

TENDER PROCEDURES AND CRITERIA

**FOR THE SELECTION OF THE STRATEGIC INVESTORS
FOR THE PRIVATIZATION OF THE PACKAGE OF STATE OWNED
SHARES CONTITUTING 100% OF THE SHARE CAPITAL OF**

“HEC BISTRICA 1 BISTRICA 2” SH.A

2012

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TENDER PROCEDURES AND CRITERIA

FOR THE SELECTION OF STRATEGIC INVESTORS FOR THE PRIVATIZATION OF 100% OF THE SHARE CAPITAL OF “HEC BISTRICA 1 BISTRICA 2” SH.A

These tender procedures and criteria "**Tender Procedures** have been prepared pursuant to Article 3 and 8 of Law No. 8306 dated 14/03/1998 “On the Privatization of strategy of special importance sectors”, Law no.10430, dated 9.6.2011 “On the creation of the companies HEC ULËZ SHKOPET Sh.a, HEC TIRANË, LANABREGAS SHA and HEC BISTRICA 1 BISTRICA 2 Sh.a, and the definition of the form and structure and for the privatization formula of the companies HEC ULËZ SHKOPET Sh.a and HEC BISTRICA 1 BISTRICA 2 Sh.a” and the Decision Council of Ministers No. 329, dated 12/7/1999 “On the tender procedures for the selection of strategic investors and on the transfer of shares owned by the state to private companies in sectors of special importance” as amended.

1. INTRODUCTION

The Government of Albania "**GoA** has undertaken several initiatives in the energy sector, including the process of liberalization and privatization of the energy market, deriving from the adherence in the Treaty establishing the Energy Community signed on 25 October 2005 in Athens.

The main measures taken by the GoA, on the side of the liberalization of the energy market, between others, are:

- the unbundling from KESH of the Transmission System Operator (TSO);
- the unbundling from KESH of the Distribution System Operator (DSO);
- the introduction of new liberalized rules for the energy market, by approving the new Power Market Model (Decision of the Council of Ministers No. 338, dated 19 March 2008 On the approval of the Power Market Model”) and new Power Market Rules (Energy Regulator (ERE) Decision No. 68 dated 23 June 2008);
- the privatization of the Distribution System Operator (DSO), unbundled from KESH;

The GoA plans to further develop its already initiated strategy, by attracting further foreign investments in the Albanian energy sector, and specifically in hydropower generation projects.

The GoA, through the Ministry of Economy, Trade and Energy "**METE** of the Republic of Albania or the "**Seller**" wishes to privatize 100% of the share capital of the joint stock company "HEC BISTRICA 1 BISTRICA 2" Sh.a the "**Target Company**", having its registered office in: Vlorë, Mesopotam, Bistricë, Sarandë, Albania, registered at the Albanian commercial registry with unique company identification number L17106501F.

The Target Company is engaged in the business of hydro generation and sale of electrical power. The privatization of the Target Company shall be realized by the sale of one hundred (100%) of the share capital of the Target Company held by METE, the "**Share Package**" to the strategic investors, selected pursuant to these Tender Procedures "**Project**".

In order to attract the optimal strategic investors to operate and develop the Target Company, GoA has decided to initiate open international tender procedures, the "**Bidding Process**" for the execution and completion of a share purchase agreement, the "**Share Purchase Agreement**" to be entered into by and between METE and the strategic investor selected pursuant to these Tender Procedures.

METE and/or GoA as the case may be, reserve the right at any time to revise or cancel the Bidding Process for the Target Company or to reject any recommendation of the Bid Evaluation Commission or not to enter into an agreement with a Bidder, at no cost to and with no liability on the part of METE and the GoA and any of its ministries, the Bid Evaluation Commission, or any of their representatives, to the Bidders or any of them or any member thereof or any other person, and whether in respect of loss suffered, damage or any costs incurred or otherwise, or revise the Tender Procedures and/or these Instructions to Bidders.

During the Bid Validity Period, until execution and closing of the Share Purchase Agreement no Bidder shall have any rights with respect to the Target Company, whether as a result of their submission of a Bid and/or participation in the Bidding Process or otherwise and neither METE nor GoA is under any obligation to enter into a Share Purchase Agreement.

