural person:

- a) who holds directly or indirectly more than 25 per cent of the shares or the stake of a legal entity or of another legal entity or controls them directly or indirectly;
 - b) in whose favor 25 per cent or more of the property of a person which is a foundation, non-profit organization or association, or another entity carrying out trust management or distribution of property in favor of third persons are being managed or distributed;
 - c) who, beyond the cases referred to in sub-items "a" and "b" is acting as a high managing officer, if, after having exhausted all feasible means and provided that there are no justified doubts, a person under sub-items "a" and "b" cannot be identified, or if there are any doubts that the identified person or persons are not beneficial owner(s); the liable entities shall maintain records of undertaken actions in order to identify the beneficial owner under sub-items "a" and "b".
- [...]

²⁸ "Affiliated persons" within the meaning of § 2, pt. 45 of the Additional provisions of the PPA shall be:

- e) the persons, one of which controls the other person or its subsidiary;
- f) the persons whose activity is controlled by a third person;
- g) the persons which jointly control a third person;
- h) the spouses, relatives in a direct line without limitations, relatives in the collateral line to the fourth degree of consanguinity including.

"Control" shall be present when one person:

- a) owns, including through a subsidiary or by virtue of agreement with another person more than 50 per cent of the number of votes in the general meeting in a company or another legal entity; or
- b) may determine directly or indirectly more than half of the members of the management or supervisory body of a legal entity; or
- c) may in another manner exercise decisive influence over the decision making in connection to the activity of the legal entity.

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		(2015, 2016 and 2017) depending on the date on which the Candidate was established or commenced its activity	– Selection criteria, column "Minimum requirements"
	C	Construction works with a scope and volume identical or similar to those of the Procurement, with stating of the construction works rendered for the last eight years as of the date of submission of the Request	pt. 3.1 of the Table in <u>Appendix No 7</u> - Selection criteria, column "Minimum requirements"
		Technical personnel responsible for the performance of the construction	pt. 3.2 of the Table in <u>Appendix No 7</u> - Selection criteria, column "Minimum requirements"
		Technical tools and facilities for ensuring quality including for research and development, as well as application of specific measures for ensuring quality	pt. 3.3 of the Table in <u>Appendix No 7</u> - Selection criteria, column "Minimum requirements"
		Personnel and/or management staff with specific professional competence for implementation of the Procurement	pt. 3.7 of the Table in <u>Appendix No 7</u> - Selection criteria, column "Minimum requirements"
		Machinery and technical equipment necessary for implementation of the Public procurement.	pt. 3.6 of the Table in <u>Appendix No 7</u> - Selection criteria, column "Minimum requirements"
	D	System(s) for quality management certified in accordance with ISO EN 9001 standard (or equivalent).	pt. 3.4 of the Table in <u>Appendix No 7</u> - Selection criteria,

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				column "Minimum requirements"
			System(s) for environmental protection certified in accordance ISO EN 14001 standard (or equivalent).	pt. 3.5 of the Table in <u>Appendix No 7</u> - Selection criteria, column "Minimum requirements"
4.	V (fifth)	N/A	The Candidate shall declare the manner in which it complies with the criteria and rules which must be applied in order to restrict the number of the candidates set out in <u>Appendix No 8 – Rules and criteria for reducing the number of Candidates to be invited to submit tenders</u>	<u>Appendix No 8</u> – 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, regardless of the name of the bodies in which they participate or the positions they occupy.

The Declaration of consent for implementation of a specific part of the public procurement on the basis of a form in Appendix No 6 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, proving that the Subcontractor has undertaken to perform 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

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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 which is 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 allowed²⁹. 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 6, 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 a partner which is designated to represent the consortium.

²⁹ 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. 3 of Part one.

4.6.2. ESPD shall be signed with an electronic signature by the persons stated in pt. 3.1.2.1.³⁰ of this section. When the requirements for the lack of grounds for exclusion under pt. 1, 2, 7 and 12 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 situation, 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 12 of Table 2 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 the circumstances under pt. 4.6.3., the data related to the selection criteria shall be filled only in ESPD signed with an electronic signature by a person who can independently³¹ represent the respective economic operator.

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 upon a signature, or
- b) by post by way of a registered mail and acknowledgment of receipt,
- c) or 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 of 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 proof of receipt.

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

³⁰ The persons which represent the Candidate, members of management and supervisory bodies and other persons who have powers to exercise control in the decision making process by such bodies.

³¹ When the Candidate is represented by more than one person, they sign ESPD in which the data related to the selection criteria is filled.

