



**NET4GAS, s.r.o.**

**HP PIPELINE DN1400 CONSTRUCTION WORKS,  
NODE KATEŘINSKÝ POTOK - LINE VALVE STATION MALMĚŘICE (LOT I.)  
LINE VALVE STATION MALMĚŘICE – NODE PŘIMDA (LOT II.)  
("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 contractors (each as the “**Contractor**”) for construction works and services (the “**Works**”) related to a high pressure (HP) gas pipeline DN1400 with the length of approximately 150 km from newly built distribution node Kateřinský potok in Ústí nad Labem Region to distribution node Přimda in Plzeň Region, including line valve stations (LVS) and cathodic protection stations located on the gas pipeline and including delivery of all required materials (with the exception of the Employer supplied equipment and materials). The HP gas pipeline forms the part of planned development of NET4GAS's transmission system 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**”).

The Tender is divided into two lots, as defined below.

All capitalized terms used in the TD, but not otherwise defined, shall have the same meanings given to them in the Draft Contract (as defined below).

### 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/profil/NET4GAS>

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(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

In summary, the Contractor's scope of works and services covers mainly:

- taking-over of the Site and the documentation provided by the Employer;



- preparation of the Detail Design of the Works, including all surveys necessary for the Detail Design and construction of the Works;
- mobilization and preparation of the Temporary Works;
- management (operation) of the pipe yards;
- preparation of the Site for the purposes of performance of the Works (including removal of existing structures and natural plants);
- taking-over and installation of the Employer's Plant and Materials;
- obtaining all required permits;
- construction of the Works;
- deliveries of Plant and Materials;
- construction management;
- coordination of works to be conducted by the Other Employer's Contractors necessary for the completion of the Pipeline and cooperating with the Employer in the identification of defects of the works executed by the Other Employer's Contractors;
- health and safety management in accordance with Laws;
- communication with the relevant land owners and authorities with respect to rights of way until the hand over of the re-cultivated land plots to land owners and ensuring compliance with the ROW Requirements;
- fulfilment of the requirements specified in the Existing Authorities' Statements and New Authorities' Statements, including those requirements which are addressed to the investor (in Czech *investor*) or the constructor (in Czech *stavebník*) or similar;
- supply of Spare Parts;
- warehouse management;
- mechanical completion of the Works;
- pre-commissioning of the Works;
- commissioning of the Works;
- elaboration of as-built documentation and operation and maintenance manuals for the Works;

- obtaining the Trial Operation Permit for the Works on behalf of the Employer in accordance with Sub-Clause 2.2 of the Conditions and assistance with the trial operation of the Works;
- obtaining the Final Operation Permit for the Works on behalf of the Employer in accordance with Sub-Clause 2.2 of the Conditions;
- participating in the inspections and taking-over of the works executed by third-party contractors on Site and review their compliance with the Employers Requirements and notify any discrepancies to the Employer;
- taking-over of the Works;
- demobilization and disposal of removed equipment and leftover material;
- removal of defects of the Works; and
- all related works, as defined in the Contract;

all as further specified in the Draft Contract (as defined below), esp. the documents General Technical Requirements and the Scope of Work (forming part of the Employer's Requirements).

The items specified in Section 8 of the Interface Report are optional only. Such items include the construction of the pipe-yards, fiber optic cable supply and installation, construction of the LVS Vrskaň, relocation of the power supply cables in the LVS Mladotice and noise protection measures for the LVS Mladotice – GC2 and for the distribution node Přimda – GC2.

The following works are not part of the Contractor's scope of works and delivery:

- Supply of defined long lead items, which will be issued by Employer free of charge
- NDT testing

The scope of this Tender is divided into Lot I. and Lot II. (each as the "**Lot**") as follows:

Description / Segment of Pipeline	Lot
The gas pipeline part between RU006 – DN Kateřinský potok and TU50S (or TU33S) - LVS Vrskaň (or LVS Jirkov)	I.
The gas pipeline part between TU50S (or TU33S) and TU51S – LVS Hrušovany	I.
The gas pipeline part between TU51S and TU52S – LVS Sýrovice	I.
The gas pipeline part between TU52S and TU53S – LVS Malměřice (Scraper station)	I.
The gas pipeline part between TU53S and TU40S – LVS Mladotice	II.