2. PUBLIC ANOUNCEMENT

METE shall publish an announcement for the launching of the Bidding Process in at least three newspapers having international distribution. The timetable for the start of the publication shall be approved by METE together with the "**Instructions to Bidders**". The publication of the announcement for the launching of the Bidding Process shall be made pursuant to the other

requirements of Decision Council of Ministers No. 329, dated 12/7/1999 “On the tender procedures for the selection of strategic investors and on the transfer of shares owned by the state to private companies in sectors of special importance” as amended.

3. GENERAL RULES OF THE BIDDING PROCESS

3.1 Applicable law

The Bidding Process will be conducted in accordance with the Tender Procedures contained in this document, and by Instructions to Bidders (including annexes thereto) approved by the Minister of Economy, Trade and Energy.

3.2 International Tender

The Bidding Process is an international open tender process with one phase, which shall be published in at least three international newspapers. The process of the identification and acceptance of strategic investors shall be made pursuant to the Instructions to Bidders (including annexes thereto) approved by the Minister of Economy, Trade and Energy.

3.3 Language

The language of the Bidding Process shall be the English and Albanian language. The technical and financial proposals, submitted by the Bidders, as well as all correspondence and documents related to the Bid shall be submitted in English, together with a notarized translation, with the exception that any pre-printed information furnished by the Bidder may be written in another language, provided that its relevant parts are accompanied by a translation in English language, certified in the country of origin of the Bidder.

3.4 Acceptance of the terms and conditions of the Bidding Process

The submission of a Bid by a Bidder entails full knowledge and acceptance of, and submission to, all terms and conditions set out in these Tender Procedures and in the Instructions to Bidders (including annexes thereto), and to all liabilities in case it is declared the Winning Bidder (as defined in Section 9.5.1).

3.5 Definitions

Whenever used in these Tender Procedures, unless the context otherwise requires, terms defined here below. If a term is not defined in these Tender

Procedures, the meaning as ascribed to that term in the Instruction to Bidders (including its Annexes thereto), which shall be approved by METE. In case of conflict between the terms defined in these Tender Procedures and the same term defined differently in the Instruction to Bidders (including its Annexes thereto), unless the context otherwise requires, terms used in these Tender Procedures shall prevail and be applicable also to the Instruction to Bidders (including its Annexes thereto).

The Defined Terms are:

"Authorities" shall have the meaning as defined in Section 5.4;

"Bid" shall have the meaning as defined in Section 4.1;

"Bid Costs" shall have the meaning as defined in Section 3.6;

"Bid Validity Period" shall have the meaning as defined in Section 6.2.1;

"Bid Security" shall have the meaning as defined in Section 6.1.11;

"Bidders" shall have the meaning as defined in Section 4.1;

"Bidding Process" shall have the meaning as defined in Section 1;

"Bids Submission Deadline" shall have the meaning as defined in Section 7.2.1;

"Consortium" shall have the meaning as defined in Section 4.1;

"Evaluation Report" shall have the meaning as defined in Section 9.2;

"Estimated Timetable" shall have the meaning as defined in Section 5.5;

"Financial Bid " shall have the meaning as defined in Section 6.1.3;

"GoA" shall have the meaning as defined in Section 1;

"Instructions to Bidders" shall have the meaning as defined in Section 2;

"Leader" shall have the meaning as defined in Section 4.1;

"METE or "Seller" shall have the meaning as defined in Section 1;

"Project" shall have the meaning as defined in Section 1;

"Purchase Price" shall have the meaning as defined in Section 6.1.10;

"Response to Questions Document" shall have the meaning as defined in Section 5.2;

"Share Package" shall have the meaning as defined in Section 1;

"Share Purchase Agreement" shall have the meaning as defined in Section 1;

"Target Company" shall have the meaning as defined in Section 1;

"Technical Bid" shall have the meaning as defined in Section 6.1.2;

"Tender Procedures" these Tender Procedures for the privatization of the Share Package of the Target Company;

"Winning Bidder" shall have the meaning as defined in Section 9.5.1;

"Withdrawal Notice" shall have the meaning as defined in Section 7.4;

3.6 Costs

The Bidders shall bear all costs associated with the conduct of their due diligence and preparation and submission of its Bid, and the Bidder's participation in the Bidding Process, the **"Bid Costs"** including, without limitation, all costs and expenses related to the Bidder's involvement in:

- the gathering of all other information, including the due diligence of the Bidder;
- interviews;
- preparation of responses to questions or requests for clarification from METE;
- preparation of Bidders' questions during the clarification process; and
- Share Purchase Agreement discussions.

