

**“Terms and Conditions”
Invitation to e-Tender for the purchase of Fuel Gas**

GY 2017-2018

01.10.2017 06:00 a.m. - 01.10.2018 06:00 a.m.

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Preamble

For the purposes these Terms and Conditions, all words and expressions when written with capital letter shall bear, unless expressly otherwise stated herein, the same meaning as defined in the “*Contract for the Supply of Fuel Gas GY 2017-2018*” (“*Supply Contract*”).

Trans Austria Gasleitung GmbH (hereafter referred to as “TAGG”) is the Transmission System Operator (TSO) of the TAG Pipeline System running from the Slovakian-Austrian border near Baumgarten an der March to the Austrian-Italian border near Arnoldstein.

In line with the Austrian Gas Act 2011, the Entry/Exit regime in Austria and the Gas System Charges Ordinance 2013, as amended with the Ordinance 2017, starting from 01.01.2013 06:00 a.m. TAGG has to procure Fuel Gas for the operation of the compressor stations in the TAG Pipeline System (“Fuel Gas”).

The procurement of above mentioned Fuel Gas for the period **from 01.10.2017, 06:00 a.m. until 01.10.2018 06:00, a.m.**, will be executed in a market-oriented, transparent and non-discriminatory manner. For this purpose TAGG conducts an e-Tender for which these Terms and Conditions shall apply.

The e-Tender purchase event will take place from **02.08.2017, 11:00 a.m. until 03.08.2017, 11:30 a.m.** and it will be executed by means of the TAG e-Procurement Platform (“TAG e-Procurement Platform”).

1. e-Tender outline

TAGG intends to purchase Fuel Gas as outlined below:

DELIVERY POINT:	VTP-CEGH
ORIGIN OF NATURAL GAS:	The natural gas shall have its physical origin inside the common market of the European Union. In case gas of extra European Union origin has been delivered, the Supplier shall bear all custom duties and shall be responsible for any custom clearances, if any.
SUPPLY PERIOD:	GY 2017-2018 01.10.2017, 06:00 a.m. until 01.10.2018, 06:00 a.m.
QUANTITY:	1 LOT, with the following conditions: <ul style="list-style-type: none"> • Minimum Monthly Contract Quantity: 80.000 (eighty thousand) MWh/m • Maximum Monthly Contract Quantity: 550.000 (five hundred fifty thousand) MWh/m • Maximum Hourly Contract Quantity: 870 (eight hundred seventy) MWh/h
BID TO BE INSERTED:	1 PREMIUM in €/MWh, with max. 2 decimal digits
MONTHLY PRICE:	PREMIUM + TTF _{mDA} , in €/MWh

Time Schedule:

REGISTRATION PERIOD:	from 06.07.2017 until 25.07.2017, 04:00 p.m.
e-TENDER (BIDDING WINDOW):	from 02.08.2017, 11:00 a.m. until 03.08.2017, 11:30 a.m.
RAISING e-TENDER (IF NECESSARY):	from 03.08.2017, 02:00 p.m. until 03.08.2017, 03:00 p.m.

2. Registration

In order to participate to the e-Tender event and to receive the credentials for the access to the TAG e-Procurement Platform any interested bidder (the “**Bidder**”) has to be registered sending the original of the documents here below, as published on TAGG Website, duly signed by authorized representative(s) of its company.

The documents must be sent in original by courier (anticipated by e-mail) to TAGG latest by **25.07.2017, 04:00 p.m.**

Documents received later than **25.07.2017, 04:00 p.m.**, will not be considered. The timestamp of the acceptance by TAGG (courier acceptance) shall be considered for the time log.

1. “**Registration Form**”: including the Bidder’s company general information, the user contact details and the chosen type of Temporary Guarantee. It is understood that each company is entitled to nominate only one user.
2. “**Temporary Guarantee**” as set out in Point 2.1
3. “**Electronic bidding rules and regulations**”: acceptance of the rules and regulation of the TAG e-Procurement Platform. In addition to the original document to be provided, the acceptance of the rules and regulations has to be given also online at any access to the TAG e-Procurement Platform. Non-acceptance will cause the impossibility to get access.
4. “**TAG Code of Ethics**”: the Bidder is aware that TAGG has adopted a Code of Ethics and that the Bidder is bound by the values expressed therein. Any breach of this Code of Ethics constitute an important reason for the immediate termination of the e-Tender and of the Supply Contract. The TAG Code of Ethics must be accepted initialling each page.

Only those interested Bidders that have properly registered and fulfilled the conditions stated in Point 2 and 2.1 will be entitled to participate to the e-Tender.