The gas pipeline part between TU40S and TU41S – LVS Hubenov	II.
The gas pipeline part between TU41S and TU42S – LVS Sviňomazy	II.
The gas pipeline part between TU42S and TU48S – LVS Bor	II.
The gas pipeline part between TU48S and RU005 – DN Přimda (Scraper Station)	II.

- a) The terms and conditions of the Tender, including the minimum requirements for the Works are contained in the draft contracts attached hereto as Attachment 1 for the respective Lot (each such contract as the “**Draft Contract**”), which form an integral part of the TD.
- b) The scope of the Tender also includes the delivery of all documents required for the proper use, operation and maintenance of the Works.

### 1.3 Designation of Tender

#### CPV Codes:

- 45000000-7 – Construction work
- 71300000-1 – Engineering services
- 44161100-7 – Gas pipelines
- 71520000-9 – Construction supervision for civil engineering works

### 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 Application, 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 provisions of the present TD shall apply equally to both Lots of the Tender, unless they expressly specify to only apply to one specific Lot.
- f) The indicative time schedule for the Tender shall be as follows:

Deadline for Submission of Applications	February 15, 2019, 2:00 p.m.
Expected Time of Invitation for Submission of Tender Offers for Both Lots	Three (3) months following the deadline for the submission of Applications**

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

- g) The Annex 1 of Draft Contracts (Lot I., Lot II.) – Employer Requirements will be provided to potential Applicants by the Contracting Entity in an electronic form on a DVD subject to the Applicant entering into a non-disclosure agreement ("NDA") between the Contracting Entity and the potential Applicant. The draft NDA is Attachment 10 of this TD.

## **2 TIME AND PLACE OF DELIVERY**

The indicative times of performance under the Draft Contract for both Lots are between July 2019 and December 2020. More detailed specification for the Works can be found in Annex 1 to the Draft Contract for the respective Lot.

The place of performance of the Works is the Ústecký Region and Plzeňský Region, as further specified in the Draft Contract for the respective Lot.

## **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 f) 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 of the TD.
- c) All Applications shall be submitted in writing in electronic form via the TENDERARENA electronic tool available at [www.tenderarena.cz](http://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 with the clients’ reference certificates according to the requirements of Section 4.4(a);
  - 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) Proposed termination payment table in case of the termination of the contract pursuant to Section 15.5 and 16.4 of the Conditions of the Draft Contract (the template of the table is contained in Annex 3 to the Draft Contract);
  - ii) Applicant’s proposals of the purchase price escalation formula to be inserted in Section 13.8 of the Conditions of the Draft Contract; and

- iii) Information as to whether it intends to submit a Tender Offer for both Lots or only for one Lot.

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 pipeline construction for at least the last five (5) consecutive years as of the publication of this Tender in the Official Journal of the EU (*Affidavit in the form contained in Attachment 4 to the TD*); and
- c) The turnover of the pipeline construction division of the Applicant in the last three (3) completed financial years was more than EUR 200 million, regardless of whether the Applicant submits a Tender Offer for one or both Lots.

*(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 (*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.

- d) It has taken out insurance (*a simple copy of a valid insurance policy or insurance certificate*) applicable to the subject of the Tender and covering the Applicant, its

subcontractors, the Contracting Entity and all other entities which may be affected by the Works (as defined in the respective Draft Contract) as follows:

- (i) Public/Products liability as described in Attachment 8;
- (ii) Professional liability insurance as described in Attachment 8;
- (iii) Transport insurance as described in Attachment 8.

Alternatively, the Applicant may undertake to enter into an insurance contract covering the scope specified in Attachment 8 in the event its Tender Offer wins, by no later than the conclusion of the respective Draft Contract (*Affidavit*). Prior to the conclusion of the insurance contract, the Applicant must notify the Contracting Entity of the amount of the insurance premiums. A failure to conclude an insurance policy confirmed by the Applicant's affidavit within the required time limit shall be deemed by the Contracting Entity to mean a failure of the Applicant to provide proper cooperation aimed at the conclusion of the contract within the meaning of Section 104(e) of the PPA.