METE shall not be responsible or liable to pay any Bid Costs of any Bidder, regardless of the conduct or outcome of the Bidding Process.

4. BIDDERS

4.1 Invited Bidders

The participation in the Bidding Process is open to all interested investors who are strategic investors as defined herein, and have validly expressed their interest to participate in the Bidding Process pursuant to the terms and conditions of these Tender Procedures and of the Instructions to Bidders (including annexes thereto), the "**Bidders**".

METE shall reserve the right to send Invitations for Bids only to interested investors that upon expressing their interest to participate in the Bidding Process, have shown to meet the following qualification criteria:

1. be incorporated (pursuant to the law governing its incorporation) as a legal entity, having separate legal personality from its members/shareholders;
2. to be solvent, not to have been declared bankrupt or undergoing liquidation procedures.
3. to possess human resources as well as technical, professional and organizational experience in operating hydropower plants – a bidder owning/operating one or more hydropower plants, with an individual, or combined installed power capacity of at least 15 MW is deemed to meet this criteria;
4. to possess financial resources for operating hydropower plants - a bidder is deemed to meet this criteria if its equity, resulting from its financial accounts of the last business year is at least equal to Eur 25 Million (or equivalent in other currencies);
5. to be reputable regional and/or international energy market operator;

The form and content of documents for attesting the above criteria shall be approved by METE together with the Instructions to Bidders. The evaluation of the above criteria and issuance of the Invitation to Bid shall be in the sole discretion of METE.

An expression of interest to participate in the Bidding Process may be submitted also as a Consortium between more interested investors, provided however that a copy of the executed Consortium Agreement is submitted to METE together with the relevant documentation (as required by the Instruction to Bidders) attesting the above criteria with respect to all members of the Consortium.

For the purpose of these Tender Procedures, the "**Consortium**" is defined as a joint venture, consortium or other similar type of temporary partnership agreement, notwithstanding the title or relevant legal treatment of such partnership under the applicable law of their country of origin, having as its

object the joint participation in the Bidding Process and the joint submission of a Bid for the Target Company. The members of the Consortium shall not be allowed to amend the terms and conditions of the Consortium Agreement during the Bidding Proceeds, and thereafter, pursuant to the Share Purchase Agreement, without the prior written consent of METE, which shall be discretionary.

The Consortium agreement should indicate the member who shall be the "**Leader**" of the Consortium, who shall have the majority stake in the Consortium, and shall be addressed by METE for all purposes during the Bidding Process. Notices of METE to Leader, and replies of Leader shall be binding for the Consortium.

Any amendment of the terms of the Consortium Agreement during the Bidding Proceedings, without METE's prior written consent shall result in the disqualification of the Consortium and its members.

If the expression of interest to participate in the Bidding Process is submitted as a Consortium, each member of the Consortium should meet at least the criteria set forth in items 1 and 2 above in this Section 4.1, provided however that the Consortium as a whole, meets all criteria from 1 to 5 above in this Section 4.1.

Bidders who are invited by METE to participate individually in the Bidding Process are also allowed to submit a Bid as a Consortium, provided however that prior to the Bid Submission Deadline, the already invited Bidder, who shall be the Leader of the Consortium, submits to METE a written notice on the establishment of the Consortium, together with a written copy of the Consortium Agreement and the relevant documentation (as required by the Instruction to Bidders) attesting that the other members of the Consortium also meet, at least the criteria set forth in items 1 and 2 above in this Section 4.1. METE shall formally invite the Consortium, provided that all the above conditions for Consortiums are met, and upon issuance of the new invitation for the Consortium, the prior invitation issued by METE to the individual Bidder shall be deemed null and void, without prejudice to validity of other prior actions, documents and correspondence related to the Bidding Process with already invited individual Bidder. Consortiums between already invited Bidders shall not be allowed.

Only Bidders meeting the above criteria, who are invited by METE to participate in the Bidding Process, individually, or as a Consortium, are allowed to submit one "**Bid**" pursuant to Sections 6 and 7.