Each interested Bidder will receive an e-mail confirming the successful/failed acceptance for the e-Tender latest by **28.07.2017, 02:00 p.m.**

Accepted Bidders will receive the credentials (username/password) for the log-in in the TAG e-Procurement Platform, latest by **31.07.2017, 05:00 p.m.** After the first login the Bidder has to change the received password.

2.1 Temporary Guarantee

Any Bidder shall prove that it has a sufficient **Credit Rating** equal or higher than Baa3 Moody's or equivalent Standard & Poor's or Fitch or provide TAGG with a temporary deposit in the form of a **Bid Bond** or a **Parent Company Guarantee** in the amount of **EUR 1.000.000 (one million)** ("Temporary Guarantee").

The Temporary Guarantee serves to ensure that each successful Bidder will execute the Supply Contract and submit the Security according to Article 8 of the Supply Contract. In case a successful Bidder fails to enter into the Supply Contract or to submit the required Guarantee, TAGG will enforce the provided Temporary Guarantee for the damage suffered without prejudice to any other remedy available at law. However, TAGG will not enforce the Temporary Guarantee in case Energie-Control Austria does not approve the Supply Contract as specified under Point 5.2.

Bidder having a Credit Rating as described above has to provide TAGG with the **Rating Declaration Form** in original, via courier, at latest by **25.07.2017, 04:00 p.m.** TAGG will review publicly available information about the financial situation (Credit Rating) of the Bidder.

If a sufficient rating cannot be proven, the Bidder has to submit to TAGG a **Bid Bond** issued by an internationally reputed bank that has a rating equal or higher than Baa3 Moody's or equivalent Standard & Poor's or Fitch at the date of issue of the Bid Bond or a **Parent Company Guarantee** from a company which has a rating equal or higher than Baa3 Moody's or equivalent Standard & Poor's or Fitch and is directly controlling the Bidder, in original, via courier, at latest by **25.07.2017, 04:00 p.m.**, using the forms published on TAGG Website.

The envelope shall be marked with Confidential:

Tender for the Purchase of Fuel Gas "GY 2017-2018" and shall be addressed to:

Trans Austria Gasleitung GmbH
Wiedner Hauptstraße 120
A-1050 Vienna
Attention: Francesco Menditti, Head of Commercial Department

The Bid Bond, the Parent Company Guarantee and the Rating Declaration will be returned to each Bidder, after stipulation of the Supply Contract and the receiving of the relative Guarantee with the winning Bidder. In any case after **30.09.2017** the Bid Bond, the Parent Company Guarantee and the Rating Declaration will be null and void.

3. E-Tender conditions

The accepted Bidder takes part at the tender procedure connecting via Internet to the TAG e-Procurement Platform <https://b2b.taggmbh.at/sap/bc/nwbc> and inserting the received credentials.

As soon as the e-Tender bidding window starts, on **02.08.2017, 11:00:00 a.m.**, the registered Bidder receives an invitation to tender by e-mail.

The **User Manual (Bidder)** published on TAGG Website describes how to use the e-Bidding on TAG e-Procurement Platform and how to create and submit the offer.

The e-Tender follows the “sealed bid” principle. The Bidder submits in a single-round method:

the “**PREMIUM**” or “**Bid**” in €/MWh with max. 2 decimal digits, for the Lot defined in the Point 1 of these “Terms and Conditions”.

The Bid submitted is considered binding.

TAGG pays to the winning Bidder for each MWh of natural gas delivered at the Delivery Point in accordance with Article 6 of the Supply Contract the monthly price of:

$$\text{Monthly Fuel Gas Price (€/MWh)} = \text{PREMIUM} + \text{TTFm}_{\text{DA}}$$

Where:

PREMIUM = submitted Bid (max. 2 decimals). The PREMIUM is a fixed value in addition to the TTFm_{DA}.

TTFm_{DA} = average of the daily TTF Day-Ahead/Weekend Market Assessment published by Heren for each **month of delivery**.

The daily value to be taken into account shall be calculated as the average of bid and offer prices of Day-Ahead/Weekend Assessment. The monthly average price of TTF is the average of the daily prices assessments for the relevant month.

4. E-Tender result

The submitted binding electronically sealed Bid will be opened on **03.08.2017, 11:35 a.m.**, in the presence of a Notary Public, after the closure of the bidding window.

In this e-Tender the Bid(s) will be evaluated based on the criteria of the **lowest PREMIUM**. The time of the submission of the Bid(s) will only be considered in case of a Raising e-Tender, as described in Point 4.1 ("Raising e-Tender").

In any case, TAGG is not obliged to accept any Bid submitted by one or more Bidder(s) in accordance with this invitation.

At the end of the e-Tender (or Raising e-Tender) if the lowest PREMIUM is accepted, the winning Bidder will be informed by e-mail, which includes the Supply Contract to be signed.

