



Purchase of Fuel Gas  
by GRTgaz Deutschland GmbH  
– Conditions of Tendering and Delivery –

## **Sec. 1 Subject Matter**

(1) GRTgaz Deutschland GmbH (GRTgaz Deutschland) is a transmission system operator in the market area of Trading Hub Europe (THE). It operates a gas pipeline system between the German-Czech border near Waidhaus, the Franco-German border near Medelsheim and the German-Austrian border near Wildenranna and Schwandorf/Rothenstadt (the MEGAL pipeline system).

(2) To meet operational requirements, it invites interested parties to bid for a contract on the supply of fuel in the shape of natural gas (H) or biogas (either hereinafter: fuel gas) under the terms of these conditions. The selection of the economically most advantageous bid is conducted in a transparent, non-discriminatory and market-oriented manner based on offers sent by email during a specific time frame.

(3) The tender procedure aims at the conclusion of a gas delivery contract between GRTgaz Deutschland and the bidder with the economically most advantageous bid. Based on that contract and the terms of these conditions (Contract), the supplier shall deliver fuel gas to GRTgaz Deutschland and GRTgaz Deutschland shall accept said fuel gas from the supplier.

(4) Type and specifications of the fuel gas, delivery amount, period and point are defined in the call for bids on the website of GRTgaz Deutschland. The purchase price shall be determined by the accepted bid. It is exclusive of any applicable value-added tax or other taxes and charges such as pursuant to the national emissions trading system (BEHG).

## **Sec. 2 Prequalification**

(1) GRTgaz Deutschland will only consider bids by bidders who have submitted the prequalification documents set out in para. 2 to GRTgaz Deutschland before noon (Berlin time) of the last full working day before expiry of the deadline set out in the relevant call for bids on the website of GRTgaz Deutschland. A working day is any day that is neither a Saturday or Sunday nor a public holiday in any of Germany's 16 states nor the 24<sup>th</sup> or 31<sup>st</sup> of December. To participate in more than one tender procedure of GRTgaz Deutschland within 12 months, bidders need to submit the documents only once.

(2) Bidders shall submit the following prequalification documents:

a) Excerpt from the public trade register: an excerpt from the relevant register (in Germany: *Handelsregister* or *Handwerksrolle*; in case of foreign bidders: documents under Annex XI of the Directive 2014/24/EU or similar documents under the regulation of the state the bidder is based in) issued within 12 months before the bidding deadline.

- b) Business report: annual business report of the last reported business year in German or English or a certified translation into one of these languages). If the annual report is available online, a link to the website suffices.
- c) Creditworthiness: proof of a long-term credit rating of at least
- BBB- according to Standard & Poor's or Fitch,
  - Baa3 according to Moody's,
  - Risk Indicator 3 according to Dun & Bradstreet,
  - Risk class 2 and/or of less than 235 points according to Creditreform, or
  - a comparable rating of another rating agency

issued within the last 12 months before the bidding deadline. GRTgaz Deutschland may accept bids by bidders whose parent company features the abovementioned rating.

- d) At least one email address used by bidder to send the offer and receive its acceptance.
- (3) The bidder shall inform GRTgaz Deutschland immediately of any negative change of their rating as compared to the rating submitted under para. 2. This applies both during the tender procedure and the duration of the Contract.
- (4) GRTgaz Deutschland accepts documents only in English or German language. Where documents require translation to meet this requirement, translation risks are borne by the bidder.

### **Sec. 3 Offer and Commitment Period**

- (1) Bidders shall place their bids by email to the address stated on the website of GRTgaz Deutschland platform before the end of the deadline set out in the call for bids. GRTgaz Deutschland receives the bids at the time of receipt in the email client and shall, upon request, provide adequate proof of receipt including its time .
- (2) Bidders shall be bound by their bids for the duration of the commitment period specified in the call for bids. Any bid GRTgaz Deutschland rejected or did not accept by the end of the commitment period in accordance with sec. 4 expires and may no longer be accepted.
- (3) GRTgaz Deutschland does not charge any fees for participation in the tender procedure. Bidders bear all costs incurred by participation in the tender procedure.

#### **Sec. 4 Contract Award and End of the Tender Procedure**

(1) By accepting a bid, the successful bidder (Supplier) and GRTgaz Deutschland (Party / Parties) enter into the Contract. GRTgaz Deutschland shall base its decision on the economical advantageousness of the bids. The same shall apply if one bidder has presented several bids. Where the lowest bid is presented by several bidders, the Contract shall be awarded by the drawing of lots.