4.2 Restrictions

Each interested investor shall participate in the Bidding Process as one Bidder only (or member of one Consortium only) and each Bidder (or Consortium thereof) may submit only one Bid (as further explained in Section 6 and 7). An interested investor shall be considered as already participating in the Bidding Process when:

- a) it has been invited by METE to be a Bidder; or
- b) it is already member of a Consortium invited by METE by METE to be a Bidder;

5. BIDDING DOCUMENTS

5.1 Content of Bidding Documents

The Bidding Documents include the following:

1. Law No. 8306 dated 14/03/1998 “On the Privatization of Strategic Sectors”;
2. Law no.10 430, dated 9.6.2011 On the creation of the companies “HEC ULËZ SHKOPET” Sh.a, “HEC TIRANË, LANABREGAS” SHA and “HEC BISTRICA 1 BISTRICA 2” Sh.a, and the Definition of the Form and Structure and formula for the Privatization Formula of the Companies “HEC ULËZ SHKOPET” Sh.a and “HEC BISTRICA 1 BISTRICA 2” Sh.a”;
3. The Decision of the Council of Ministers Decision approving these Tender Procedures;
4. Instructions to Bidders (including annexes thereto) approved by Order of the Ministry of Economy, Trade and Energy;
5. The Information Memorandum (CV) of the Company;
6. Registration abstract of “ “HEC BISTRICA 1 BISTRICA 2” Sh.a with the Albanian commercial registry;
7. Articles of Association of “HEC BISTRICA 1 BISTRICA 2” Sh.a
8. Balance sheet and audit report of “HEC BISTRICA 1 BISTRICA 2” Sh.a as of end of 2011;

Each Bidder shall examine under its sole responsibility all instructions, terms and conditions, forms, specifications and other information contained in these Tender Procedures and the Instructions to Bidders (including annexes thereto). If the Bidder:

- a) fails to provide all documentation and information required by the these Tender Procedures and the Instructions to Bidders (including annexes thereto); or

- b) submits a Bid which does not substantially comply with the terms and conditions of these Tender Procedures and the Instructions to Bidders (including annexes thereto);

than such action is at the Bidder's risk and the Bid Evaluation Commission may declare the Bid as non-responsive to these Tender Procedures and the Instructions to Bidders (including annexes thereto), and therefore reject it.

A copy of the full set of Bidding Documents shall be issued to each Bidder (as defined in Section 4) who has signed a Confidentiality Agreement and has paid the Due Diligence Fee provided in the Instructions to Bidders approved by METE. Bidders who fail to sign the Confidentiality Agreement and pay the Due Diligence Fee shall not receive documents and information, as further detailed in the Instructions to Bidders (including annexes thereto), contain confidential information on the Target Company.

5.2 Clarification of Bidding Documents

A Bidder requiring any clarification or modification of the Instructions to Bidders (including annexes thereto) may notify METE by e-mail at the address indicated in the Instructions to Bidders with a copy to the IFC Project Team albaniahpps@ifc.org. Similarly, if a Bidder feels that any important provision in the Instructions to Bidders (including annexes thereto) is unacceptable, such an issue may be raised at any time before the Bid Submission Deadline, as specified in the Estimated Timetable (defined below in Section 5.5) without prejudice to METE's discretionary right to accept or not such request for change.

Any request for clarification or modification of the Instructions to Bidders (including annexes thereto) must be received (in the manner specified in this Section 5.2) no later than the date set out in the Estimated Timetable. Electronic copies of the response (if any), including an explanation of the query but not identification of its source, "**Response to Questions Document**", will be sent by METE (or any person duly authorized by METE) to all Bidders. If similar or repeated queries are made by Bidders, those queries may be listed as one query and METE may respond to such query only once. No Response to Questions Document and/or information given whether orally or in writing shall be binding on any party. Only the Share Purchase Agreement and its appendices, when duly executed, shall have legal force and be binding on the parties.

There will be (1) one round of comments in order for the Bidders to be able to present and discuss with METE their written comments on the Instructions to Bidders including the Share Purchase Agreement.

5.3 Amendment of Instructions to Bidders (including Annexes thereto)

At any time prior to the Bids Submission Deadline (as defined in Section 7.2), METE may, for any reason, whether at its own initiative, or in response to a clarification requested by a Bidder, amend the Instructions to Bidders (including annexes thereto). No other communications of any kind whatsoever, including, without limitation, the Response to Questions Document, shall modify the Instructions to Bidders (including annexes thereto).