The Contracting Entity procures on its own cost insurance described in Attachment 9 (Construction all risk including construction liability and cross liability).

#### **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:

- a) During the past six (6) years as of the publication of this Tender in the Official Journal of the EU, the Applicant executed (i.e. successfully completed, commissioned and handed over to its client) at least:
  - (i) one project covering detail engineering, construction and commissioning of a pipeline with a minimum diameter of DN1000, a minimum design pressure of 63bar, and a minimum continuous (uninterrupted) length of 30 km, in the position of general contractor or as the member of a joint venture (i.e. in a position other than that of a subcontractor) and,
  - (ii) one project covering detail engineering, construction and commissioning of pipeline with a minimum diameter of DN1000, a minimum design pressure of 63bar, and a minimum continuous (uninterrupted) length of 40 km, in the position of general contractor or as the member of a joint venture (i.e. in a position other than that of a subcontractor), which was constructed either with full automatic main line welding technology or with combination of semi-automatic main line welding technology of root pass and



automatic/mechanized main line welding technology for fill and cap passes

The Contracting Entity will only accept those reference projects that meet all requirements of the TD.

For the purposes of the reduction of the number of Applicants under Section 4.8, for each accepted reference project under letter (a)(i) above, the Applicant gains 1 point. For each accepted reference project under letter (a)(ii) above, the Applicant gains 2 points. The maximum allowed number of points gained for reference projects under letter (a) above is cumulatively 8.

The Applicant shall attach a *reference certificate* issued and signed by the relevant client in relation to each reference project to the Applicant's Reference List (Reference List shall have the form contained in Attachment 5 to the TD).

Each of the client's reference certificates will specify:

1. Client's name and place of performance of given reference project,
2. Specific scope of project provided during the relevant period (with specification of exact dates), a brief description of the subject of the contract,
3. Dates of implementation and commissioning, including information concerning duration of the construction from the end of mobilization until readiness for gas-in,
4. Technology used for main line welding of the reference project under Section 4.4, letter (a) above,
5. Share of the Applicant in case it acted as a member of a joint venture or a subcontractor to a joint venture company in which he had a share in the voting rights.

If the Applicant was a member of a joint venture or a subcontractor to a joint venture company in which he had a share in the voting rights, it must have successfully constructed at least 30km (with respect to Section 4.4.(a)(i), or 40 km with respect to Section 4.4.(a)(ii) of the pipeline in a reference project (provided that such Applicant itself performed mechanical works) in order for such reference project to meet the requirements set forth under letter (a) of this Section above.

- b) The Applicant is a holder of the following valid certificates and licenses:

- (i) EN ISO 9001 Certificate (*a copy of the ISO 9001 Certificate*);
- (ii) EN ISO 14001 Certificate (*a copy of the ISO 14001 Certificate*);
- (iii) OHSAS 18001 Certificate (*a copy of the ISO 18001 Certificate*);
- (iv) EN ISO 3834-2 Certificate (*a copy of the ISO 3834-2 Certificate*); and
- (v) License for manufacturing, installing, repairing, inspecting and testing selected gas and electrical equipment, issued by ITI within the meaning of Act No. 174/1986 Coll., as amended (*a copy of the license*). Foreign Applicant may prove fulfillment of this requirement by submitting the fully filled out and authorized request for i) selected gas equipment "Žádost o prověření odborné způsobilosti a vydání oprávnění pro zahraniční subjekty ze statů EU" available at [www.ticr.eu](http://www.ticr.eu), and ii) selected electricity equipment „Žádost o prověření odborné způsobilosti a vydání oprávnění pro zahraniční subjekty ze statů EU" available at [www.ticr.eu](http://www.ticr.eu) (*a copy of the fully filled out and authorized request*).

The Contracting Entity excludes the option of the Applicant to demonstrate fulfillment of the technical qualification criteria pursuant to Section 4.4(b)(i) to (v) above by using any third person, i.e. the Applicant itself must fulfill these technical qualification criteria.

- c) The Applicant employs (or otherwise contracts) at least twenty (20) qualified welders with certificate issued in line with ČSN EN 9606-1 (*a list of the welders with copy of the required certifications*).
- d) The Applicant has the equipment and the machinery resources of at least fifteen (15) sidebooms with lifting capacity of at least 90 tons and one (1) pipe bending machine 42"-56" (*a list of equipment with ownership title indication; if leased or rented, a copy of the contract must also be provided*).
- e) 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*).
- f) 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*).

