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SHEBERGHAN GAS GENERATION ACTIVITY (SGGA)

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Report on Draft of Drilling Contract Tendering Documents for Review (Deliverable 2-1)

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Acronyms and Abbreviations

ADB	Asian Development Bank
AEAI	Advanced Engineering Associates International, Inc.
ARDS	Afghan Reconstruction and Development Service
FIDIC	Fédération Internationale des Ingénieurs-Conseils (International Federation of Consulting Engineers)
GIRoA	Government Islamic Republic of Afghanistan
Grantee	Ministry of Mines
IADC	International Association of Drilling Contractors
ICSID	International Center for the Resolution of Investment Disputes
IL	Implementation Letter
MoF	Ministry of Finance
MoM	Ministry of Mines
PCC	Particular Contract Conditions
SGDP	Sheberghan Gas Development Project
SGGA	Sheberghan Gas Generation Activity
SOAG	Strategic Objective Grant Agreement
UNCITRAL	United Nations Commission on International Trade Law
USAID	United States Agency for International Development
USD	United States Dollar
OFAC	Office of Foreign Asset Control

1 Purpose

This report is submitted in compliance with the requirements of Sheberghan Gas Generation Activity (SGGA), Task Order No. AID-306-TO-12-00002, which requires that SGGA submit a report on the draft drilling contract tendering documents proposed to be issued by the Ministry of Mines as part of the implementation of its on-budget grant agreement with USAID. This is the first of three deliverables associated with this tender. In addition to this report (Deliverable 2-1), Deliverable 1-5 (Proposed I/SGDP Procurement Schedule), and Deliverable 2-2 (Report on Completed and Issued Drilling Contract Tendering Documents) will be issued. This report describes the structure and content of the tender, while the procurement schedule will be the focus of Deliverable 1-5, and a report on the finally submitted tender will be highlighted in Deliverable 2-2.

2 Background

The Ministry is proposing to award a contract for drilling, re-entry, and associated services to re-enter two existing wells and drill two new gas wells in the Juma and Bashikurd Fields, Jawjzan Province, and to test and complete all four wells. The most immediate purpose for the drilling program is to prove and develop sufficient gas reserves to supply fuel for a proposed gas-fired power plant near the gas fields. The United States Agency for International Development is providing both funding through the Afghan national budget and technical services through SGGA for the project.

Working with the Ministry SGGA drafted the bidding documents for the tender and submitted them to the Ministry for review on October 7, 2012. The Ministry then submitted the final draft to the Afghan Reconstruction Development Service (ARDS), the Government procurement agency, and to USAID for review and approval.

After several rounds of review and discussions with the Ministry and ARDS, described below, the decision was made to prepare a single tender, inviting bids for the design and execution of all phases of the drilling and re-entry operations for a single fixed sum price (a "turnkey" project). The elements of the operations will include design of the operations to drill and/or re-enter the four wells, test, complete, and equip them, and carry out all required auxiliary operations such as the building or repair of field roads, drill site locations, and contractor camp, and providing specifications for and procuring well casing, tubing, other production equipment, and wellheads. The well operations and equipment designs and specifications are required to form part of bidders' technical bids.

3 Development of the Tender Documents

Government procurement in Afghanistan is primarily done through the Afghan Reconstruction Development Service (ARDS) under policies developed by the Procurement Policy Unit (PPU) in the Ministry of Economy. The PPU prescribes the format and contents of tenders, which formats and contents are required to be followed by ministries and other government bodies in their procurement processes. The PPU-prescribed form of tender for "works" (which encompasses activities such as those being tendered for by the Ministry here) follows the familiar Invitation-Instruction to Bidders-Scope of Work layout.

However, the form of General Conditions of Contract (GCC) and Particular Conditions of Contract (PCC) used by PPU/ARDS in works tenders is the contract template "FIDIC contract" promulgated by the Fédération Internationale des Ingénieurs-Conseils (International Federation of Consulting Engineers). This is well suited to most government works contracting, which consists largely of buildings, roads, and other civil works.