(2) Without prejudice to para. 3, GRTgaz Deutschland shall accept a bid before the end of the commitment period by email, which bidder receives at the time of receipt in the email client. Upon request, bidder shall provide adequate proof for the time of receipt

(3) GRTgaz Deutschland may, without giving reason, let the commitment period expire without awarding a contract.

(4) In assessing bids in accordance with para. 1, GRTgaz Deutschland may consider, other than the prequalification documents pursuant to para. 2, *inter alia*

- a) insolvency procedures regarding the bidder's property,
- b) truthfulness of information provided by the bidder,
- c) the bidder's likely compliance with these conditions as indicated by objective circumstance (e.g. contradicting terms of conditions).

(5) The tender procedure ends with the award of the Contract, or otherwise with the expiry of the commitment period. Derogating from sentence 1, GRTgaz Deutschland may cancel the tender procedure before awarding a contract and before expiry of the commitment period without giving reason; in that case, GRTgaz shall inform bidders of the cancellation and shred all documents submitted by bidders with regard to the tender procedure.

#### **Sec. 5 Assignment**

Either Party may assign their rights and/or obligations under the Contract to a third party only upon prior written consent from the other Party. Consent shall not be withheld unreasonably.

#### **Sec. 6 Delivery**

(1) Supplier shall supply the commodity by way of matching at the delivery point specified in the call for bids.

(2) Supplier shall report the amount delivered during a given month to GRTgaz Deutschland by the 3<sup>rd</sup> working day of the following month. GRTgaz Deutschland shall check and confirm or complain in due time; this suffices to meet time-related notification obligations under commercial law regarding the gas supply.

## **Sec. 7 Biomethane**

(1) Biogas must be supplied from a biogas balancing group. Supplier must be able to confirm the biogenic origin of the biogas by means of using the DENA Biogasregister mass balance system or by using a DENA biogas certificate. For biogas produced outside Germany, Supplier must present an exit record issued by the mass balance system used in the country of the biogas' origin and confirm the mass balance of the biogas quantities through an independent audit.

(2) To the extent that GRTgaz Deutschland orders 'RED2 biomethane', the fuel gas must meet the requirements set out in art. 29 para. 2-7 and 10 of Directive (EU) 2018/2001; if it was produced from waste and residues, other than agricultural, aquaculture, fisheries and forestry residues, it is required to fulfil only the criteria laid down in Article 29(10) of Directive (EU) 2018/2001.

(3) Supplier shall provide proof and documentation relating to the requirements in para. 1 before end of April of the year following the delivery. Where the delivery is subject to para. 2, proof and documentation shall be sent before the end of January.

## **Sec. 8 Price and Quantities for Flexible Delivery**

(1) If an indexed price refers to the EGIX-M, the price for quantities delivered in a given month shall be the last price noted in the Monthly EGIX for the month preceding the delivery month.

(2) Under flexible delivery contracts, the daily amount of fuel gas to be delivered to GRTgaz Deutschland is, within the limits set out in the call for bids, at the sole discretion of GRTgaz Deutschland.

(3) Without prejudice to derogating agreements in text form, GRTgaz Deutschland shall notify Supplier of the delivery quantities for each day of a given month no later than the 25<sup>th</sup> calendar day of the preceding month using EDIFACT, indicating

- The contract number used by Supplier;
- The THG balancing group number of GRTgaz Deutschland;
- The validity period of the delivery contract;
- The daily amounts of fuel gas in kWh at 25° C.

(4) If Supplier does not receive an amount notice by the 25<sup>th</sup> calendar day of the month preceding a delivery month, the amounts noted in the previous amount notice shall apply (fictional notice).

(5) GRTgaz Deutschland may alter the amount notice for an entire month or for individual days at any time, but no later than 2 p.m. (Berlin time) of the workday (Monday through Friday) before the day the alteration takes effect. For biomethane, the amount notice pursuant to sentence 1 needs to be sent three workdays before the day the alteration takes effect.

(6) Supplier shall confirm in text form the receipt of the initial or altered amount notice without delay. In case of a fictional notice, Supplier shall notify the amounts determined in accordance with para. 3 no later than the first working day following the fictional notice.

## **Sec. 9 Invoicing and Payment**

(1) Supplier's claim for payment shall be based on the amounts delivered. Supplier shall send GRTgaz Deutschland a monthly invoice for the previous month to a contact address to be specified by GRTgaz Deutschland by the 10<sup>th</sup> calendar day of each month or, if this day is not a workday, the first following workday.

a) The monthly invoice shall contain

- The allocated amount (kWh) per delivery day and per month;
- The total price for the respective month (plus VAT and other taxes).

b) The monthly invoice for residual load deliveries shall also contain

- The relevant daily reference price specified in the call for bids sourced from the data provider specified in the call for bids;
- The surcharge specified in the successful bid.

