



NET4GAS, s.r.o.

**BALL VALVES FOR HIGH PRESSURE PIPELINE
("CAPACITY4GAS" PROJECT)**

TENDER DOCUMENTATION

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1 CONTRACTING ENTITY AND SCOPE OF TENDER

The purpose of this tender documentation (the "TD") is to select the supplier of ball valves, including the manufacturing, delivery, unloading and piling of ball valves, for the construction of a high pressure gas pipeline within the project designated as "Capacity4Gas" (the "Tender").

The tender procedure in this Tender is a negotiated procedure with prior publication launched in accordance with Section 60 *et seq.* of Act No. 134/2016 Coll., the Czech Public Procurement Act, as amended (the "PPA").

1.1 Contracting Entity

NET4GAS, s.r.o.

Na Hřebenech II 1718/8, Prague 4 – Nusle, Post Code 140 21, Czech Republic

ID No. 27260364

Profile Link: <https://www.tenderarena.cz/profily/NET4GAS>

Contact Person for the purposes of this Tender: Ing. Radomila Fraňová, Tel.: +420 220 225 468

Email: radomila.franova@net4gas.cz

(the "Contracting Entity")

The Contracting Entity holds an exclusive gas transmission system operator (TSO) license for gas transmission in the Czech Republic issued by the Czech Energy Regulatory Office, and operates more than 3,800 km of pipelines, ensuring the international transport of natural gas, as well as gas transport for regional gas companies.

1.2 Scope of Tender

- a) The scope of this Tender is the supply of ball valves, subject to the terms and conditions set out in the technical specifications attached hereto as *Annex 1 to Schedule 2* and in the draft contract for the attached hereto as *Schedule 1*.
- b) The scope of the tender also includes all documents required for proper use and operation of the Goods.
- c) The basic description of the subject matter of the Tender: (for a full specification of type and quantity, see *Annex 1 to Schedule 2– Technical Specifications*).

1.3 Designation of Tender

CPV Codes:

42130000-9 Taps, cocks, valves and similar appliances

42131000-6 Taps, cocks and valves

1.4 Basic Tender Rules

- a) The Tender shall proceed in accordance with the PPA. Each applicant (the "**Applicant**") who submits a request to participate in the Tender (the "**Application**") shall acquaint itself with the current wording of the PPA and proceed in accordance with it when drafting and submitting its indicative tender offer (the "**Indicative Tender Offer**") and final tender offer (the "**Tender Offer**"). Where applicable, provisions relating to the Tender Offer shall similarly apply to the Indicative Tender Offer.
- b) The information and data contained in the individual parts of this TD and attachments hereto form the binding requirements of the Contracting Entity for the performance of the Tender. Each Applicant who qualified in the Tender and was invited to submit an Indicative Tender Offer in the Tender (the "**Bidder**") shall reflect these requirements in their Indicative Tender Offer and in the Tender Offer, fully and without exception. Failure to accept the requirements of the Contracting Entity in the Tender Offer (and in particular any amendments to the Draft Contract) shall be deemed a failure to meet the terms of the Tender resulting in the exclusion of the Bidder.
- c) In the event of any discrepancy between the Draft Contract and any other parts of this TD, the contents of the Draft Contract shall prevail.
- d) The Contracting Entity does not accept variants of the Tender Offers.
- e) The indicative time schedule for the Tender shall be as follows:

Deadline for the Submission of the Applications	January 31, 2019, 3:00 p.m.
Expected Time of Invitation for Submission of Tender Offers	March 2019

* This term is only indicative and not binding. The exact term depends on the progress of the "Capacity4Gas" project.

2 TIME AND PLACE OF DELIVERY

The indicative times of performance under the contract are: during July 2019 and August 2019

More detailed specification for the individual items can be found in Annex 1 to the Draft Contract.

The places of delivery of the Goods are specified in the Draft Contract (Annex 5 – Places of Delivery).

3 INSTRUCTIONS FOR SUBMISSION OF APPLICATIONS

3.1 Submission of Applications

- a) The deadline for the submission of Applications is specified in Section 1.4 e) above.
- b) The Contracting Entity reserves the right to extend the deadline for the submission of the Applications. In that case, the Contracting Entity will inform the Applicants via the profile of the Contracting Entity specified above in Section 1.1.