The FIDIC template (or modifications of it) is also commonly required for projects funded by World Bank, Asian Development Bank (ADB), and other development banks. It is also the template referenced in the USAID project documents for the Juma/Bashikurd project. However, because of the very specialized nature of the oil and gas industry and the highly specific risk factors involved, the FIDIC-based construction contract is unsuited to use for use in contracts for upstream oil and gas operations.

Afghanistan, like most countries, has not had reason to develop templates for tenders for upstream oil and gas services like those required for the Juma/Bashikurd operations. (Contracting directly for such services is to be distinguished from entering into contracts for oil and gas firms to explore for and develop resources on a risk basis through production sharing agreement or risk services agreements.) Even nations that have State-owned oil and gas resources and also explore for and produce oil and gas typically do so through national oil companies that procure oil and gas services on a commercial rather than sovereign basis. Similarly, none of the major development banks or international donor agencies has developed a template for oil and gas exploration and development operations because of their very limited direct involvement in upstream operations. Thus, there was no suitable development bank or donor contract template available for the Juma/Bashikurd gas well re-entry, drilling, testing, and completion tender.

In the absence of such a model, the Ministry of Mines and SGGA staff worked with ARDS staff and advisors to find an effective contracting mechanism to meet both PPU/ARDS requirements to use an international accepted contracting format (generally World Bank or ADB formats) while also fitting the specific contract needs of oil and gas service firms. This integrative approach draws on the ADB model used for the recently signed ADB-funded contract between the Ministry and Turkish National Petroleum for re-entry and work-over of eight wells in the Yatimtaq and Gerquduq Fields and the most widely used oil and gas industry model services contract, promulgated by the International Association of Drilling Contractors (IADC).

After considering a number of approaches to structuring the Juma/Bashikurd gas well operations, the Ministry decided, based on its recent experience with the ADB-sponsored Yatimtaq/Gerquduq gas well re-entry and work-over project (for which a contract was finally signed on October 16, 2012), to invite bids for a fixed price (or "turnkey") contract for all well and associated operations, with a single contractor providing all of the services required.

Working with ARDS, Ministry and SGGA staff first determined that the most suitable turnkey model tender format available from the inventory of PPU-approved tender formats was the ADB small works turnkey model tender. It was quickly determined that the straightforward, simple structure and terms of that model's General Conditions of Contract ("GCC") were well-suited to the current project, and that the oil and gas industry requirements can be readily incorporated into the model Particular Contract Conditions (PCC). Accordingly, draft tender documents based on the small works format were

prepared and submitted to the Ministry on October 17. The Ministry then forwarded the draft document to ARDS on October 30.

On November 3, however, ARDS informed the Ministry and SGGA that it now considered the previously recommended ADB format not suitable for the cost of the proposed operations, and indicated that it would only approve only a tender based on the full FIDIC format. SGGA obtained the FIDIC/World Bank format, and during November 7 through 11, adapted the tender documents to this more complex format. The resulting draft document was submitted to Ministry's counsel for review on November 8.

On November 10, a copy of the revised tender was provided to ARDS for informal review, and on November 17, SGGA staff met with ARDS to discuss the document. On November 20, SGGA received comments and suggested changes from ARDS staff. On November 21, the SGGA legal advisor was able to meet with Ministry counsel to discuss the Ministry's questions and comments on contractual and tax issues.

With all comments received, SGGA staff again revised the tender documents during November 22 through 24, and delivered the final draft to the Ministry on November 25. The Ministry reviewed, forwarded to ARDS and the tender was advertised on December 3.

SGGA believes that the resulting tender and contract documents will be readily understood by and acceptable to oil and gas industry service firms that form the international pool of likely bidders. Moreover, the incorporation of key terms that are familiar and industry-accepted should reduce negotiation time once a preferred bidder is selected.

4 Anticipated Schedule

The anticipated schedule for the tender, contracting, and mobilization is set out below. This schedule assumes that no major revisions are required as a result of either Ministry or ARDS review, and that weather and security conditions do not delay or prevent any step, especially the bidders' conference and site visit.

