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USAID ENERGY POLICY PROGRAM

RESPONSES TO BIDDERS' COMMENTS ON LNG SPOT TENDER

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RESPONSES TO BIDDERS' COMMENTS

Q) Will LNG Cargo which original source of CBM is acceptable?

A) PSO will revert after confirming this with SSGC

Q) We believe maximum temperature of -159° will be tough. Will you consider more flexibility?

A) PSO cannot offer further flexibility on temperature.

Q) We understand that payment from PSO will be done by Documentary LC. Please advise when it will be open for each cargo.

A) The LC will be opened by the earlier of (i) fifteen (15) days before the first day of the Delivery Window and (ii) at least three (3) days before the loading date of the Cargo as set out in Clause 14(a) of the relevant Confirmation Notice.

Q) We reference to the MSPA for supply of LNG, We would like to request your consideration to amend one clause as follows:

19.2.2 Notwithstanding the provisions of Clause 19.2.1 either Party may, upon notice to, but without the need for consent from, with the prior written consent of the other Party (not to be unreasonably withheld or delayed), transfer or assign:

A) As previously indicated, there will not be any amendment to the MSPA for the current tender.

Q 4 Contract Quantities

- **It has been stated that cargoes to be sold or purchased needs to be in the range of 136,190 CM +/- 5%. Kindly confirm that it is Seller's option to discharge within that range as long as total quantity delivered is no larger than 143,000 CM.**

A) The above understanding is correct.

Q 5 Delivery Window

- **Is it possible for Seller to choose a 3 day Delivery Window in the 12 day window that we can delivery into, while bidding into the tender?**

A) The 3 day firm Delivery Window is not at the Seller's option but at the Buyer's. Any limitation by a Bidder in their Bid to a specific 3 day Delivery Window within the 12 day window would be treated as a conditional Bid and may be rejected on that ground.

Q) 6.1 Title Transfer

- **In Clause 6.1, currently title and risk of loss is transferred at the Delivery Point (which is defined as the flange at the Receiving Facility).**
- **In addition, in Section 7, Seller shall pay all taxes upstream of the Delivery Point (and vice versa).**
- **Therefore, based on that wording, there is a possibility that the Seller is liable for taxes in Pakistan, which is unacceptable.**
- **We would need that Section 6.1 be amended that the title and risk of loss of LNG shall transfer at international waters. This is a matter of utmost importance and may prevent us bidding if not amended.**

A) PSO reiterates that title and risk of loss of LNG will transfer at the LNG Delivery Point and not in international waters. Bidders may seek local tax advice so as to reassure themselves that they will not be exposed to any unacceptable tax consequences.

Q) 7 Tax

- **It is not expressly stated that the Buyer (PSO) will be the "Importer of record"**
- **Typically the Buyer should be responsible for managing the customs duties and processing etc.**
- **We would suggest that an additional clause Section 7.5 be added mentioning the Buyer (PSO) shall be the "Importer of record" and will manage the necessary requirements as such.**

As indicated above, no amendment in the MSPA is anticipated. PSO will consider this point for future tender process.

Q) 15.4 Payment

- **In Clause 15.4 Payment, payment shall be made via wire transfers.**
- **However, the Letter of Credit attached to the Confirmation Notice is a documentary letter of credit which provides for payment through a draw under the letter of credit.**
- **Is this the method of payment via wire transfer (after receiving invoice) or is it via drawing on the Letter of Credit?**

A) The terms of the Confirmation Notice will supersede the MSPA and this provides for payment through letter of credit.

Q) Please find below our comments to the Confirmation Notices (specifically the Letter of Credit).

Appendix A: Letter of Credit Draft (LC)

- **Typically the obligations of an LNG buyer are secured by a standby letter of credit (SBLC). This is the case because the letter of credit needs to cover both the obligation of the buyer to pay for LNG that is delivered and the obligation of the buyer to pay for damages if it does not accept delivery without justification. However, the letter of credit form provided appears to be a documentary letter of credit, and it only provides for payment for the quantity of LNG that is actually delivered. We would request that a standby letter of credit be provided in keeping with international practice. A proposed form of standby letter is provided below (Attachment A).**
- **Kindly let us know the details of the LC/SBLC issuing bank. Can we ask for LC/SBLC to be issued from National Bank of Pakistan?**
- **If only a documentary letter of credit will be provided, we have the following comments on the form of documentary letter of credit. Questions on the LC:**

- **Since sometimes only part of a cargo is unloaded, the letter of credit must allow partial shipments.**
- **If Seller does not deliver a full cargo due to Buyer’s failure to receive, the Seller must be able to draw on the LC.**
- **LC form requires that draws be presented 30 days from the date of the Bill of Lading— This timing does not work since if the loading port is at a distance from Port Qasim,–30 days may not give sufficient time to load the cargo, transport it to Port Qasim and unload the cargo and have the independent surveyor provide the necessary information to support a draw? At a minimum, the LC must be available for at least 30 days after the end of the Delivery Window.**
- **What is the role of the “Chamber of Commerce” in this LNG transaction? We would suggest to remove this as a condition to draw the LC.**
- **There is no governing law governing this LC. We would suggest to use the laws of England and Wales.**

A) No amendment is anticipated. PSO might consider this point for future tender process.

Q) 4.2 Quantity

- **A quantity of 143,000 CM has been stated as the maximum. Would the cargo size be allowed to be bigger subject to a longer Allowed Lay time (of more than 36 hours)?**

A) No. The cargo volume should be as per Bid Document.