The amendment shall be notified in writing to all Bidders and the amended documents will be deemed to be the applicable documentation for purposes of the Bidding Process.

In order to offer Bidders reasonable time in which to take the amendment into account in preparing their Bids, METE may, at its discretion, extend the Bids Submission Deadline (as clarified in Section 7.2), in which case, METE will notify all Bidders in writing of the extended deadline.

5.4 Information Provided by the Authorities/Bidders Due Diligence

Each Bidder is solely responsible for conducting its own independent research, due diligence, and any other work or investigations and for seeking any other independent advice necessary, at its own cost, for the preparation of its Bid and the negotiation and finalization of the Share Purchase Agreement.

No representation or warranty, express or implied, is made and no responsibility of any kind is accepted by METE and its personnel and agents, the "**Authorities**" or their advisors, employees, consultants or agents, for the completeness or accuracy of any information contained in the Bidding Documents or the Response to Questions Document, or provided during the Bidding Process or the negotiations of the Share Purchase Agreement. The Authorities and their advisors, employees, consultants and agents shall not be liable to any person or entity as a result of the use of any information contained in the Bidding Documents or the Response to Questions Document, or provided during the Bidding Process or during the negotiations and finalization of the Share Purchase Agreement.

Bidders shall not rely on any oral statements made by the Authorities or their advisors, employees, consultants or agents.

All Bidders shall, prior to submitting their Bid, review all requirements with respect to corporate registration and all other requirements that apply to

companies that wish to conduct business in Albania. The Bidders are solely responsible for all matters relating to their legal capacity to operate in the jurisdiction to which this Bidding Process applies.

Any information provided by the Authorities in the course of the due diligence, shall be subject to the Confidentiality Agreement signed by all Bidders.

5.5 Timing

In these Tender Procedures an official business day, unless otherwise provided in the tender documents, shall be any day of the week, excluding Sundays and Saturdays, and public holidays in the Republic of Albania.

An estimated timetable for the Bidding Process is incorporated in the Instructions to Bidders, "**Estimated Timetable**".

METE may, in its sole discretion and without prior notice to the Bidders, amend the Estimated Timetable, and notify such change to all Bidders.

Bidders shall not rely in any way whatsoever on the Estimated Timetable and METE shall not incur any liability whatsoever arising out of amendments to the Estimated Timetable.

6. BIDS: PREPARATION

6.1 Preparation of Bids

6.1.1 Documents Comprising the Bid

When submitting the Bid in accordance with Section 7, each Bidder as defined in Section 4, may, without being obliged to, submit one Bid, in relation to "HEC BISTRICA 1 BISTRICA 2" Sh.a.

Any false data shall constitute a legal ground for disqualification of the Bidder (or Consortium thereof) and any finding that the Bidder has provided false material information or withheld material information in its Bid will constitute grounds for termination of the Share Purchase Agreement.

The Bidders should use only the standard documents of the Bidding Process, without making any modifications to the terms thereof. No mark-up of the approved templates comprising the Technical and Financial Bids shall be allowed. No conditions Bids shall be allowed.

Each Bid submitted as above, shall be composed of the following:

6.1.2 Technical Bid

The technical proposal, comprising the following documents, collectively, the "**Technical Bid**":

- a) Bid Application Form required by Section 6.1.4;
- b) Final draft of the Share Purchase Agreement, with each page initialed by the Bidder;
- c) Power of Attorney in the form and content, required by Section 6.1.5;
- d) Confirmation of Minimal Technical Conditions, required by 6.1.6;
- e) Confirmation of Minimal Employment Requirements, required by Section 6.1.7;
- f) Conflict of Interest statement required by Section 6.1.8;
- g) Declarations of Commissions and Gratuities required by Section 6.1.9;

6.1.3 Financial Bid

The financial proposal comprising the following documents, collectively, the "**Financial Bid** ":

- a) the Financial Bid Form, required under Section 6.1.10 below;
- b) Bid Security, in the form and content required by Section 6.1.11;

6.1.4 Bid Application Form

The form and content of the Bid Application Form shall be approved by METE together with the Instructions to Bidders.

6.1.5 Power of Attorney

In the Technical Bid, each Bidder (or if the Bidder is a Consortium, each member of the Consortium) shall provide a written power of attorney indicating that the person(s) signing the Bid has(ve) the authority to sign the Bid and thus that the Bid is binding upon the Bidder (or the Consortium thereof) during the full Bid Validity Period.