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 chairperson of the Commission for which a protocol shall be drawn up and signed. The protocol contains information regarding the Candidates submitting 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 Contracting entity's notice published on the Profile of the buyer. 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 situation and selecting criteria imposed by the Contracting entity and shall issue an ascertainment protocol.

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 situation 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 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 according to 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 12 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 12 of Table 2, the new ESPD shall be signed by the persons to whom the amendments refer.

PART TWO. PRELIMINARY SELECTION (PHASE 1)

1.9. Following expiration of the time limit under pt. 1.6. the Commission shall review the additionally submitted documents checking the compliance of the Candidates with the requirements regarding the personal situation 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 is limited to five (5) 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 (5), the Rules and criteria on reducing the number of candidates which shall be invited to submit tenders shall apply – Appendix No 8.

2.2.2. When the number of Candidates which meet the requirements is less than five (5), 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 each 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 Specification
Appendix No 2 - Form List of the submitted documents in the package containing the Request for participation
Appendix No 3 - Form Request for participation
Appendix No 4 - Form European Single Procurement Document
Appendix No 5 – Form 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 Declaration regarding consent of the Subcontractor to implement a specific part of the Public procurement

Appendix No 7 – Selection Criteria

Appendix No 8 - Rules and criteria for reducing the number of Candidates to be invited to submit tenders

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.

The Contracting entity attaches to the invitations to submit tenders the Project technical documentation, required for the Tender's preparation: FEED – for Greek territory and the approved Technical design – for the Bulgarian territory.

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 filed in a folder in the order in which they are listed in the description of the submitted documents under the form in Appendix No 9, and the pages shall be numbered. Each page shall be signed by the statutory representative of the Participant, and if 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 language other than Bulgarian and English shall be submitted also with Bulgarian and English 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 titles 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 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 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:

"Design, procurement and construction of the natural gas Interconnector Greece-Bulgaria (IGB Project)"

Name of the Participant:
Members of the consortium: (*when applicable*)
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 description of the submitted documents on the basis of the form in Appendix No 9;
- b) Technical offer;
- c) Price offer on the basis of the form in Appendix No 11.

2.1.2. The Technical offer of the Tender shall contain:

- a) Document for authorization - notary certified when the person submitting the Tender is not the statutory representative of the Participant;
- b) Proposal for implementation of the procurement in accordance with the Appendix No 1 - Technical Specification, the Front End Engineering Design (FEED) – for the section of the gas pipeline on Greek territory, the approved Technical design – for the section of the gas pipeline on Bulgarian territory, and the requirements of the Contracting entity. The proposal shall be prepared on the basis of a form in Appendix No 10 which contains also:
 - (i) Declaration regarding the validity term of the Tender;
 - (ii) Declaration regarding consent with the clauses of the suggested draft contract (Appendix No 13);
 - (iii) Declaration that in the preparation of the tender the obligations related to tax and social security contributions, environmental protection, protection of employment and work conditions have been complied;
 - (iv) Declaration under art. 102, para. 1 of the PPA regarding confidential information contained in the Tender (if applicable).

2.2. Guidelines on preparation of the Technical offer

2.2.1. The Proposal for implementation of the procurement (Technical offer) shall be drawn up on the basis of a form in Appendix No 10.

When preparing the Proposal for implementation, the Participant must take into account the requirements of the Documentation for the Public procurement and the Technical documentation of the Project – Technical design for the section of the Gas pipeline on Bulgarian territory and FEED – for the section on Greek territory. In the preparation of the Technical offer all of the characteristics of the pipeline route must be taken into account. For this purpose the potential participants could perform site visits. Considering the nature of the site, the Contracting entity shall neither organize the visits nor send representatives to take part in such.

The specific steps of the implementation of activities in the scope of the procurement and the deadlines/terms for their implementation must be submitted in linear schedule. The Participant must include in the linear schedule the deadlines/terms for coordination and approval by the Contract entity, the control authorities and any parties concerned.

The Proposal for implementation of the Public procurement should present the concept of the Participant for the realization of the assigned activities and should contain information about every point in the Proposal for implementation of the Procurement (Technical offer) – Appendix No 10. The absence of any mandatory information leads to exclusion from participation.

2.2.2. The validity term of the Tender which the Participant shall state in the Proposal for implementation of the procurement (Technical offer) as per the form in Appendix No 10, shall be no shorter than 6 (six) months as of the deadline for receipt of Tenders. A Participant which submits a Tender of a shorter validity term 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.