The not-winning participating Bidder(s) will be informed by e-mail and the not-winning Bid(s) might be considered in the "**Next in line procedure**", as described in Point 5.1.

The mentioned communication e-mail will be sent as soon as possible and latest by **03.08.2017, 05:00 p.m.**, and each Bidder shall inform TAGG by e-mail about successful receipt of TAGG's communication e-mail.

The Bid submitted is considered binding, therefore the winning Bidder shall be obliged to conclude a Supply Contract with TAGG on the basis of its respective Bid and to provide TAGG with the corresponding Guarantee as described in the Article 8 of the Supply Contract.

4.1 Raising e-Tender conditions

In case of 2 (two) or more Bidders have offered the same lowest PREMIUM a Raising e-Tender will be necessary according to the time schedule displayed in Point 1. above.

Only Bidders that have submitted the same lowest PREMIUM in the first round are entitled to participate to the Raising e-Tender and they will receive the second invitation on **03.08.2017, 02:00 p.m.** by e-mail.

In the Raising e-Tender the invited Bidders have to submit a new PREMIUM. This new PREMIUM shall not be equal or higher than the originally submitted PREMIUM.

In the Raising e-Tender the relevant conditions described in Point 3 shall also apply.

In the Raising e-Tender the Bids will be evaluated on the criteria of the lowest price, in the presence of a Notary Public.

The Bidders invited to the Raising e-Tender are not obliged to participate.

In case no invited Bidder participates to the Raising e-Tender, TAGG shall use the criteria of the time of submission of the bid in the e-Tender (first round) of the original e-Tender. The winner is the Bidder who has been the first to submit the same original lowest PREMIUM according to the registered time of submission of the Bid in the TAG e-Procurement Platform.

Should also the Raising e-Tender result in Bidders having offered the same lowest PREMIUM, the winner is the Bidder who has been the first to submit the same new lowest Bid in the Raising e-Tender, according to the registered time of submission of the Bid on the TAG e-Procurement Platform.

5. Contract for the Supply of Fuel Gas

The winning Bidder shall be obliged to conclude a Supply Contract with TAGG on the basis of its respective Bid and to provide TAGG with the corresponding Guarantee as described in the Article 8 of the Supply Contract, in the amount of **EUR 1.500.000 (one million five hundred thousand) (“Guarantee”)**.

The two (2) originals of the signed Supply Contract and the relative Guarantee have to be sent to TAGG as soon as possible but in any case not later than **29.08.2017, 04:00 p.m.**, via courier service to TAGG. The signed Supply Contract shall be anticipated via e-mail. The winning Bidder having executed the Supply Contract and provided the relative Guarantee consequently named the “Supplier”.

The relevant template named “*Contract for the Supply of Fuel Gas GY 2017-2018*” including its Annexes has been published on TAGG Website.

According to Point 2.1 of these Terms and Conditions, if the winning Bidder fails to enter into the Supply Contract TAGG will enforce **EUR 1.000.000 (one million)** for the damage suffered without prejudice to any other remedy at law available. Furthermore, TAGG reserves the right to exclude the winning Bidder that refuses to enter into the above mentioned Supply Contract at the next tender event(s).

5.1 Next in line procedure

In case the winning Bidder refuses to sign the Supply Contract and/or to submit the required Guarantee, TAGG will provide to notify the next successful Bidder “**winning Bidder next in line**”, who submitted the next lowest PREMIUM (as resulted in the first e-Tender or in the Raising e-Tender, if any), that as winning Bidder is obliged to conclude a Supply Contract with TAGG on the basis of its respective Bid and to provide TAGG with the corresponding Guarantee as described in Article 8 of the Supply Contract.

The winning Bidder next in line will be informed on **29.08.2017, 04:00 p.m.**
The signed Supply Contract and the relative Guarantee shall be received by TAGG latest by **15.09.2017, 02:00 p.m.**

According to Point 2.1 of these Terms and Conditions, if the winning Bidder next in line fails to enter into the Supply Contract, TAGG will enforce **EUR 1.000.000 (one million)** for the damage suffered without prejudice to any other remedy at law available.

Furthermore, TAGG reserves the right to exclude the winning Bidder next in line that refuses to enter into the above mentioned Supply Contract at the next tender event(s).

This procedure will be repeated as long as there is not a winning Bidder next in line. The new deadlines will be communicated by e-mail to the involved Bidder(s).

5.2 Condition Precedent

In case the winning Bidder is regarded as a VIU (vertically integrated gas undertaking) in the sense of the Austrian Gas Act 2011 (“GWG”) and in accordance with the respective decrees of Energie-Control Austria (“E-Control”) (V ZER G 04/13, V ZER G 04/15) dated 18.07.2014 and 14.09.2015, the effectiveness and enforceability of the Supply Contract is subject to the condition precedent that Energie-Control Austria approves the Supply Contract in accordance with § 113 (3) GWG.