<https://www.tenderarena.cz/profil/NET4GAS>

- c) All Applications shall be submitted in writing in electronic form via the TENDERARENA electronic tool available at www.tenderarena.cz. The Applicant shall proceed in accordance with the rules specified in Attachment 7 to this TD. The Application may not exceed 200 MB, with a maximum of 100 MB for proof of qualification and a maximum of 100 MB for the other Tender documents. The Application must be processed through acceptable file formats, i.e. Microsoft Office (Word, Excel), Open Office, PDF, JPEG, GIF, or PNG. The contents of the Application shall consist of at least the following documents:
 - i) Contents of the Application with a specification of individual documents and their sequence, with reference to the document number and page number;
 - ii) Request for participation in the negotiated procedure with publication – “Cover Sheet” (Attachment 2 to the TD);
 - iii) All other appendices as requested in the TD;
 - iv) Reference list according to Attachment 5 to the TD and all its attachments;
 - v) Document confirming the authority of the relevant person(s) to act for or on behalf of the Applicant (extract from the commercial register and, if applicable, power of attorney); and
 - vi) Any other documents required by the Contracting Entity or the PPA.
- d) The Application itself and the correspondence shall be in English or Czech.

- e) The Applicant must number all consecutive pages using a continuous numerical series and mark each page with a rubber stamp and the Applicant's signature, and state the total number of pages.
- f) As part of the Application, the Applicant shall further submit:
 - i) Any other comments to the Draft Contract that it may have.
 - ii) Any other comments to the Technical Specification it may have (deviation table)

Please note that these documents will not be subject to evaluation, but they will form the basis for the discussion during the negotiated procedure.

4 QUALIFICATION OF APPLICANTS AND FURTHER REQUIREMENTS

4.1 Proof of Compliance

In its Application, the Applicant shall demonstrate, using relevant documents (*written in italics*), that it meets the qualification criteria set forth below.

In case the Applicant provides qualifications gained abroad, qualifications in a joint venture, or using subcontractors, the Applicant shall comply esp. with Sections 81 – 84 of the PPA.

The Applicant must also include affidavits, substantially in the form prescribed in Attachment 4 to the TD, in its Application. If several Applicants submit a joint Application, each such Applicant must provide affidavits separately.

The Contracting Entity reserves the right to verify the correctness and verity of the information provided, including, without limitation, by way of visiting the Applicant's premises and its subcontractor's premises. For this purpose, the Applicant undertakes to permit the Contracting Entity and the third-party advisors to the Contracting Entity to perform the visit, and undertakes to provide any necessary assistance. The Contracting Entity reserves the right to request a correction, or to exclude the Applicant from the Tender if it is discovered through the visit or otherwise that the Applicant failed to prove the qualification criteria.

4.2 Basic and Professional Eligibility

By furnishing the relevant documents (*written in italics*), the Applicant shall demonstrate that it meets the following basic and professional eligibility criteria:

- a) Excerpt from the Commercial Register or similar register (*copy of extract from the Commercial Register or similar register*);
- b) It is not in a liquidation procedure (*Affidavit in the form contained in Attachment 4 to the TD*); and

- c) Its assets are not (and have not been over the past three (3) years) as of the publication of this Tender in the Official Journal of the EU subject to any insolvency proceedings resulting in a decision on bankruptcy, no insolvency petition was rejected because its assets would not suffice to cover the costs of the insolvency proceedings, bankruptcy was not cancelled due to absolute insufficiency, and forced administration was not imposed under special laws (*Affidavit in the form contained in Attachment 4 to the TD*).

The documents demonstrating compliance with the basic and professional eligibility criteria shall not be older than three (3) months as of the publication of this Tender in the Official Journal of the EU.