For the purposes of submitting the Application, the Contracting Entity excludes the option of the Applicant to demonstrate 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 Use of Subcontractors**

##### **4.5.1 Use of Subcontractors for Works**

The Contracting Entity requires that the following key Works be carried out directly by the selected Bidder, subject to further rules specified in the Draft Contract (esp. Sub-Clause 4.4 of the Conditions):

- a) Main line welding (except for welders);
- b) Main line lowering-in ;

The Applicant shall include documents demonstrating the fulfillment of all of the basic and professional eligibility set out in Section 4.2 by such subcontractors.

##### **4.5.2 Demonstrating Fulfillment of Applicant's 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 (with the exception of technical qualification criteria pursuant to Section 4.4(b)(i) to (iv), which must be fulfilled by the Applicant itself), 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 a joint Application and intend to submit a joint Tender Offer:

- a) 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
- b) 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 Applicants who submit a joint Application 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 language, together with a certified translation into Czech or English language; this also applies if the 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.

#### **4.8 Rules for Reduction of Number of Applicants**

The Contracting Entity is going to limit the number of Bidders with whom it will commence negotiations. If the Application is submitted by more than five (5) Applicants, the Contracting Entity will, based on the number of points gained for the technical qualification criteria pursuant to Section 4.4(a), reduce the number of Applicants in the Tender down to five (5) Applicants pursuant to Section 111 of the PPA with respect to each Lot, whereas, in compliance with Section 61(5) of the PPA, the Contracting Entity will exclude those Applicants whose Application does not meet the requirements of the TD, who failed to produce the required documents demonstrating their qualification, or who were not selected upon the reduction in the number of Applicants.

Should two or more Applicants be awarded an identical number of points, they will be put in descending order from the highest number of reference projects pursuant to Section 4.4(a)(ii) of the TD. Should two or more Applicants be ranked equally based on the number of reference projects pursuant to Section 4.4(a)(ii) of the TD, they will be put in descending order from the highest total length of all such reference projects pursuant to Section 4.4(a)(ii) of the TD.

### **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 shall announce the preliminary outcome of the evaluation to all Bidders who have submitted an Indicative Tender Offer for the respective Lot of the Tender, and shall invite them to participate in negotiations. 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: HP gas pipeline commencing at the distribution node Kateřinský potok in Ústí nad Labem Region and ending at the distribution node Přimda in Plzeň Region.

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 to submit Tender Offer (the "**Tender Offer Submission Deadline**").

## **7 SUBMISSION OF TENDER OFFERS**

- a) The Tender Offer for each Lot shall be submitted in electronic form via the TENDERARENA electronic tool available at [www.tenderarena.cz](http://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 for each Lot 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 for each Lot 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;
- (vi) Bank guarantee or a guarantee insurance certificate, or a copy of a bank instruction, in accordance with Section 9 of the TD;
- (vii) A list of potential / selected subcontractors of the Bidder, who are going to be a subject of further Contracting Entity's approval; 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

Envelopes 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:

- (i) EUR 1,000,000 for Lot I.,
- (ii) EUR 1,000,000 for Lot II.

As one Bidder cannot be awarded both Lot I. and Lot II. but can submit a Tender Offer for both these Lots (see Section 11 below), a provision of only one bid security of EUR 1,000,000 shall suffice even in case the Bidder submits a Tender Offer for both Lots.

- 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 electronically signed by a person authorized to act on behalf of the bank, 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 conditions of such bank guarantee or guarantee insurance shall state that it will expire only upon the lapse of the term of the Tender Offer or upon delivery of a notice by the Contracting Entity to the Bidder to the effect that the said Bidder has been excluded from participation in the Tender.
- h) The Bidder shall provide an account number for the purpose of crediting the collateral back to the Bidder.

## **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**

### **11.1 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 most economically advantageous Tender Offer in accordance with Section 114(2) of the PPA. The Bidder with the highest number of points shall be evaluated as the first-place Bidder.