2.2.3. The Participants may receive the necessary information regarding the obligations related to tax and social security contributions, environmental protection, protection of employment and work conditions which are in force for the Republic of Bulgaria respectively for the Republic of Greece and relevant to the activities - subject matter of the procurement, as follows:

a) Regarding the obligations related to tax and social security contributions:

For Bulgaria:

National Revenue Agency:

Internet address: www.nap.bg

Informational telephone of the NRA: 0700 18 700;

For Greece:

Greek Tax Authority

Hellenic Ministry of Finance (tax)

Nikis 5-7, 105 63 Athens

Call Center: 210-3332000

Internet Address: <http://www.minfin.gr/>

and

Ministry of Labor, Social Security & Welfare (social security)

Address: Stadiou 29, Athens 105 59

Ministry Call Center: 213-1516649, 213-1516651

Internet Address: <http://www.ypakp.gr/>

b) Regarding the obligations related to environmental protection:

For Bulgaria:

The Ministry of Environment and Water:

Department "One-desk office and service", provision of information, submission of documents for rendering administrative services and clerk of the MEW are situated in the building at No 22, "Maria Louisa" Blvd., ground floor.

Opening times: 9 - 17.30 h

Telephone: 02/940 66 62, 02/940 65 01

Internet address: www.moew.government.bg

For Greece:

Ministry of Environment and Energy

Opening Times to public: 12:00-14:30

General Secretariat of Environmental Protection, Directorate of Environmental licensing

119 Mesogeion Ave. 11523 Athens

Tel. +30 213 1513859/850/852

Internet Address: <http://www.ypeka.gr>

- c) Regarding the obligations related to the protection of employment and work conditions:

For Bulgaria:

Ministry of Labour and Social Policy:

Internet address: <http://www.mlsp.government.bg>

Sofia 1051, No 2 Triaditsa Str.

Telephone: 02 8119 443

For Greece:

Ministry of Labor, Social Security & Welfare

Labour Inspectorate

10 Agisilaou Str. 10437 Athens

Opening Times to public: 09:00-13:30

Tel +30 210 5289 216/217/220/279

Internet Address: <http://www.ypakp.gr>

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 11.

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.

Neither the lump sum for implementation of the Procurement nor any prices whatsoever should be disclosed in documents other than the Price offer (e.g. Technical offer, catalogues). Upon non-compliance with 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 upon a signature, or
- b) by post 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 before the expiration of the deadline. The risk of 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 chairperson 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";

PART THREE. SUBMISSION, REVIEW AND ASSESSMENT OF TENDERS (PHASE 2)

- 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 letter 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 shall 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 12 – 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 in the Procedure or their authorized representatives may be presents, as well as representatives of the media.

1.8. The Commission shall announce the results from the assessment of the Technical offer in accordance with the indicators set out in Appendix No 12, 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 12 – 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 assessment. 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 with the indicator "Technical parameters regarding quality of the implementation".

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 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 criterion

The assessment indicators, included in the criterion under pt. 2.1. are specified in Appendix No 12 – Indicators for the award criterion and the Complex assessment methodology .

2.3. Relative weight of the indicators

The relative weighting of each of the indicators is set out in Appendix No 12 - Indicators for the award criterion and the Complex assessment methodology.

2.4. Complex assessment methodology

The relative weighting of each of the indicators is set out in Appendix No 12 - Indicators for the award criterion and the Complex assessment methodology.

3. Completion of the Procedure

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

- 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 as a Contractor the Participant who 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 the Table 2 is admitted 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 7 and the non-discrimination rules and criteria regarding reducing the number of candidates in accordance with Appendix No 8;
- 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 inappropriate³²;
- 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 PPA³³ a public procurement contract is not concluded³⁴;
- 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 changes³⁵ 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

³² „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).

³³ Art. 112 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:

1. submits document for registration in accordance with the requirement under art. 10, para. 2 of the PPA;
2. performs the obligation under art. 67, para. 6 of the PPA;
3. submits the performance guarantee;
4. 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."

³⁴ The condition shall apply when the first and second ranked participants have not submitted the documents necessary for conclusion of a contract.

³⁵ 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.

- 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).

SECTION IV. APPENDICES AND FORMS FOR PHASE 2

Table 5

Appendix No 9 - Form List of the submitted documents in the package containing the Tender
Appendix No 10 - Form Proposal for implementation of the procurement (Technical offer)
Appendix No 11 - Form Price Offer
Appendix No 12 – Indicators under the award criterion and Complex assessment methodology
Appendix No 13 - Draft Public Procurement Contract

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 pt. 3.1.1 of Part Two. *Preliminary selection (Phase 1), Section II. Guidelines on preparation and submission of Requests for participation*, 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, except for the cases when the conditions under art. 4 of this act are not 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 (if such was required) or whose justification/tender has not been accepted in accordance with art. 72, para. 3-5 of the PPA³⁶;

³⁶ 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 proposal 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 non-compliance with norms and rules related to environmental protection, social and labour law, applicable collective agreements and/or provisions of the international environmental, social and labour law set out in Annex 10 of the PPA₂

(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 authorities 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

- e) Candidates or Participants which are affiliated persons.

