

**Conditions Governing Calls for Tender, Procurement, Calling and Handling Load
Flow Commitments**

at ONTRAS Gastransport GmbH

(“T&C LFC”)

Preliminary Remarks

On the basis of these "T&C LFC", ONTRAS Gastransport GmbH ("ONTRAS") procures its load flow commitments required for operating and controlling its gas transmission network in accordance with § 9, section 3 of the GasNZV (Gas Network Access Ordinance).

A load flow commitment ("LFC") is a contractual agreement with third parties on the provision or restriction of gas flows at one or more entry or exit points which appears necessary and suitable at the time of planning in order to increase the range of freely allocable entry and exit point capacities to a sufficient extent (decision by the Federal Network Agency on 15.05.2014 (file no. BK9-14/606)).

For this purpose and as a market-oriented, non-discriminatory and transparent process, ONTRAS carries out calls for tender in accordance with the Federal Network Agency decision of 15.05.2014 (file no. BK9-14/606).

§ 1 Area of Application

- a) These "T&C LFC" regulate the calls for tender, bid and acceptance as well as handling of load flow commitments for the ONTRAS network. The applicability of General Terms and Conditions of Business or other deviating regulations on the part of potential and actual providers of load flow commitments are hereby expressly revoked.
- b) Terms which are not otherwise defined are subject to the definitions of the ONTRAS network access conditions (available online at www.ontras.com/en/company/downloads), and the respectively valid versions of the EnWG and the GasNZV.

§ 2 Call for Tender

- a) Each call for tender is published via a call for tender data sheet on the ONTRAS Web site at www.ontras.com/en/translate-to-englisch-netztransparenz/translate-to-englisch-lastflusszusagen. ONTRAS can also utilise other means of publication.
- b) The call for tender is an invitation to submit binding offers for load flow commitments in line with the bidding form specified in the call for tender.

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- c) The respective call for tender includes details on the respective load flow commitments demanded and offered, in particular
- i. the bidding deadline,
 - ii. the respective entry or exit point(s), including any node-specific conditions,
 - iii. the batch size (10,000 kWh/h or 10,000 kWh),
 - iv. the number of batches tendered,
 - v. the load flow commitment term,
 - vi. pricing based on a combination of commodity price and capacity charge,
 - vii. for forming the Merit Order List, including weighting of the commodity prices and capacity charges offered,
 - viii. the type of load flow commitment call, including any necessary technical prerequisites for confirmation,
 - ix. other details and conditions necessary for specific product design (e.g. temperature and pressure conditions, load flows), where relevant,
 - x. the e-mail address for submitting the bid,
 - xi. ONTRAS contact data and contact persons.

§ 3 Bids

- a) A bidder participates in the call for tender by means of a regular bid pursuant to lit. d). The bid is a binding, irrevocable application by the bidder to conclude a contract on a load flow commitment.
- b) Bids may only be submitted by bidders registered for ONTRAS prior to expiry of the bid deadline in accordance with the ONTRAS network access conditions, § 2a T&C Entry and Exit Contract here, and authorised to use the primary capacity platform. The ONTRAS network access conditions are available at www.ontras.com/en/company/downloads.
- c) A regular bid is submitted by sending to the e-mail address published in the respective call for tender a comprehensive and signed, unreserved and unconditional bid in accordance with the bidding form for the respective call for tender within the bidding deadline. The bid must include the price and the number of batches offered.
- d) Incomplete or expired bids as well as bids by bidders who are not registered and approved in accordance with lit. b) will not be taken into consideration.

- e) Bidders can submit several bids with varying batch quantities and prices. Only bids with commodity prices and capacity charges greater than or equal to zero are admissible. Bids with negative commodity prices and capacity charges will not be admitted.
- f) By submitting a bid, the bidder agrees to the “T&C LFC” as well as the conditions outlined in the respective call for tender.
- g) The bidder is bound to the bid until the time limit expires and at the latest for five working day after expiry of the bidding deadline.
- h) The bidder bears the costs incurred in connection with drawing up and submitting the bid.
- i) Groups of bidders are permissible but only one responsible contact person may be appointed. Where bids are submitted by a group of bidders, all members of the group must sign and confirm joint and severable liability by submitting the bid.
- j) The bidder guarantees the correctness of details provided.

§ 4 Batch Size and Prices

- a) The batch size is either 10,000 kWh/h (batch for performance) or 10,000 kWh (batch for work). The exact details are outlined in the respective call for tender.
- b) The call for tender is for each batch based on a combination of capacity charges and commodity prices. The commodity price or capacity charge can also be € 0.00.
- c) Commodity prices are remunerated in €/kWh in the event of a call.
- d) Capacity charges are remunerated as fixed prices as € per batch.
- e) Commodity prices and capacity charges are the (net) prices indicated by the bidder in the bid.

§ 5 Awarding Contracts

- a) The respective bid is accepted in the form of acceptance on the part of ONTRAS. ONTRAS is not obliged to accept.