4.3 Economic and Financial Qualification Criteria

By furnishing the relevant documents (*written in italics*), the Applicant shall demonstrate that it meets the following economic and financial qualification criteria:

- a) It has a failure score of 50 or higher (*Dun & Bradstreet financial record*). The Contracting Entity will also accept financial records from Creditreform, Standard & Poors, Fitch and Moody's. A rating of BBB- will be accepted from Standard & Poors and Fitch, at least a Baa3 from Moody's, and a rating of 250 or higher from Creditreform;
- b) It has been active in the business of ball valves production for at least the last five (5) consecutive years as of the publication of this Tender in the Official Journal of the EU (*Affidavit*); and
- The yearly turnover of the ball valve division of the Applicant in each of the last three (3) completed financial years was more than EUR 5Mio. in total. *Copy of the profit and loss accounts for each completed financial year or a similar document under the laws of the Applicant's country of residence*
 - In addition, the Applicant shall submit a signed *affidavit* containing the relevant figures from the profit and loss accounts in the above years and confirmation that such turnover relates to the relevant division of the Applicant's company (*Affidavit*).

If the Applicant's yearly turnover is evidenced by a profit and loss account showing the relevant amounts in foreign currency, the Applicant shall recalculate the relevant amounts according to the exchange rate announced by the Czech National Bank for the date of the publication of this Tender in the Official Journal of the EU.

In accordance with Section 83(3) of the PPA, the Contracting Entity requires that the Applicant proving the economic and financial qualification criteria under Section 78 of the

PPA via other entities shall be jointly liable with such other entities for the performance of the contract.

4.4 Technical Qualification Criteria

By furnishing the relevant documents (*written in italics*), the Applicant shall demonstrate that it meets the following technical qualification criteria:

- In last 5 years, the Applicant has produced and successfully delivered minimum of 8 pieces finished Ball Valves in DN 1400 according the attached Technical Specification (requested type of Ball Valves), 5 of these pieces have been delivered within European Union (*List of references in the form contained in Annex 3*)
- In at least 1 year during the past 5 years, the Applicant has produced and successfully delivered minimum of 10 pieces finished Ball Valves in DN 500 according the attached Technical Specification (requested type of Ball Valves), all delivered within European Union (*List of references in the form contained in Annex 3*)
- The Applicant disposes of own actuator production or cooperates with other company producing the actuators. For actuators, the following documents for proving our technical requirements according to the Technical specification will be submitted on this stage: dimensional drawings of actuator, hydraulic schema, electrical schema, certificates for delivery of the following components within European Union: LBS, solenoid ventils, pressure vessels, electronical equipment (*List of potential actuator producers with their signed affidavit that they have read the Technical Specification, incl. above mentioned documentation*).
- The Applicant uses a subcontractor for the inspection process. The inspection company shall be independent to the extent that is required with regard to the conditions under which it performs services. The inspection company meets the following criteria (*a copy of a certificate of accreditation shall be submitted*):
 - Type A inspection body according to EN ISO/IEC 17020 (Notified Body);
- The Applicant is a holder of the following certificates and licenses:
 - i) EN ISO 9001 Certificate with respect to the production line (or more production lines) (*a copy of the ISO 9001 Certificate*);
 - ii) ISO 17025 Certificate for material testing (*a copy of the ISO Certificate*); and

iii) OHSAS 18001 Certificate with respect to the production line (or more production lines) (*a copy of the ISO 18001 Certificate*);

- The Applicant is able to fulfill all the minimum requirements set forth in the technical specification forming Annex 1 to the Draft Contract (*Affidavit in the form contained in Attachment 4 to the TD*);
- The Applicant has an internal directive (or other document) standard for the industry describing the rules for the manipulation and storage of ball valves and the piling of ball valves in pipe yards (*Internal directive containing the standard rules*);
- The Applicant agrees and confirms that it is able to communicate during the Tender (including the negotiated procedure phase) and during the performance of the contract in at least one of these languages: Czech, Slovak and/or English (*Affidavit in the form contained in Attachment 4 to the TD*); and
- The Applicant's suppliers of the base material (if different from the Applicant) approved the technical specifications contained in Annex 1 (*List of Suppliers of Base Material with their signed affidavit that they have read and approved Annex 1 –Technical Specifications*). The Applicant shall only use base material from such company when producing ball valves during the performance of the contract. If the Applicant uses base material from more suppliers, the below information must be provided for each such supplier, and the base material from one or more such suppliers must then be used when producing ball valves during the performance of the contract. The supplier of the base material must be a reputable company in the industry with a positive track record. (*Applicant provides a document with following information on the balls, seats, actuators, forging pieces: company information; testing, monitoring / control, QA/QC of rolling process; experience record with X52, X60 and X70, ISO and further QA/QC, HSE certificates*).