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 information, *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 person³⁷ - in the cases under pt. 1.1., letter a) and c);
- b) each interested candidate³⁸ 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 provisions, 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.

agreements or national technical standards relating to the evidence and documents submitted in connection to the data under para. 2.

³⁷ "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).

³⁸ "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).

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:

- a) the decision for selecting a Contractor under pt. 3.1., letter a) of *Part three. Submission, review 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, review 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 participant³⁹ 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., letter 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.

³⁹ "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 force⁴⁰ of the decision for determining a Contractor for the Public Procurement under the conditions of art. 112⁴¹ 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

1.2.1. Condition for the conclusion of the Contract is the 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. 1-3 of

⁴⁰ 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 a contractor – in the event that a complaint has been submitted.

⁴¹ 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 contract 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 this 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 from the 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 single 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 unless for the cases when there is a preliminary enforcement admitted or when the procedure is commenced 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.

PART FIVE. PUBLIC PROCUREMENT CONTRACT. SUBCONTRACT

Appendix No 7; 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;
- d) certificate for registration with the Central Professional Constructors Register (CPCR) under art. 3, para. 2 of the Construction Chamber Act (CCA) for constructions of first category for all of the following groups:
 - (i) first group pursuant to art. 5, para. 6, p. 1.1 of the Rules on the procedure for registration and keeping of the Central Professional Constructors Register (the Rules) in conjunction with art. 137, para. 1, p. 1 of the Spatial Development Act (SDA) and art. 2, para. 4, p. 1, letter "e" of Ordinance No 1 dated 30 July 2003 on the nomenclature of the types of constructions (Ordinance No 1/2003);
 - (ii) second group pursuant to art. 5, para. 6, p. 2.1 of the Rules, in conjunction with art. 137, para. 1, p. 1, letter "a" of the SDA and art. 2, para. 1, p. 2 of Ordinance No 1/2003;
 - (iii) third group pursuant to art. 5, para. 6, pt. 3.1 of the Rules in conjunction with art. 137, para. 1, pt. 1, letter "b" of the SDA and art. 2, para. 2, pt. 3 of Ordinance No 1/2003;
 - (iv) fourth group pursuant to art. 5, para. 6, p. 4.1 of the Rules in conjunction with art. 137, para. 1, p. 1, letter "b" of the SDA and art. 2, para. 2, p. 4 of Ordinance No 1/2003.

1.2.2. 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 documents
1.	pt. 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 Conviction for a crime similar to those listed above in another member state or third country.	Judicial record certificate of the state where Participant is established
2.	pt. 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

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3.	pt. 6 of Table 2	Violation in the implementation of the public procurement of art. 61, para. 1, art. 62, para. 1 or 3, art. 63, para. 1 or 2, art. 118, art. 128, art. 228, para. 3, art. 245 and art. 301-305 of the Labour Code or similar obligations pursuant to the law of the country where the selected contractor is established.	Certificate issued by the Executive Agency "Chief Labour Inspection"
4.	pt. 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 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.	Certificate issued by the Registry Agency

1.2.3. When the Participant selected as Contractor is not established in Bulgaria, it shall submit the respective document under pt. 1.2.2 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 in front of a competent body in the respective country.

1.2.4. 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 Public procurement 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 ".....", IBAN:, BIC:

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 shall be suspended and shall commence 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. In such a case neither Party shall be liable to the other Party for any financial or other compensation arising from the termination.

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 - only for the Subcontractors stated in the Request for participation. Any other Subcontractors shall be included following pt. 3.1 below.

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

2. Rules on direct payments to Subcontractors

The implementation of a part of the procurement by the Subcontractor, including the performance of separate activities relating to the design, the equipment delivery, construction of a section of the Gas pipeline, does not constitute separate object according to art. 66, para. 4 of the PPA.⁴² Therefore rules for direct payments to a Subcontractor are not foreseen, meaning the Contract entity cannot pay remuneration directly to the Subcontractor for the implemented part.

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. The conditions for replacement of a Subcontractor in the course of implementation of the procurement are further detailed in Sub-Clauses 4.4.2 – 4.4.5 of the Draft Public Procurement Contract (Appendix No 13).

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.

⁴² Art. 66, para. 4 of the PPA: "When the part of the procurement, which is fulfilled by a subcontractor, may be fulfilled as a separate site for the contractor or the contracting authority [or contracting entity], the contracting authority [or contracting entity] shall pay remuneration for this part to the subcontractor."