Each Lot is subject to individual evaluation. **One Bidder may be awarded the Tender in one Lot only. One Bidder may submit the Tender Offer for both Lot I. and Lot II.** In case such Bidder becomes the first-place Bidder in both Lot I. and Lot II., the following rules shall apply:

- a) the Contracting Entity shall sum up the points for the following Lot combinations: (i) the points of the first-place Bidder in Lot I. and the points of the second-place Bidder in Lot II. and (ii) the points of the first-place Bidder in Lot II. and the points of the second-place Bidder in Lot I.;
- b) in the combination where the total of the points pursuant to letter (a) above is higher:
  - (i) the first-place Bidder shall be awarded the Lot where it ranked first; and
  - (ii) the second-place Bidder shall be awarded the Lot where it ranked second.

## 11.2 Evaluation Criteria

It is envisaged that the partial evaluation criteria will be as follows:

<i><b>Criterion</b></i>	<i><b>Weight</b></i>
<b>11.2.1 Lowest Tender Offer Price (without VAT) (same for both Lots)</b>	65 % weight
i. Lump sum price for the offered Lot based on the SPRQ*** considering construction time**** of up to 14 months (i.e., 14-Month Scenario as per Draft Contract). (Attachment 6 - SPRQ)	20 points
ii. Lump sum price for the offered Lot based on the SPRQ*** considering construction time**** of up to 12 months (i.e., 12-Month Scenario as per Draft Contract). (Attachment 6 - SPRQ)	20 points
iii. Lump sum price for the offered Lot or for both Lots based on the SPRQ*** considering construction time**** of up to 11 months (i.e., 11-Month Scenario as per Draft Contract). (Attachment 6 - SPRQ)	20 points

iv. Lump sum price for the offered Lot or for both Lots based on the SPRQ*** considering construction time**** of up to 10 months (i.e., 10-Month Scenario as per Draft Contract). (Attachment 6 - SPRQ)	20 points
v. The sum of reference set prices for the offered Lot or for both Lots (hourly rates contained in the Schedule of Hourly Rate from Attachment 6 to be used for the purposes of any potential variations) and the total price unit rates under item P3 of the SPRQ	12 points
vi. Special prices under items 6.1 ("Stand-by cost before issuance of the Notice to Proceed" under Clause 3.2 (c) of the Contract Agreement), 6.2 ("Stand-by cost after issuance of the Notice to Proceed" under Sub-Clauses 8.9, 13.3 and 16.1 of the Conditions), 6.3 ("Interruption mobilization and demobilization costs" under Clause 3.4 of the Contract Agreement) and 6.3.1 (transportation costs) of the SPRQ.	8 points
<p>*** In case the 12-Month Scenario (sub item ii.) or the 11-Month Scenario (sub-item iii.) or the 10-Months Scenario (sub-item iv.) will be used, all items of the SPRQ (concerning the default 14-Month Scenario) shall be multiplied by the respective coefficient proposed by the Bidder in its Tender Offer (under items K1, K2 and K3 of the SPRQ).</p> <p>**** Construction time means the period of time as of Notice to Proceed is issued by the Contracting Entity until start of the Trial Operation. (Notice to Proceed allows the Contractor to start with mobilization activities and with site construction activities as well.)</p>	
<b>11.2.2 Technical Quality</b>	35 % weight
<b>i. Contractor's Project Execution Plan Considering Construction Time**** of up to 10 Months (i.e., 10-Month Scenario as per Draft Contract)</b>	15% weight under this item 2
<p>Contractor to provide its Project Execution Plan, including, but not limited to the following aspects:</p> <p><b>A) <u>For Lot I.</u></b></p> <p>1. Project Summary Provide evidence that the project, the process and its technologies, the interfaces to third parties and the time schedule are understood. Elaborate on 3-5 pages.</p>	10 points