Release of Bidding Document	3 December 2012
Pre-Bid Conference and site visit in Afghanistan	7 January 2013
Submission of written Questions by bidders	8 January 2013
Response to Questions by MOM	10 January 2013
Deadline for bid submission At 1400 hours Kabul	2 February 2013
Expected date of contract award:	8 May 2013
Expected mobilization of rig and equipment to site	8 July 2013

5 Summary of Tender Structure and Terms

5.1 Contract Operations

The operations to be conducted in the Juma/Bashikurd Fields for the primary purpose of confirming gas reserves and deliverability will consist of the following five phases, all of which are to be carried out by a single contractor for a fixed price:

- a. Rehabilitation of existing field roads and/or construction of new field roads for the movement of

- operations equipment, as required; construction of an operations camp, including site preparation; and preparation of drilling locations suitable to Contractor's equipment.¹
- b. Re-entering and completing one well previously drilled and cased well (Bashikurd #3).
 - c. Re-entering, deepening, and completing a previous drilled and cased well (Bashikurd #9).
 - d. Drilling and completing either one or two (depending on drilling and test results and available budget) replacement wells (Juma #2A and Bashikurd #2A) for wells that were drilled in the 1980's and then abandoned for lack of suitable corrosion resistant equipment.
 - e. Logging, perforation, and testing of the above three or four wells, including providing complete wireline equipment and services, and providing gas quality testing.

The single contractor will be required to supply all materials required for the operations, such as drilling fluids, and to provide all equipment needed for the operations, as well as to complete and equip the wells for production, such as corrosion resistant casing, tubing, and wellheads. Bidders will be required, as part of their technical bids, and in addition to the usual requirements to specify the proposed drilling equipment and schedule, to submit proposed designs for the re-entry/drilling, testing, and completion of each of the four wells.

5.2 Bidding Document

The bidding document that is submitted with this report and has been submitted by the Ministry to ARDS for formal review, consists of three main segments, the bidding procedures, the scope of work, and the form of contract, prefaced by the Invitation to Bid, a brief summary of the work for which bids are being solicited and of the bidding process. Each of these includes more detailed sections:

5.2.1 Section 1-Instruction to Bidders

This section sets out, as the title implies, applicable definitions, fundamental matters such as qualifications of bidders and anti-fraud and anti-corruption regulations, the required contents and form of bids, and the bid submission instructions, and description of the bid opening and review process.

5.2.2 Section 2-Bid Data Sheet

The Bid Data Sheet prescribes in detail the following:

- A. Introduction, including the name of the agency soliciting bids and the specific name of the project to be bid.
- B. Bidding Documents, setting out ARDS' and the Ministry's official addresses and contact.
- C. Preparation of Bids, which prescribes several of the commercial and technical terms of the bids, such as bid language, currency, and deadline for and method of submission of bids.

Many of the terms in the Bid Data Sheet, which are numbered, are directly linked to the corresponding contractual terms in the GCC and PCC.

5.2.3 Section 3-Evaluation and Qualification Criteria

This section sets out in some detail the minimum requirements that bids must meet, such as equipment and personnel requirements, minimum financial and experience requirements, and disclosure of

¹ The civil works segment was originally to presented as a separate national tender, but was incorporated into the overall tender in order to assure that roads, camp, and drill site are fully suitable to the contractor's needs, and to minimize scheduling requirements. Due to similar concerns, plans for the Ministry to procure completion equipment such as casing, tubing, and wellhead assemblies, were incorporated into the single lot tender.

financial and litigation information. In this tender, bidders must have a minimum of at least one completed similar project within the past three years of a value of at least USD 30 million.

5.2.4 Section 4-Bidding Forms

These include the forms for the submission of the formal bid letter, bill of quantities, technical specifications, and bidder information forms.

The draft bid document follows the exact content and form prescribed by ARDS, without variations.

5.2.5 Section 5-Grantor Requirements

This section contains the specific requirements and references to prohibit sources and commodities mandated by USAID in its grant conditions and from the Strategic Objective Grant Agreement (SOAG).

5.2.6 Section 6-Works Requirements

The "Works Requirements" (scope of work) describes the general scope of work for which bids are to be submitted. The work descriptions are general and designed to describe the operations to be accomplished and the time for completion (365 calendar days), rather than the specific means of accomplishing these operations and results. The work to be completed is set out above in the introduction to this report. Section 6 is incorporated into the Particular Conditions of Contract by reference in the PCC.