The form and content of the Power of Attorney shall be approved by METE together with the Instructions to Bidders.

6.1.6 Minimal Technical Conditions

In the Technical Bid, each Bidder shall confirm the commitment to meet the minimal technical performance conditions for the Target Company, if any, which shall be determined by METE upon approval of the Instructions to Bidders.

The Minimal Technical Conditions shall include the compliance with IFC's general Environmental, Health and Safety Guidelines and relevant sector specific IFC guidelines, or equivalent recognized international good practices accepted by IFC, accessible on the webpage: <http://www.ifc.org/ifcext/sustainability.nsf/Content/EHSGuidelines>.

The details of the minimal technical performance conditions for operation of the Target Company, together with the relevant confirmation statements shall be made available by METE together with the Instructions to Bidders.

6.1.7 Minimal Employment Requirements

In the Technical Bid, each Bidder shall confirm the commitment to meet the minimal employee collective dismissal requirements approved by the Government of Albania for the Target Company.

The Minimal Employment Requirements shall include the compliance with IFC's Performance Standard 2 “Labor and Working Conditions”, accessible on the webpage: http://www.ifc.org/ifcext/sustainability.nsf/Content/Publications_GPN_Retrenchment

The Minimal Employment Requirements for the Target Company, together with the relevant confirmation statements shall be made available by METE together with the Instructions to Bidders.

6.1.8 Conflict of Interest Statement

In the Technical Bid, each Bidder (or if the Bidder is a Consortium, each member of the Consortium) shall provide a written conflict of interest statement, regarding any existing, potential, possible or future conflict of interest that the Bidder (or each member of a Consortium) may have with the Bidding Process.

The form and content of the Conflict of Interest Statement shall be approved by METE together with the Instructions to Bidders.

6.1.9 Commissions and Gratuities

In the Technical Bid, each Bidder (or if the Bidder is a Consortium, each member of the Consortium) shall provide detailed information listing all commissions and gratuities, if any, paid or to be paid by the Bidder to agents and/or intermediaries relating to the Bid or the Share Purchase Agreement. The Bidder shall list the name and address of any agents and/or intermediaries, the amount and currency paid or to be paid to the agents and/or intermediaries and the purpose of the commission or gratuity. If no such commissions and gratuities have been paid, the Bidder shall provide this information in its Technical Bid.

The form and content of the commissions and gratuities statement to be submitted by Bidders shall be approved by METE together with the Instructions to Bidders.

6.1.10 Financial Bid

The Financial Bid shall contain the Bidder's offered price, the "**Purchase Price**" for the acquisition of the legal title of one hundred (100%) of the share capital of the Target Company. The Purchase Price shall be expressed as a fixed amount in Euros to be paid in immediately available funds, pursuant to the terms and conditions of the draft terms of the Share Purchase Agreement, in force as approved by METE at the Bid Submission Deadline.

In the Financial Bid, the Bidder shall be required to disclose the source of funding for the Purchase Price, and METE shall be entitled to verify, if deemed necessary, the source of funding.

The form and content of the Financial Bid shall be approved by METE together with the Instructions to Bidders.

6.1.11 Bid Security

As part of its Financial Bid, the Bidder shall furnish a bid security payable to METE in the amount of Euro 10,000,000 (ten million), the "**Bid Security**".

The Bid Security shall be a letter of guarantee from a reputable and solvent bank or financial institution. If the institution issuing the Bid Security is incorporated outside Albania, the Bid Security shall be issued by a reputable and solvent Albanian branch or a correspondent Bank incorporated in Albania to make it enforceable.

The Bidders shall ensure that the Bid Security remains valid for a period of 30 (thirty) calendar days after the end of the original Bid Validity Period (as defined in Section 6.2.1) and thirty 30 (thirty) calendar days after any extension subsequently requested by METE in accordance with Section 6.2.2.

The Winning Bidder is required to ensure that the Bid Security term is extended and remains valid for a period of 30 (thirty) calendar days after the closing period of the purchase, pursuant to draft terms of the Share Purchase Agreement, in force as approved by METE at the Bid Submission Deadline, if the initial above Bid Security validity term is shorter than the such closing period.