<p>2. Contractor's Approach for Construction, Installation and Commissioning, Start Up and Trial Operation</p> <ul style="list-style-type: none"> <li>- Provide summary of Works to be implemented on Site.</li> <li>- Provide sample transport and material handling procedure.</li> <li>- Describe welding techniques to be used.</li> <li>- List relevant Contractor's policies and construction procedures applicable for this project.</li> </ul>	<p>20 points</p>
<p>3. Contractor's Project Organization</p> <ul style="list-style-type: none"> <li>- Provide description of roles and responsibilities of Key Personnel of Contractor's project organization (include management, lead and supervision functions).</li> <li>- Provide organization chart incl. project position, name and company (in case of joint venture).</li> <li>- Provide organigram.</li> <li>- All potential subcontractors shall be included under the condition that their influence does not interfere with Key Personnel.</li> </ul>	<p>10 points</p>
<p>4. Contractor's Approach Towards Time Scheduling</p> <ul style="list-style-type: none"> <li>- Explain Contractor's approach towards time scheduling, including utilization of the different levels of time schedules (e.g. level 2 for management summary, level 3 for reporting and level 4 for execution aspects).</li> <li>- Provide level 3 schedule with evidence that relevant project milestones are being met and with detailed specification of the following: <ul style="list-style-type: none"> <li>• Mobilisation,</li> <li>• Engineering,</li> <li>• Procurement of main materials,</li> <li>• Civil works, including ground works,</li> <li>• Construction works,</li> <li>• Mechanical completion,</li> <li>• Commissioning,</li> <li>• Permitting (Trial Operation Permit and Final Operation Permit),</li> <li>• Testing and hand over.</li> </ul> </li> <li>- Provide risk analysis and critical path analysis specific to the project.</li> </ul> <p>5. Contractor's Approach on Engineering</p> <ul style="list-style-type: none"> <li>- Describe which services / disciplines of engineering will be provided by the Contractor and which services will be provide by subcontractors.</li> </ul>	<p>45 points</p>

<ul style="list-style-type: none"> <li>- Describe location of engineering office and facilities available herein.</li> <li>- List engineering software used for the project.</li> <li>- Provide initial list of deliverables.</li> </ul> <p><b>B) <u>For Lot II.</u></b></p> <p>It is requested to submit Project Execution Plan with same scope as requested under A) for Lot I. but project specific to Lot II.</p>	15 points
<b>ii. HSSE (one combined for both Lots)</b>	5% weight under this item 2
<p>Contractor to provide the following information:</p> <ol style="list-style-type: none"> <li>1. Health, safety, security and environmental manuals / guidelines, including, but not limited to the following: hazard identification and control, regulatory compliance, safety rules, personal protection, training and awareness, communication, incident reporting, safe work practices and procedures, audits and inspections, emergency preparedness, permits and forms.</li> <li>2. Contractor's HSSE statistics for the years 2015, 2016, 2017 including hours worked; injuries; fatalities; environmental spills.</li> <li>3. Sample Project procedures for : <ol style="list-style-type: none"> <li>i. Excavation works,</li> <li>ii. Lifting of heavy equipment,</li> <li>iii. Fuel and chemical storage and handling.</li> </ol> </li> <li>4. Provide Contractor's Corporate Procedures on: <ol style="list-style-type: none"> <li>i. HSSE incentives plan (bonus for managers for safe work of the construction team),</li> <li>ii. HSSE training plan,</li> <li>iii. Environmental management and monitoring plan.</li> </ol> </li> </ol>	<p>25 points</p> <p>25 points</p> <p>25 points</p> <p>25 points</p>
<b>iii. Contractor's Project QA / QC Plan (one combined for both Lots)</b>	10 % weight under this item 2