- b) In order to award contracts, all regular bids are listed in ascending order in accordance with the weighted price for the respective call for tender (Merit Order List). In the event that there are similar bids after weighting, the bid submitted first is given priority in the Merit Order List.
- c) Contracts are awarded on the basis of the Merit Order List, starting with the bid with the lowest weighted price. Where the call for tender involves additional conditions or specifications, these are taken into consideration when awarding the contract.
- d) Contracts are awarded until the batch quantity is reached. ONTRAS is also entitled to award a contract for a lower quantity of batches than that offered in a bid.
- e) Notification of acceptance is sent to the e-mail address provided by the bidder.
- f) ONTRAS will inform all bidders without delay of conclusion of acceptance independent of whether their bids have been successful or not (end of the acceptance phase).
- g) Acceptance does not justify any obligation to actually call the LFC.

§ 6 Obligations to Perform

- a) Conclusion of a contract for LFC entitles ONTRAS to demand of the bidder an increase or reduction in gas volumes at the agreed entry or exit point.
- b) On receiving the contract for a batch for performance, ONTRAS is entitled to call the LFC as often as it wishes per hour within the agreed term per batch for work.

On receiving the contract for a batch for work, ONTRAS is entitled to call the LFC once per hour within the agreed LFC term per batch for work. Once a batch for work has been called, it can not be called again.

- c) The bidder is obliged to fulfil the respective LFC call.
- d) The bidder fulfils its commitments by submitting an updated (re-)nomination at the respective entry or exit point which complies with the requisite volume or capacity after matching. As far as several entry or exit points are named for the fulfilment of the LFC in the respective tender, these can be also used at the same time. Additional

(re-)nominations by the bidder at ONTRAS entry or exit points, which counteract the LFC or impair the effect of the LFC are impermissible.

- e) Booked capacity which is not nominated at the time of the call shall not be considered when establishing the balance for fulfilling the LFC.

In the event that ONTRAS calls LFC which are to be represented on the basis of interruptible capacity, the bidder's obligation to fulfil its obligation by submitting an updated nomination at the respective entry and exit point is also deemed to be fulfilled if ONTRAS or the VIP-TSO interrupts the interruptible capacity. "VIP-TSO" means a TSO who operates a virtual interconnection point, which contains capacities of ONTRAS.

- f) The bidder guarantees availability of sufficient capacities at the agreed entry or exit points on a fixed or interruptible basis as necessary for performance of the LFC call. The capacities must be introduced to a balancing group for the GASPOOL market area. The bidder also guarantees availability of sufficient corresponding capacities among the respective adjacent network or storage operators. The costs associated with the requisite capacities are borne by the transport client.
- g) The bidder must ensure that its balancing group is balanced.
- h) The bidder is not obliged to supply a minimum flow to the volume of its contracted load flow commitment without a request to this effect on the part of ONTRAS.
- i) No gas is transferred to ONTRAS.

§ 7 **Calling the LFC**

- a) ONTRAS calls the requisite LFC for which the contract was awarded from the Merit Order List depicted in accordance with § 5. Calls are made at optimal costs and taking consideration of the obligations in accordance with § 8, paragraph 2, sentence 1 of GasNZV and § 9, paragraph 3, no. 1 GasNZV, and can deviate from the order in the Merit Order List. ONTRAS is competent to call LFC for testing purpose.
- b) Load flow commitments are called on the basis of notifications of the agreed format defined in the bidding form and in the following steps:

- i. ONTRAS sends a call notification to the bidder with a lead time of at least 5 hours to the end of a full hour. Minimum notification parameters:
 - call validity period,
 - requisite performance in kWh/h taking consideration of the batch size of 10,000 kWh/h / 10,000 kWh and
 - contract number.
- ii. The bidder must confirm the call notification to ONTRAS for the respective call period without delay but no later than 30 minutes after receipt of the call notification. The bidder must carry out the requisite (re-)nominations in time so that they are effective for the LFC call validity period.

§ 8 Quantity Determination

Quantities are determined on the basis of the LFC called by ONTRAS and confirmed by the bidder provided the requisite (re-)nominations are effective and allocated.

§ 9 Accounting

- a) The charges for the LFC agreed by contract must be billed monthly after the respective transport month and are subject to the respective rate of VAT applicable.
- b) The sums billed in accordance with lit. a) must be paid by bank transfer onto the account indicated on the invoice within ten (10) working days of receipt of the invoice. Credit on the account indicated in the invoice is of relevance for adherence to the deadline referred to above.
- c) All charges will be rounded up or down to two decimal places in accordance with standard commercial practice.