For the purposes of submitting the Application, the Contracting Entity excludes the option of the Applicant demonstrating the required technical qualification criteria by means of an affidavit within the meaning of Section 86(2) of the PPA (except where an affidavit is explicitly required in order to demonstrate the respective technical qualification criteria).

4.5 Demonstrating Fulfillment of Qualification by Using Subcontractors

If the Applicant is unable to demonstrate that it fulfills the qualification criteria required by the Contracting Entity and related to the economic, financial or technical qualifications, it may demonstrate the fulfillment of such criterion (to the extent missing) using a subcontractor. In such

case, the Applicant is required to provide to the Contracting Entity an agreement with the subcontractor, showing the subcontractor's obligation to conduct activities to be conducted by the Applicant in the performance of the contract, or to provide things or rights to the Applicant permitting the Applicant to use them in the performance of the contract, at least to the extent to which the subcontractor has demonstrated fulfillment of the qualification criteria, and to be bound jointly and severally with the Applicant for the entire duration of the contract and for the duration of any other obligations arising from the contract vis-à-vis the Contracting Entity at least to the extent to which the subcontractor has demonstrated fulfillment of the qualification criteria. At the same time, the Applicant shall include a document demonstrating the fulfillment of the basic eligibility set out in Section 74(e) of the PPA (*affidavit of the subcontractor confirming that it has not been in liquidation*) and of the professional eligibility pursuant to Section 77(1) of the PPA (*copy of an excerpt from the Commercial Register or a similar register, if the subcontractor is entered therein*) by the subcontractor. The Applicant may not fulfill the criterion concerning an extract from the Commercial Register using a subcontractor.

Please note that subcontractors used for the purposes of qualification and those included in the Tender Offer must be used when executing the respective Draft Contract (subject to the provisions on sub-contracting included in the respective Draft Contract).

4.6 Joint Application

Where the obligations under the contract are to be performed collectively by several Applicants who submit or intend to submit a joint Tender Offer for this purpose:

- each of the Applicants shall demonstrate the fulfillment of the qualification to the full extent; this shall not apply to the economic, financial or technical qualifications, in respect of which it will suffice if all the Applicants demonstrate the fulfillment of this qualification jointly; and
- the Applicants shall submit, together with documents demonstrating the fulfillment of the qualification criteria, an agreement setting out an undertaking pursuant to which all of the suppliers are bound jointly and severally for the entire duration of the contract and for the duration of any other obligations arising under the contract vis-à-vis the Contracting Entity and any third parties under any legal relations arising in connection with the contract.

The agreement concluded between such Applicants submitting a joint Application shall contain an authorization granted to one member of the group of Applicants to act on behalf of the relevant Applicants. If any Applicant fulfills the qualification criteria only jointly with other applicants, such Applicants are required to subsequently submit a joint Tender Offer; or otherwise, their Application/Tender Offer shall be considered incomplete and shall be excluded from the Tender.

4.7 Demonstrating Fulfillment of Qualification by Foreign Applicants

The Applicant shall prove compliance with the qualification criterion in a manner foreseen by the applicable laws in the place of its registered seat, place of business or residence.

If such applicable law does not foresee the issuance of specific document required by the TD or the PPA, the Applicant shall state this in an affidavit and prove compliance with the respective qualification criterion by submitting such affidavit concerning such qualification criterion signed by the person(s) authorized to act on behalf of the Applicant.

If a qualification criterion does not exist and cannot be proven in the place of its registered seat, place of business or residence, the Applicant shall state this by submitting an affidavit and confirm that it complies with the respective qualification criterion.

The documents proving compliance with the qualification criterion shall be submitted by the Applicant in their original, together with a certified translation into Czech or English language, unless otherwise permitted in an international treaty binding for the Czech Republic; this also applies if an Applicant with the place of its registered seat, place of business or residence in the Czech Republic submits a document in a language different from Czech or English.

Documents in Slovak language do not need to be provided with a certified translation into Czech or English language.