Contractor to provide specific QA/QC plan related to one of the reference projects under Section 4.4(a)(ii) of the TD including of ITPs for earthworks and mainline welding	100 points
<b>iv. Key Personnel (same for both Lots)</b>	5 % weight under this item 2
<ul style="list-style-type: none"> <li>- For each position indicated below the Bidder must prove at least the minimum required number of projects. If the Bidder wishes to bid for both Lots, it is sufficient to prove the requirements for one Lot only.</li> <li>- As a part of the evaluation, any projects above the minimum will be considered.</li> <li>- The positions are as follows:</li> </ul> <p>The Bidder shall submit CVs of Key Personnel who will be responsible for the performance of each Lot. The Key Personnel must be an employee of the Bidder, its affiliated person, or shall be bound to the Bidder or its affiliated person by a contractual relationship (for example, as an entrepreneur). Key Personnel are natural persons who hold the following positions on the project team and achieve at least the following levels of education and professional qualifications:</p> <p>a) <b>Project Manager</b> – University education (technical); excellent knowledge of English – spoken and written; at least five (5) years of experience at position of project manager in the field of pipeline construction in the segment of gas and oil; experience with the execution of the following projects during the last ten (10) years:</p> <ul style="list-style-type: none"> <li>• Successfully managed at least two (2) projects consisting of the engineering, procurement, construction and commissioning of the pipeline with (i) diameter DN 1000 and length of at least 30 km and (ii) diameter larger than DN 500 and length of at least 20 km,</li> </ul> <p>b) <b>Site Manager</b> – Secondary technical education; knowledge of English – spoken and written; at least eight (8) years of experience at position of site manager in the field of pipeline construction; experience with the execution of the following projects during the last eight (8) years<sup>1</sup>:</p> <ul style="list-style-type: none"> <li>• Successfully led the construction site at least on two (2) projects consisting of construction and commissioning of the similar complexity pipeline,</li> </ul>	

<sup>1</sup> Please note that for the purpose of performance of the Works under the contract, the site manager shall have qualification according to Act No. 360/1992 Coll., as amended.

<p>c) <b>Lead Mechanical Engineer</b> – University education (technical); excellent knowledge of English – spoken and written, at least eight (8) years of experience in segment gas and oil; experience with the execution of following projects during the last eight (8) years:</p> <ul style="list-style-type: none"> <li>• Successfully led the mechanical engineering stream at least on two (2) projects consisting of construction and commissioning of the similar complexity pipeline,</li> </ul> <p>d) <b>Lead Electrical Engineer</b> - University education (technical); excellent knowledge of English – spoken and written, at least eight (8) years of experience in segment of energy sector in the field of technological facilities construction / reconstruction; experience with the execution of following projects during the last eight (8) years:</p> <ul style="list-style-type: none"> <li>• Successfully led electrical engineering stream of at least two (2) projects of technological facility construction / reconstruction,</li> </ul> <p>e) <b>Lead Civil Engineer</b> - University education (technical); excellent knowledge of English – spoken and written, at least eight (8) years of experience; experience with the execution of following projects during the last eight (8) years:</p> <ul style="list-style-type: none"> <li>• Successfully led civil engineering stream of at least two (2) projects of technological facility construction, scope of the works included at least technological facility buildings, roads and walkways of the facility,</li> </ul> <p>f) <b>Lead Design Engineer</b> - University education (technical); excellent knowledge of English – spoken and written, at least eight (8) years of experience in segment gas and oil in the field of pipeline construction; experience with the execution of following projects during the last eight (8) years<sup>2</sup>:</p> <ul style="list-style-type: none"> <li>• Successfully managed elaboration of detail design of at least two (2) projects of similar complexity pipeline,</li> </ul> <p>g) <b>Authority Engineering Manager</b> – Secondary technical education; excellent knowledge of English and Czech/Slovak – spoken and written, at least eight (8) years of experiences in the segment of line construction, experience with the execution of following projects during the last eight (8) years:</p>	
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<sup>2</sup> Please note that for the purpose of performance of the Works under the contract, the lead design engineer shall have qualification according to Act No. 360/1992 Coll., as amended.

<ul style="list-style-type: none"> <li>• Successfully managed at least two (2) projects concerning authority engineering in the segment of line construction.</li> </ul>	
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The evaluation committee may request that the Bidder clarify certain information contained in its Tender Offer in writing.

When evaluating the Tender Offers, the evaluation committee shall use a points system from 0 to 100 points. Based on a partial evaluation criterion, each Tender Offer shall be assigned a number of points reflecting the success of the Tender Offer in the context of the partial evaluation criterion.

### **11.3 Evaluation of Section 11.2.1 (Price)**

For numerically quantifiable criteria for which the best Tender Offer has the minimum value of the criterion, i.e. the lowest tender offer price, the Tender Offer under evaluation shall obtain a number of points equal to the product of 100 and the ratio of the value of the best Tender Offer to the value of the Tender Offer under evaluation.