In case Energie-Control Austria does not approve the Supply Contract in the sense of § 113 (3) GWG, the Supply Contract shall have no legal effect between the Parties.

The winning Bidder shall not be entitled to any compensation for any loss of profits, damages (direct and/or indirect), costs of whatever nature in case the Supply Contract does not come into effect as a consequence of the non-approval by Energie-Control Austria.

5.3 Additional gas quantity

TAGG may request to the Supplier an **additional gas quantity** not covered by the Supply Contract, according to the conditions of the Article 3.5 of the Supply Contract.

6. Notification to the Supplier

On a weekly basis TAGG will notify, by e-mail, the Supplier of the natural gas quantities which TAGG intends to purchase, using the “Notification Template” defined in the Annex 4 of the Supply Contract or a different template agreed between TAGG and the Supplier (e.g. Kiss-A file).

The **hourly notification** in kWh/h will be flat for the relevant gas day. However, TAGG reserves the right to submit an hourly non-flat notification only in case of planned maintenance works on the TAG Pipeline System which have an impact on the TAG Pipeline nomination as published on the TAGG website.

The **weekly non-binding notification** shall be sent each Monday by 04:00 p.m. (CET) for a gas week starting from the following day (Tuesday) 06:00 a.m. (CET) until the following week Tuesday 06:00 a.m. (CET).

On a **daily basis** TAGG has the right to notify not later than 08:00 p.m. (CET) changed binding notification for the following gas day starting from 06:00 a.m. (CET).

If TAGG does not submit a daily notification until 08:00 p.m. (CET) for the following gas day the relevant quantities set out in the weekly notification shall be deemed confirmed and binding.

Should the Supplier not have received any weekly notification from TAGG for the following week by 04:00 p.m. (CET) of Monday, the notified quantity shall be deemed to be equal to the quantity notified on the previous Monday. Each notification shall be confirmed by a nomination from the Supplier at the Delivery Point.

Each Party will make the corresponding nominations to the respective network operator or system operators at the Delivery Point in accordance with applicable rules at that Delivery Point.

7. Payment Conditions and Taxes

The payment conditions are described in Article 7 *“Invoicing and Payment”* of the Supply Contract published on TAGG Website.

The submitted Bid is considered to be exclusive of VAT and any applicable natural charge.

Any levies must be borne by TAGG and Supplier will invoice TAGG separately for such levies at rates as applicable from time to time. VAT shall be charged according to the law of the country of delivery.

8. Miscellaneous

Any reference to time shall be construed as to whatever official time in force in Austria (CET).

The procedure will be carried out in English.

TAGG shall charge no fee for Bidder’s participation in the tender procedure. Each party in the tender procedure including each Bidder shall bear its own costs and expenses incurred in that context.

The minimum hardware, software and internet requirement needed for the participation at the tender are published in the **User Manual (Bidder)**.

The purchase, installation, configuration as well as the hardware and the software maintenance are in sole charge and under the responsibility of the user.

The Bidder is responsible for the accuracy and completeness of all information, documents and evidence. Any incomplete or erroneous documents will not be considered by TAGG.

Documents submitted by Bidders in connection with this e-Tender will be treated confidentially by TAGG and will be used only for the purposes of this invitation to e-Tender.

For non-discriminatory reasons TAGG is not in the position to accept any modification or amendment in the text of the Temporary Guarantee, of the “Contract for the Supply of Fuel Gas GY 2017-2018” and of the relative Guarantee.

If needed, the annual reports of TAGG are available at the Commercial Court of Vienna.

TAGG reserves in its sole discretion the right to stop the tender procedure at any time before, during or after the end of the e-Tender event. TAGG will make such decision public by way of its website and by way of written direct notification to Bidder(s) in case such decision by TAGG is made at the end of the e-Tender event.

These Terms and Conditions shall be governed by and construed in accordance with the substantive laws of Austria excluding its rules and regulations governing conflict of laws and the UN Convention on Contracts for the International Sale of Goods (CISG).

The competent court for Vienna, Inner City (Wien Innere Stadt), shall have exclusive jurisdiction over all disputes arising out of these Terms and Conditions or related to their violation, termination or nullity.

In the event of any conflict between these “Terms and Conditions” and the “Contract for the Supply of Fuel Gas GY 2017-2018” the Supply Contract shall prevail.

9. Contact

In case of any questions please contact:

Trans Austria Gasleitung GmbH
(Commercial Department)

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A-1050 Wien

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TAGG Website: www.taggmbh.at

TAG e-Procurement Platform: <https://b2b.taggmbh.at/sap/bc/nwbc>