Any Bid not accompanied by an acceptable Bid Security shall be rejected by the Bid Evaluation Commission as being invalid. The Bid Security of a Bidder that is a Consortium must be in the name of all of the members of such Consortium submitting the Bid.

The purpose of the Bid Security is to ensure that the Winning Bidder shall, within 30 (thirty) calendar days after the announcement of the Winning Bidder, pursuant to Section 9.6.1 execute the Share Purchase Agreement substantially in the form of the draft in force as approved by METE at the Bid Submission Deadline, and initialed by the Bidder in its Technical Bid.

The form and content of the Bid Security shall be approved by METE together with the Instructions to Bidders.

6.1.12 Payment of a Success Fee by the Winning Bidder

The Winning Bidder shall be liable to pay, in addition to the Purchase Price, an amount of Euro 420,000 (four hundred twenty thousand), directly into the account of the International Finance Corporation, as a success fee payable for this transaction.

The commitment of the Bidder to pay success fee shall be contained in the Financial Bid to be approved by METE together with the Instructions to Bidders.

6.2 Validity of Bids

6.2.1 Bid Validity Period

Bids shall remain valid for the term following the Bids Submission Deadline as detailed in the Instructions to Bidders (including annexes thereto) approved by

METE, the "**Bid Validity Period**". A Bid valid for a shorter period shall be rejected by the Bid Evaluation Commission as non-responsive.

6.2.2 Extensions

In exceptional circumstances, METE may solicit the consent of Bidders having submitted a Bid, to an extension of the Bid Validity Period. The request and responses thereto shall be made in writing. If Bidders accept to extend the Bid Validity Period, the Bid Security shall also be extended in accordance with Section 6.1.11 above (and the Bidders shall use all reasonable endeavors for that purpose). A Bidder may refuse METE's request for extension without forfeiting its Bid Security. A Bidder granting the request will not be required nor permitted to modify its Bid.

6.3 Format and Signing of Bids

The Bidder shall prepare an original Bid and a number of copies of its Bid as specified in the Instructions to Bidders, clearly marking each one as original or COPY NO. 1; COPY NO. 2 etc. In the event of any discrepancy between the original and any copy, the original shall prevail.

The original Bid and all copies of the Bid shall be typed and shall be signed by the Bidder (or if the Bidder is a Consortium, by each member of the Consortium) or by person(s) duly authorized to bind the Bidder/ the Consortium. The latter authorization shall be indicated by a written power of attorney submitted as part of the Technical Bid in accordance with Section 6.1.5. All pages of the Bid, except for unamended pre - printed literature, shall be initialed by the person or persons signing such Bid.

7. BIDS: SUBMISSION

7.1 Sealing and Marking of Bids

7.1.1 Inner Envelopes

The Bidder shall seal its Technical and Financial Bid for the Target Company, in separate sealed envelopes, duly marking the envelopes:

one sealed inner envelope bearing the words:

(i) **“TECHNICAL BID – FOR THE PRIVATIZATION OF HEC BISTRICA 1 BISTRICA 2 S.H.A.”** which envelope shall contain the

documents listed in Section 6.1.2 comprising Bidder's Technical Bid for - "HEC BISTRICA 1 BISTRICA 2 SH.A; and

one sealed inner envelope bearing the words:

(ii) "**FINANCIAL BID - FOR THE PRIVATIZATION OF HEC BISTRICA 1 BISTRICA 2 SH.A.**" which envelope shall contain the documents listed in Section 6.1.3 comprising the Bidder's Financial Bid for - "HEC BISTRICA 1 BISTRICA 2 SH.A.";

7.1.2 Originals and Copies

The inner envelopes described in Section 7.1.1 above shall be prepared in one original and a number of copies as required in the Instructions to Bidders. The envelopes containing the original and each copy of the Technical and Financial Bids shall be included in separate envelopes, duly marking the envelopes as:

"BID - FOR THE PRIVATIZATION OF HEC BISTRICA 1 BISTRICA 2 SH.A. – ORIGINAL" / **"BID - FOR THE PRIVATIZATION OF HEC BISTRICA 1 BISTRICA 2 SH.A. - COPY NO. 1"**; **"BID - FOR THE PRIVATIZATION OF HEC BISTRICA 1 BISTRICA 2 SH.A. - COPY NO. 2"**, and so forth;

7.1.3 Outer Envelopes

The envelopes described in Section 7.1.2 above shall be included in one separate sealed outer envelope, duly marked as:

"BID - FOR THE PRIVATIZATION OF HEC BISTRICA 1 BISTRICA 2 SH.A."