5 SUBMISSION OF INDICATIVE TENDER OFFER AND PRINCIPLES OF INDICATIVE TENDER OFFER NEGOTIATIONS

Section 7 below shall apply accordingly vis-à-vis the submission of the Indicative Tender Offer.

The Contracting Entity does not limit the number of Bidders with whom it will commence negotiations and shall invite them to a meeting. The day, place and time of the meeting will be specified by the Contracting Entity. Negotiations with Bidders shall be conducted in the Czech, Slovak or English language. The Contracting Entity further envisages that negotiations will take place in several phases, the precise number of which is to be specified by the Contracting Entity.

The Contracting Entity shall draw up a record of the meeting, in which it shall describe all actions that may result in the amendment of the Indicative Tender Offer or Draft Contract. A record of the meeting shall be signed by the attending members of the evaluation committee and the Bidder's representatives.

Meetings shall be conducted with each Bidder separately.

The Contracting Entity may discuss all terms of performance contained in the contract and in the Indicative Tender Offer. The Contracting Entity may amend all terms contained in the TD, except for the following minimum technical requirement: DN dimensions for the ball valves, as specified in Annex 1 to the Draft Contract.

Upon the conclusion of the negotiations, the Contracting Entity shall notify the Bidders and invite the Bidders to submit the Tender Offer.

The Contracting Entity reserves the right to award the contract based on an Indicative Tender Offer submitted by the Applicant and not to procure the negotiations.

6 DEADLINE FOR SUBMISSION OF TENDER OFFERS

The deadline for the submission of Tender Offers shall be set forth in the invitation for the submission of Tender Offers (the "**Tender Offer Submission Deadline**").

7 SUBMISSION OF TENDER OFFERS

a) The Tender Offer shall be submitted in electronic form via the TENDERARENA electronic tool available at www.tenderarena.cz. Each Bidder is required to submit a Tender Offer in Czech or English language.

b) The Bidder shall proceed in accordance with the rules specified in Attachment 7 to this TD. The Tender Offer in electronic form may not exceed 200 MB. The Tender Offer must be processed through acceptable file formats, i.e. Microsoft Office (Word, Excel), Open Office, PDF, JPEG, GIF, or PNG. The Tender Offer shall comprise the following documents duly filled out and signed by the person(s) authorized to act on behalf of the Bidder:

- i) Cover letter containing the identification and contact details of the Bidder (business name/name, registered office, full mailing address, name of contact person in charge of this public tender, Business ID No., Taxpayer No., telephone, e-mail);
- ii) File contents;
- iii) Original of the Draft Contract (a signed Draft Contract, including annexes, shall be submitted by the Bidder in one counterpart only; the copies of the Draft Contract shall be submitted by the Bidder without annexes). The Bidder shall not amend the Draft Contract, but only fill in its identification information and the values corresponding to its Tender Offer in the specified places. Any other

amendments of the Draft Contract shall result in the exclusion of the Bidder from the Tender;

- iv) Document demonstrating the authorization of the person(s) to act for or on behalf of the Bidder;
- v) Filled-in price table for the purposes of Tender Offer evaluation – Attachment 6 to the TD – Price Table for Tender Offer Evaluation;
- vi) Bank guarantee or a guarantee insurance certificate, or a copy of a bank instruction, in accordance with Section 9 of the TD;
- vii) Detailed list of subcontractors of the Bidder (except the subcontractors in charge of transportation and unloading, if these are not known to the Bidder at the moment of submission of the Tender Offer); and
- viii) Any other documents required by the Contracting Entity or the PPA.

Tender Offers not containing the documents or information required by the PPA or the TD will be deemed incomplete and the relevant Bidder will be excluded from the Tender. This shall not be prejudicial to the right of the Contracting Entity to additionally require documents or information pursuant to Section 46 of the PPA.

- c) Tender Offers shall be delivered before the Tender Offer Submission Deadline, or otherwise the Contracting Entity shall inform the Bidder that its Tender Offer was delivered after the Tender Offer Submission Deadline.
- d) If any of the documents required as part of the Tender Offer under this Section 7 was already submitted by the Bidder as part of its Indicative Tender Offer under Section 5 and the Bidder does not wish to amend it, the Bidder shall not be required to re-submit such documentation but an express reference to such document(s) submitted as part of the Indicative Tender Offer will suffice.