### **11.4 Evaluation of Section 11.2.2 i), ii) iii) (Technical Quality)**

The evaluation committee will assess the documents submitted by the Bidder for each individual sub-item and the Bidder shall achieve the following percentage of the score assigned to each sub-item in the table above:

1.0	– Excellent	Satisfactory and complete / compliant response;
0.75	– Above Average	Nearly satisfactory response - some information may be missing;
0.5	– Average	Issue has been understood by Contractor, however relevant information might be missing or relevant quality deficits;
0.0	– Unsatisfactory	Unsatisfactory / non-compliant response.



If the evaluation committee considers the value of any partial evaluation criterion other than the price to be patently inappropriate, the above procedure shall not be applied and the Tender Offer shall be assigned 0 points with reference to such criterion.

The evaluation using the points system shall be made by the evaluation committee so that each number of points assigned to a Tender Offer based on a partial evaluation criterion shall be multiplied by the weight of the partial evaluation criterion. As for the partial evaluation criterion set in Section 11.2.2 hereof (Technical Quality), the scores achieved in all sub-items will be added together and the Tender Offer under evaluation shall obtain a number of points equal to the product of the weight of the criterion and the ratio of the amount of achieved score of the Tender Offer under evaluation to the amount of the best score achieved in the Tender.

The Contracting Entity reserves the right to exclude Tender Offer if any item under Section 11.2.2 i.) A) 1. – 5., or 11.2.2 i.) B) 1. – 5., or 11.2.2 ii.) 1. – 4. or 11.2.2 iii.) is rated with 0 points and therefore the Tender Offer does not fulfill assignment with regards to technical quality. The Contracting Entity reserves the right to exclude Tender Offer if the overall score of the criterion in Section 11.11.2.2.2 i.) A), or 11.11.2.2.2 i.) B), or 11.11.2.2.2 ii.), or 11.11.2.2.2 iii.) is lower than 50 points (out of 100 points) and therefore the Tender Offer does not fulfill assignment with regards to technical quality.

#### **11.5 Evaluation of Section 11.2.2 iv) (Key Personnel)**

For each accepted project above the minimum, the Bidder will acquire 1 point, whereas the maximum number of accepted projects per each position shall be 3. In case of accepted project is identical with accepted project submitted according to 4.4(a) the Applicant gains additional bonus of 20% represented by multiplicator of 1.2 for such project. For numerically quantifiable criteria for which the best Tender Offer has the maximum value of the criterion, the Tender Offer under evaluation shall obtain a number of points equal to the product of 100 and the ratio of the value of the Tender Offer under evaluation to the value of the best Tender Offer.

Please note that such Key Personnel indicated in the Tender Offer must be used when executing the respective contract (subject to the provisions on Key Personnel included in the respective Draft Contract). In case the minimum required number of projects will not be proven, the Tender Offer does not fulfill assignment with regards to technical quality and the Contracting Entity reserves the right to exclude such Tender Offer from the Tender.

#### **11.6 Final Evaluation**

The Bidders who submit the most advantageous Tender Offers in each Lot shall be awarded the Tender in each Lot I. and Lot II, subject to the rules pursuant to Section 11.1 of the TD.

## **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 to substantiate or explain in writing any information or documents submitted, or to provide additional information or documents proving compliance with the qualification criteria. The Applicant 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.

Any attempt by the Applicant 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 exclusion of such Applicant from the Tender.

## **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 by the Applicant 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) 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 Security (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 Security as requested by the Contracting Entity, such Bidder will be excluded from the Tender, and the next best Tender Offer in such Lot shall become the selected Tender Offer, under the condition that one Bidder may be awarded the Tender in one Lot only.

#### **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 eight (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 Entity.

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.

Such personal data 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 Contracts (Lot I., Lot II.), including annexes
- 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 – SPRQ LOT I., SPRQ LOT II., Schedule of Hourly Rates
- Attachment 7 – Instructions for Submission of Application and Tender Offer in Electronic Form
- Attachment 8 – Insurance Qualification Requirements
- Attachment 9 – Insurance Procured by Contracting Entity
- Attachment 10 – Non Disclosure Agreement

NET4GAS, s.r.o.

Ing. Andreas Rau  
Executive Director

Ing. Radek Benčík, MBA  
Executive Director