A delivery day begins at 06:00 hours Berlin time and ends at 06:00 hours Berlin time the following day. The delivery day of the 31<sup>st</sup> December ends at 23:59 hours Berlin time.

(2) GRTgaz Deutschland shall pay the due price no later than 14 calendar days after receipt of the invoice or, if that day is not a working day, no later than the next workday (due date), in EURO by direct bank transfer in favour of a bank account specified by Supplier.

(3) If Shipper has not received the payment by the due date, they may charge interest at a rate of 3 percentage points above the 1-month EURIBOR of the due date, from the day following the due date until the date of the actual payment.

(4) If a Party disputes in good faith the accuracy of an invoice, they shall submit on or before the due date a written statement of the reason for the dispute and pay the undisputed amount invoiced no later than the due date. The Parties shall agree amicably on the disputed amount as soon as possible. If or to the extent any retained disputed amount ultimately turns out to be due and unless otherwise agreed by the Parties, it shall be paid without delay along with interest.

(5) Supplier shall invite GRTgaz Deutschland to submit documents relating to the use of the fuel gas in installations subject to the European Emission Trading System. To the extent that GRTgaz Deutschland credibly demonstrates and declares meeting the requirements of sec. 7 para. 5 of the BEHG act establishing a national emissions trading system, Supplier shall forego demanding pre-emptive reimbursement of costs incurred for the purchase of certificates for the national emissions trading system; this is without prejudice to Supplier's right to, in the year following the delivery, pass on the costs of such certificates to the extent that the requirements of sec. 7 para. 5 of the BEHG were not actually met.

## **Sec. 10 Adjustment and Termination**

(1) If circumstances arise during the term of the Contract unforeseen at the time of its closure that have significant economic, technical or legal implications for the Contract and render meeting contractual obligations of one Party unacceptable, each Party may, within a reasonable time after learning of the relevant facts and their impact on the performance of the Contract, demand reasonable adjustments. The Party asking for adjustment shall provide a justification and an amendment proposal. The Parties shall then enter consultation on how to implement the sought modification in good faith.

(2) Each Party may terminate the Contract for good cause without notice any time in writing. Good causes are, *inter alia*, the breach of material obligations under the Contract, binding rules on fuel gas procurement imposed by the authorities or subjection of Supplier to an admissible application for the opening of insolvency proceedings.

## **Sec. 11 Liability**

(1) GRTgaz Deutschland's liability is limited to cases of intent or gross negligence or damage resulting from injury to life, limb or health.

(2) Failure of information technology does not release Supplier from their delivery obligation.

## **Sec. 12 Confidentiality**

(1) All information disclosed during the tender procedure is confidential unless already known to the public for reasons other than a wrongful act of the receiving party (Confidential Information). For the sake of clarity, all information and documents about the MEGAL pipeline system, or any related documents, obtained by one Party from the other constitutes Confidential Information.

(2) The parties may use Confidential Information solely for the purposes of the tender procedure or the Contract, and may not disclose it to third parties without prior written consent of the other Party except

- a) to an affiliate company within the meaning of sec. 15 of the German Stock Cooperation Act (AktG) if and as far as the affiliate company is equally committed to confidentiality;
- b) to professionals with professional privilege if and as far as that disclosure is necessary for the proper performance of their contractual obligations vis-à-vis the disclosing Party;
- c) if it must be disclosed by the disclosing Party under a mandatory statutory provision or a judicial or administrative order or a request of the regulatory authority;
- d) is already legitimately known to the third party.

(3) The confidentiality obligations set out in this section end four years after the end of the Contract.

(4) Sec. 6a of the Energy Management Act (EnWG) remains unaffected.

## **Sec. 13 Form**

Unless agreed otherwise, any additions, changes or supplements to these conditions shall be made in writing and require the signature of both parties. The requirement also applies to changes to this clause.

## **Sec. 14 Applicable Law, Legal Venue and Language**

(1) The tender procedure and the Contract are governed by the law of the Federal Republic of Germany, except that the United Nations Convention on Contracts for the International Sale of Goods shall not be applicable directly nor indirectly. Any legal action arising out of or relating to the tender procedure or the Contract may be brought in the courts of Berlin and Supplier irrevocably submits to the exclusive jurisdiction of such courts.

(2) The English version of these documents is a convenience translation only. The German version prevails in all cases of conflict.

### **Sec. 15 Severability**

(1) If any provision of these conditions is or becomes invalid or unenforceable, the remaining provisions shall remain unaffected.

(2) The Parties undertake to replace the invalid or unenforceable provision in a suitable procedure. In doing so, they strive to minimize changes to the economic effect of the Contract. This applies correspondingly to loopholes not covered by the Contract.