8 OPENING OF TENDER OFFERS

Opening procedure shall be conducted in accordance with Section 109 of the PPA after the Tender Offer Submission Deadline.

9 SECURITY

- a) In order to secure its obligations arising from its participation in the Tender procedure, the Bidder shall provide the Contracting Entity with a collateral payment (bid security) of EUR 50.000.

- b) The Bidder may pay the collateral in any of the methods described in Section 41 of the PPA, i.e. in the form of a deposit in a bank account of the Contracting Entity (bank transfer), in the form of a bank guarantee, or in the form of guarantee insurance.
- c) If the collateral is paid by bank transfer, it shall be credited to the account of the Contracting Entity no later than one (1) day before the Tender Offer Submission Deadline to the following bank account of the Contracting Entity:

Bank: Československá obchodní banka, a.s.

Acct No.: 2004280/0300

IBAN: CZ8803001712800017470543

SWIFT: CEKOCZPP

Acct Holder: NET4GAS, s.r.o.

Variable Symbol: registration number of the Tender in Tender Electronic Daily – CZ

A copy of the document confirming that the amount was deposited in the Contracting Entity bank account or that the payment order was made shall be included in the Tender Offer.

- d) If the security is provided in the form of a bank guarantee or in the form of insurance guarantee, the validity must be ensured throughout the entire period of validity of the Tender Offer in accordance with Section 41(5) of the PPA (please refer to Section 10 of the TD). The original bank guarantee or insurance contract shall be included in the Tender Offer.
- e) If the security is provided in the form of a bank guarantee, an original letter of the bank guarantee issued in favor of the Contracting Entity as the authorized creditor (recipient of the guarantee) shall form part of the Tender Offer. From its content it shall be clear that the bank will provide the Contracting Entity with the benefit up to the guaranteed amount without delay and without objection after receiving the first call of the Contracting Entity based on the statement that the Bidder has been excluded from the Tender pursuant to Section 122(7) of the PPA or Section 124(2) of the PPA.
- f) The bank guarantee shall be issued for the benefit of the Contracting Entity in accordance with Section 2029 and further of Act No. 89/2012 Sb., the Civil Code, as amended, in case of a bank guarantee, and Section 2758 and further (in particular Section 2868), in case of guarantee insurance by an institution holding a long-term minimum rating of BBB- by Standard & Poor's (Fitch) or Baa 3 by Moody's, or by an institution that will provide evidence of the existence of a controlling agreement or contract on profit transfer with a managing person holding a long-term minimum rating of BBB- by Standard & Poor's (Fitch) or Baa 3 by Moody's.

- g) The security provided by depositing the required amount in the bank account shall be remitted back to the Bidder within the statutory time limits, including accrued interest accounted for by the bank. If the security is provided in the form of a bank guarantee or guarantee insurance, the Contracting Entity shall release the security by returning the original guarantee deed or insurance contract to the Bidder.
- h) The Bidder shall provide an account number for the purpose of crediting the collateral back to the Bidder.
- i) Security in the form of a bank guarantee must be submitted as part of the Tender Offer in the original, i.e. in the form of an electronically signed bank guarantee by a person authorized to act on behalf of the bank or in the form of an electronic conversion of the original bank guarantee document.

10 VALIDITY OF TENDER OFFERS

The time period during which the Bidder is bound by its Tender Offer shall be 90 days and shall start as of the day following the day of expiration of the Tender Offer Submission Deadline.

11 EVALUATION CRITERIA AND TENDER OFFER EVALUATION METHOD

The evaluation of Tender Offers shall be performed by an evaluation committee set up by the Contracting Entity. The evaluation committee will first assess whether the submitted Tender Offers meet the statutory requirements and requirements set in the TD. The criterion for awarding the Tender will be the lowest tender offer price in CZK without VAT in accordance with Section 114(2) of the PPA. The Bidder with the lowest Tender Offer price shall be evaluated as the first-place Bidder. If the bidder submit its tender offer price in EUR the exchange rate will be determined by the official rate declared by the Czech National Bank on the date of deadline for submission of the final tender offers (preliminary tender offers in case the Contracting Entity will apply its right to accept preliminary tender offers as the final tender offers). The Contracting Entity may verify the information and documents included by the Bidder in their Tender Offer, i.e. in particular, ask the Bidder to furnish the respective documents demonstrating the information included by the Bidder in their Tender Offer. Should any Bidder provide their Tender Offer with information or documents that do not correspond to reality and that did or may impact the outcome of the Tender procedure, the Contracting Entity may exclude the Bidder, or if the Draft Contract is already concluded, it may withdraw from the contract.