Aside from meeting the minimum specifications for results, equipment, and personnel to be provided, the specific designs and operational details are to be provided by the bidders in their technical bids to be submitted. (In general construction terms, this would be referred to as a "design and build" contract.)

Also included in this Section 6 are general descriptions, maps, and data on the area of operations and geologic and operational information on the fields and wells. Substantially more information is contained in Appendix 1, and the bidding documents inform bidders that any data available may be obtained from the Ministry's Afghan Geological Survey, Afghan Gas, and the Northern Hydrocarbon Unit. A process for bidders to submit written questions is provided, as well as a bidders' conference at which all available data will be made available. A site visit will also be arranged following the bidders' conference.

5.2.7 Section 7-General Conditions of Contract

The GCC is the base form of contract, setting out definitions, the general obligations of the contract for both parties, procedural structures for time, quality, and cost control of the work, rights of termination, and means of calculating and scheduling payments and compensation for unexpected events.

Many of the specific contractual agreements for these basic contract issues are set out in the Particular Conditions of Contract and incorporated into the GCC only by reference.

As a general rule, the GCC terms cannot be altered except through the PCC. Because the form of the GCC is the World Bank's adaptation of the FIDIC agreement, the GCCs refer at several places to the Bank or "Borrower" rather than USAID or the Ministry. Where suitable (such as in describing audit rights) the references have been changed to provide for USAID to have "lender" rights consistent with USAID's rights under its Implementation Agreement with the Ministries of Mines and Ministry of Finance.

5.2.8 Section 8-Particular Conditions of Contract

The PCC contains most of the specific commercial terms of the contract, and supplements and prevails over the GCC. PPU/ARDS procedures allow variations and additions to the PCC in order to accomplish the tendering objectives of the Government. The PCCs in the bidding document follow the WB/FIDIC format, a chart format. The PCC numbering and caption format refer to the corresponding clause numbers and captions in the GCCs.

Oil and gas industry terms relevant to the operations have been integrated into the FIDIC-based document by adding "Part B" to the PCCs and substituting Part B's terms for GCC terms. The oil and gas industry specific terms are based primarily on the International Association of Drilling Contractors' international standard terms, which are generally accepted in the oil and gas industry.

5.3 Key Contract Terms

The principal terms of the contractual terms of the tender include the following:

Time of completion: 365 days

Delay damages: 0.1% of contract price per day with a cap of ten percent of contract value

Commencement: within 30 days of signing

Warranty/defects liability period: 365 days after completion. Work, equipment, and materials warranties and remedies (including replacement and re-performance are international oil and gas industry terms.

Contract currency: US Dollars

Insurance requirements: adequate to cover anticipated claims, with deductibles set at a maximum one percent of policy limits; worker compensation insurance required

Health, Safety, and Environmental Standards: Compliant with international oil and gas industry standards. In addition, SGGA has prepared and recommended to the Ministry international standard health, safety, and environmental standards to be adopted as policy or regulations. An environmental scoping study has been prepared and is being updated; Contractor is required to comply with Afghan National Environmental Protection Agency requirements developed for the project. Express acknowledgment by contractor of the presence of hydrogen sulfide and carbon dioxide in the wells is included. Specific safety requirements for these risks are required to be provided in technical bids.

Social protection and materials sourcing: Non-discrimination, anti-forced/child labor, and prohibited source provisions are included.

Arbitration: Arbitration provisions follow the requirements of the Hydrocarbons Law (ISCID, with UNCITRAL as alternative); sole arbiter provided for disputes under US\$1,000,000 is provided.

Import/re-export, visas, company registration: Part B, introduces three very unique contractual provisions drafted and included at the specific request of the Ministry. These provisions deal with issues that have proven contentious in Ministry dealing with oil and gas operators in the past – registration to do business in the country, customs clearance and compliance, and visas and work permits.

Afghan legal requirements and procedures are specifically described. The contractor will be solely responsible for delays or other losses occasioned by its failure to comply. Ministry obligations to assist are clearly spelled out and limited.