Q) Please confirm that a larger LNG carrier will be allowed (subject to ship-shore-compatibility) to discharge if she is partially loaded and meets the Quantity restrictions?

A) Confirmed, but please note paragraph 4.6.4 of the Bid Document including the Bidder’s responsibility to verify the current parameters of Port Qasim and to ensure

compliance of the LNG carrier delivering the relevant LNG cargo with such parameters and the Terminal Regulations.

Q) 4.4 Source of LNG

- **Currently Seller is required to nominate source and LNG carrier 5 days prior to departure from the load port.**
- **We would suggest this be linked to the Discharge Window, rather than the loading window as this could be any date. The proposal is 15 days prior to the Discharge Window, Seller shall nominate load port and LNG carrier.**

A) PSO does not envisage any amendment to bid document in current tender.

Q) We have incorporated a few comments in the bid bond as well as the performance guarantee as per attached. We would appreciate your feedback on these. We would also like to understand whether you have the special permission from the State Bank to hold foreign exchange.

A) PSO does not envisage any amendments to the form of Bid Bond or Performance Guarantee for the current tender.

- definition of “mbar” – this is wrong in the document as it reads “zero decimal zero zero zero”, when it should be “zero decimal zero zero one”;

- definition of “Interest Rate” – we do not believe the British Bankers’ Association sets the interest rate anymore, so the definition should be amended to make reference to “ICE LIBOR as set by the ICE Benchmark Administration Limited”;

- cl. 7.1, first line, in the brackets – “as a result of Buyer’s activities causing Buyer to have a permanent establishment..” should be amended to read “as a result of Buyer’s performance of this Master Agreement causing Buyer to have a permanent establishment..”, otherwise it makes no sense.

Idem in cl. 7.2 for Seller;

- cl. 13.9 – the reference to Clause 13.11 is wrong, the reference should be to Clause 13.10.

Please see Comments on MSPA below regarding amendments to the MSPA for the current tender process. However, please see the revised Confirmation Notice which accommodates corrections to MSPA including in relation to definitions of “mbar”, “Interest Rate” and Clause 13.9.

Q) Please confirm that it is PSO’s expectation that all marine assurance ship-shore compatibility must be completed prior to submission. Will submission of a bid that includes conditions on shipping result in rejection?

A) A note is being prepared on ship to FSRU compatibility and will be made available on the PSO website to parties who have obtained the Bid Document.

Q) We understand that bidders must provide documentary evidence that they have delivered not less than 8 LNG cargoes in the last 24 months. Would PSO accept a bidder that does not meet this criteria but that has received a firm undertaking for the supply of LNG cargoes for the tender from an LNG supplier that meets the criteria? Documentary evidence of such arrangement and supporting documentation regarding the eligibility criteria with respect to delivery of cargoes would be made available.

A) The Bidder should be able to demonstrate that it has itself supplied 8 LNG cargoes. The Bidder may submit its Bid through an authorized agent provided that this is supported by suitable evidence of the principal’s authorization of the agent in this regard.

Q) Please advise the relevant contacts at PSO, Excelerate, PQA and any other relevant parties with respect to all marine assurance and ship-shore compatibility matters.

A) All queries should be addressed through PSO. The relevant contact person and their details at PSO are:

Deputy General Manager (LNG Import)
Pakistan State Oil Company Limited
PSO House
Khayaban-e-Iqbal, Clifton
Karachi-75600
PAKISTAN
Email: amin.qayyum@psopk.com
Direct Tel: +92 21 99203753

Q) Please clarify if PSO's intention is to pay for LNG by means of wire transfer to the Seller's bank, or whether the intention is for the Seller to draw on an LC for payment?

A) The terms of the Confirmation Notice will supersede the SPA and the Confirmation Notice provides for payment through letter of credit.

Q) With respect to Clause 8.4.2, we request you consider that the cost of additional inspection should be borne by the Buyer in this situation.

A) As indicated previously, PSO does not envisage any amendments to the MSPA for the current tender.

Q) With respect to Clause 9.2, please consider adding "ISPS" in addition to "OCIMF" and SIGTTO guidelines.

A) PSO will revert after confirming with EETPL.

Q) With respect to Clause 13.9, we did not follow the reference to clause "13.11" - can you please explain this further?

A) The reference to Clause 13.11 in Clause 13.9 should be to Clause 13.10 which is a minor error and is also corrected through the Confirmation Notice.

Q) Regarding Clause 6.1, it is common in MSPA documentation to include language to facilitate transfer of title in international Waters by mutual election in a confirmation. Would PSO consider this? * could suggest applicable language.**

A) As regards Clause 6.1, PSO does not intend to allow transfer of title in international waters.

Q) Consideration of a representation that Buyer is not subject to U.S. taxes or provision of information to this respect outside of the MSPA. ** could suggest applicable language.**

With respect of Clause 2.3 - 2.4, ** would prefer to have the inclusion of:**

- **a representation that the parties are not sanctioned, owned or controlled by a sanction entity; and**
- **a provision allowing suspension or termination in the event of a breach of the sanctions or corrupt practices provisions.**

As indicated previously, PSO does not envisage any amendments to the MSPA for the current tender.

Comments on MSPA

PSO thanks potential Bidders who have made comments on the MSPA and on the other Bid Documents. PSO will give these comments careful consideration for future tenders. However, as previously indicated, PSO will not amend the MSPA for the current tender. Nevertheless, to accommodate certain minor errors in the MSPA, revised versions of Confirmation Notices have been prepared and initialed copies thereof have been attached.

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