§ 10 Contract Penalty

- a) If the bidder fails to provide the service requested by ONTRAS or fails to supply it completely or on time, the bidder must pay ONTRAS a contract penalty for any case of infringement. The contract penalty sum corresponds with 2.5% of the net monthly charge which would have been due if the LFC concluded with the bidder had been called in full for the month in which the contract penalty claim is to be asserted. For an agreed LFC term of less than one month, the contract penalty shall be

50% of the charge agreed for one day of the term of the LFC concluded which would have been due for a full call of the LFC.

- b) The contract penalty does not affect assertion of any more extensive claims for compensation.

§ 11 Confidentiality

- a) ONTRAS and the bidder ("Contractual Parties") shall treat confidentially the content of a contract and all information which they obtain in connection with said contract (hereinafter referred to as "confidential information") and shall not disclose such confidential information or make it accessible to third parties without the prior written consent of the party affected. The contractual partners undertake to use the confidential information exclusively for the purpose of fulfilling the respective contract.
- b) Each contractual partner has the right to disclose confidential information, which he has received from the other contractual partner, without the other contractual partner's written approval
- i) to an affiliated company, provided that such company assumes the same confidentiality obligation,
 - ii) to the Federal Network Agency,
 - iii) to its representatives, consultants, banks and insurers if and to the extent that disclosure is required for proper performance of the contractual obligations and such persons or companies have undertaken to treat such information confidentially prior to the receipt thereof or are under a professional secrecy obligation in respect of such information or
 - iv) to the extent that this confidential information
 - was legitimately known to the party receiving the information at the time it was obtained from the other party
 - was already in the public domain or becomes publicly available other than through an act or omission of the receiving party or
 - needs to be disclosed by a contractual party owing to a legal provision or an order by a court or official authority.
- c) The obligation to maintain confidentiality ends 2 years after the end of the respective contract.
- d) Article 6a of the Energy Industry Act (EnWG) shall not be affected.

§ 12 Transparency

ONTRAS publishes an anonymised list of the successful bids. ONTRAS informs the market area representative of LFC contracting. The bidder agrees to publication and information of the market area representative.

§ 13 Profitability Clause

- a) If unforeseeable circumstances occur during the term of a contract which have considerable economic, technical or legal effects on the contract but which were not provided for in the contract or in the Terms & Conditions or were not considered when the contract was concluded, and if it would consequently be unreasonable for a party to fulfil a particular contractual provision, the party affected shall be entitled to require from the other party a corresponding amendment of the contractual provisions that takes account of the changed circumstances as well as all economic, technical and legal consequences for the other contractual party.
- b) The contractual party which appeals to such circumstances must demonstrate and prove the necessary facts.
- c) Subject to entitlement to amendment of the contractual provisions, this will become effective at the earliest from the date on which the demanding party first requests amendments to the contractual provisions because of the changed circumstances, unless the demanding party could not be reasonably expected to make such requests at an earlier time.

§ 14 Severability Clause

- a) If individual provisions of these “T&C LFC”, the respective call for tender or the contracts concluded should be or become invalid or impracticable, then this will not affect the remaining valid provisions in the “T&C LFC”, call for tender and contracts concluded.
- b) The parties undertake to replace the invalid or unenforceable provisions in an appropriate procedure by other provisions having as far as possible the same economic results. This shall also apply to any gaps in this Agreement or its Appendices.

§ 15 Termination

A contract for an LFC can be terminated without notice for an important reason. An important reason prevails in particular when essential provisions of this contract are repeatedly and seriously violated despite warning notice.

§ 16 Written Form Requirement

All amendments to this contract must be made in writing in order to be effective. This shall also apply for a waiver of the requirement of written form.

§ 17 Applicable Law and Court of Jurisdiction

- a) These “T&C LFC” and all contracts concluded which are based on them are exclusively subject to the laws of the Federal Republic of Germany. Application of private international law and the UN Sales Convention is excluded unless precluded by mandatory laws.
- b) The place of jurisdiction for all disputes associated with these “T&C LFC” and contracts based on them is Leipzig.

§ 18 Force Majeure

- a) If the bidder is unable to perform its obligations because of a force majeure pursuant to Section b, said party shall be released from its obligations. ONTRAS shall be released from its corresponding obligations to the extent and as long as said first party is prevented from performing its obligations due to a force majeure.
- b) Force majeure is an external, unforeseeable event which can not be prevented by applying reasonable diligence and appropriate technical and economic methods or one which can not be prevented in time. Force majeure events shall include natural disasters, terrorist attacks, power failure, failure of telecommunications connections, strikes and lock-outs, provided that the lock-outs are lawful, and legal provisions or measures by governments, courts or authorities, irrespective of whether such measures are lawful.
- c) The bidder shall without undue delay inform ONTRAS thereof, stating the reasons for and likely duration of the disruption that has occurred. The bidder shall take all technically feasible and economically viable steps to resume the performance of its obligations as soon as possible.

- d) If the bidder avails of services from third parties to perform its contractual obligations, an event representing force majeure for the third party or any other circumstance pursuant to 2 shall also be regarded as force majeure on the part of the bidder.