12 GENERAL INSTRUCTIONS TO APPLICANTS

12.1 Change in Qualification

If the Applicant no longer fulfills any of the qualification criteria, the Applicant shall notify the Contracting Entity thereof within seven (7) business days. The Applicant shall submit any required documents proving its full compliance with the qualification criteria within ten (10) business days of informing the Contracting Entity of this fact. At the request of the Applicant, the Contracting Entity may extend the deadline or excuse the Applicant for missing the deadline.

12.2 Additional Information Request by Contracting Entity

The Contracting Entity may request the Applicant/Bidder to substantiate or explain any information or documents submitted, or to provide additional information or documents proving compliance with the qualification criteria. The Applicant/Bidder shall comply with this obligation within a reasonable period of time, as determined by the Contracting Entity.

12.3 Failure to Fulfill Qualification

Applicants that fail to fulfill the qualification criteria or that have failed to comply with their other obligations set out in the TD shall be excluded from the Tender by the Contracting Entity.

13 CONFIDENTIALITY

The Tender (tendering procedure) is confidential. All recipients of the TD, whether or not they submit an Application or a Tender Offer, shall treat the same as private and confidential, and no such recipient shall divulge any information concerning the Tender to any third party without the prior written consent of the Contracting Entity.

The Contracting Entity may use any information or documents submitted by the Applicant to the extent it is necessary to proceed in accordance with the PPA.

The members of the evaluation committee are bound by a confidentiality commitment in respect of the contents of the Applications and the evaluated Tender Offers.

14 ETHICS

The Applicant must not be affected by any real or potential conflict of interests, and shall have no particular ties with another Applicant or other parties involved in the subject of this Tender in respect of the subject of this Tender.

Any attempt by the Applicant/Bidder to obtain confidential information, enter into unlawful agreements with competitors, or influence the evaluation committee or the Contracting Entity during the Tender may lead to the rejection of its Application or Tender Offer and other consequences.

15 FINAL PROVISIONS

15.1 Application of Public Procurement Act

All matters not expressly stipulated in the TD shall be governed by the relevant provisions of the PPA.

15.2 Terms and Conditions of Tender and Costs

By the submission of the Application, the Applicant accepts the terms and conditions of the Tender stipulated in the TD in full and without any reservations, including all potential amendments received as additional information to the conditions of the Tender. By submitting the Application, the Applicant expressly acknowledges and accepts the Code of Conduct of the Contracting Entity attached as Attachment 3 to the TD.

The Applicant shall bear all costs of the preparation and submission of the Application/Tender Offer, and the Contracting Entity shall in no case have any liability for such costs, regardless of the proceedings and outcome of the Tender.

15.3 Liability for Damages

The Contracting Entity shall not be liable for any damage of any nature (including, without limitation, lost profits) resulting from the cancellation of the Tender. This shall apply even if the Contracting Entity has been informed that damage may potentially be caused to the Applicant/Bidder.

The Contracting Entity shall not be liable for any errors, misconceptions, misinterpretations, or any omissions or incorrect information obtained by the Applicant/Bidder from any sources other than the TD.

15.4 Reservation of Rights by Contracting Entity

- a) The Contracting Entity hereby reserves the right to:
 - i) cancel the qualification and/or Tender procedure at any time, subject to no further conditions, with no obligation to provide any compensation;
 - ii) add questions and to make this TD more specific, or to amend it;
 - iii) verify all the information and documents provided in the Application/Tender Offer or provided by the Applicant/Bidder for the purposes of the Tender;
 - iv) exclude an Applicant failing to fulfill the qualification criteria; and/or

- v) change the scope of performance or narrow the scope of performance according to the respective Draft Contract prior to inviting the Bidders to submit their Tender Offers.
- b) Pursuant to Section 6(3) of the PPA, the Contracting Entity will exclude an Applicant whose registered office is not located in an EU member state, or in a state that is a party to an international treaty guaranteeing access to the Tender, concluded with the Czech Republic or with the European Union.
- c) Pursuant to Section 6(3) of the PPA, the Contracting Entity will exclude an Applicant whose subcontractor does not have its registered office located in an EU member state, or in a state that is a party to an international treaty guaranteeing access to the Tender, concluded with the Czech Republic or with the European Union.
- d) The Contracting Entity may exclude any Applicant pursuant to Section 168 of the PPA, where the proportion of the supplies that originate in countries with which the European Union has not concluded an agreement ensuring comparable and effective access for European Union economic operators to the markets of those countries, exceeds 50% of the total value of the proposed supplies.
- e) The Contracting Entity requires in accordance with Sections 104 and 122 of the PPA that the selected Bidder provide the Contracting Entity with the Performance Guarantee (as defined in the Draft Contract) upon request of the Contracting Entity as a condition for the conclusion of the Contract. If the selected Bidder does not provide the Performance Guarantee as requested by the Contracting Entity, such Bidder will be excluded from the Tender, and the next best Tender Offer shall become the selected offer.

15.5 Additional Information

A request for clarification of the TD pursuant to the Section 98(3) of the PPA must be in writing, in Czech, Slovak or English language, and must be delivered to the Contracting Entity via the electronic tool TENDERARENA no later than 8 working days before the deadline for the submission of the Application/Tender Offers. Any explanation of the TD will, along with the TD, be published on the profile of the Contracting Entity.

15.6 Governing Law and Place of Jurisdiction

The governing law of the Tender shall be the laws of the Czech Republic. The place of jurisdiction shall be the place where the Contracting Entity has its registered office.

15.7 Personal Data Protection

The Contracting Entity processes personal data of the Applicants/Bidders/counterparties in order to assess its Application/Tender Offer in the Tender in compliance with the law. The processing for this purpose is necessary and is carried out upon the request of the Applicants/Bidders/counterparties as the data subject.

The Contracting Entity, in its capacity as administrator, processes personal data of the data subject correctly and in a legitimate and transparent way only for the above-specified purpose on a need-to-know basis and for a time period essential to fulfill the purpose of the processing in the manner procuring the proper security of the data in accordance with the internal policies of the Contracting Authority.

An Application/Tender Offer in the Tender procedure cannot be assessed without the provision of personal data of the Applicants/Bidders/counterparty. Failure to provide data to the required extent may result in the exclusion of the Applicant/Bidder.

Personal data of the contractor can be processed by the Contracting Entities' advisors in their capacity as processors, whereas such processing shall be performed strictly for the purpose of the Tender and in compliance with the law.

ANNEXES:

Attachment 1 – Draft Contract, including Annex 1 - Technical Specifications

Attachment 2 – Request for Participation in Negotiated Procedure with Publication (Cover Sheet)

Attachment 3 – Code of Conduct

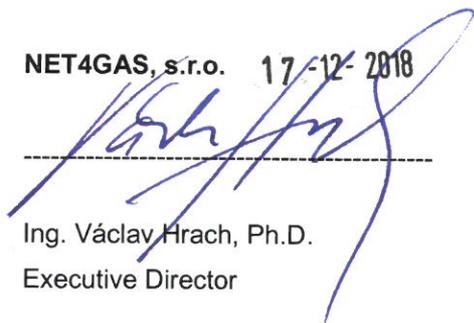
Attachment 4 – Model Affidavits

Attachment 5 – Reference List

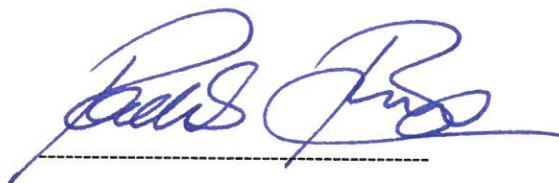
Attachment 6 – Price Table for Tender Offer Evaluation

Attachment 7 – Instructions for Submission of Application and Tender Offer in Electronic Form

NET4GAS, s.r.o. 17-12-2018



Ing. Václav Hrach, Ph.D.
Executive Director



Ing. Radek Benčík, MBA
Executive Director