The outer envelope described in this Section 7.1.3 shall be sealed, and addressed to METE at the address given in the Instructions to Bidders, and should in addition be marked with the words "**DO NOT OPEN BEFORE _____.2012, ____:__am/pm, Tirana time**" to be completed with the Bids Submission Deadline as specified below in Section 7.2 and in the Instructions to Bidders.

7.1.4 Bidder Identification

The inner envelopes described in Sections 7.1.1 and 7.1.2 above shall each indicate the name and address of the Bidder (or if the Bidder is a Consortium, each member of the Consortium) so that the envelopes containing the Technical

and Financial Bids as described in Sections Section 7.1.1 and 7.1.2 can be returned unopened as provided in Section 8.5.3.

If the outer envelope described in Section 7.1.3 is not sealed and marked as required above, METE will assume no responsibility for the Bid's misplacement or premature opening. If the outer envelope discloses the Bidder's identity, METE will not guarantee the anonymity of the Bid submission, but this disclosure will not constitute grounds for Bid rejection.

7.1.5 Non-responsive Bids

Any Bid which does not comply with the specified instructions as per the above paragraphs of this Section 7 shall be declared as non-responsive to the Bidding Documents and rejected by the Bid Evaluation Commission.

7.2 Deadline for Submission of Bids

7.2.1 Bids Submission Deadline

Bids must be received by METE at the address specified in the Instructions to Bidders no later than the time and date stated in the Instructions to Bidders as the "**Bids Submission Deadline**".

7.2.2 Extensions

METE may, at its discretion, extend the Bids Submission Deadline by amending the Instructions to Bidders, and notify Bidders in accordance with Section 5.3, in which case all rights and obligations of METE and the Bidders will thereafter be subject to the deadline as extended.

7.3 Late Bids

Any Bid received by METE after the Bids Submission Deadline will be rejected and returned unopened to the Bidder as provided in Section 8.5.3.

7.4 Modification and Withdrawal of Bids

The Bidder may not modify its Bid following to its submission. A bidder may withdraw its Bid after submission, provided that notice of the withdrawal is received by METE as follows, prior to the Bids Submission Deadline.

The Bidder intending to withdraw its Bid shall notify METE in writing, such notice to be received by METE prior to the Bids Submission Deadline. The

notice of withdrawal, the "**Withdrawal Notice**" shall be dispatched to METE at the address stated in the Instructions to Bidders; and bear as subject matter:

- **RE: "BID WITHDRAWAL NOTICE - FOR THE PRIVATIZATION OF HEC BISTRICA 1 BISTRICA 2 S.H.A."**

Any Withdrawal Notice received after the Bids Submission Deadline will be ignored, and the submitted Bid will be deemed to have been validly submitted.

Any Withdrawal Notice received in the interval between the Bids Submission Deadline and the expiration the Bid Validity Period specified in Section 6.2 will result in the Bidder's forfeiture of its Bid Security, pursuant to Section 6.1.11.

8. BIDS: OPENING AND EVALUATION

The opening and evaluation procedures of the Bids under this Section 8 shall be public and completed by the Bid Evaluation Commission at the date, time and at the premises indicated in the Instructions to Bidders. If the opening and evaluation procedures may not be completed within the same day, than the process shall be adjourned and resumed the next business day at the same time and same premises (unless otherwise communicated by the Bid Evaluation Commission). Attendance by participants to the opening event may be limited, subject to physical space availability, provided however that the presence of at least two representatives for each Bidder having submitted a Bid shall in any case be guaranteed.

8.1 Opening the Outer Envelopes

The Bidders' representative(s) who are present during the opening and evaluation procedures shall sign a register evidencing their attendance.

No Bid shall be rejected at the opening of envelopes except for late Bids pursuant to Section 7.3.

The Bid Evaluation Commission shall simultaneously open all sealed outer envelopes described in Section 7.1.3 and read out loud in the presence of the Bidder's representative(s), the name and address of each Bidder having submitted the Bid, including if the Bid has been received within Bids Submission Deadline pursuant to the Instructions to Bidders.

The Bid Evaluation Commission shall than simultaneously open all Withdrawal Notices pursuant to Section 7.4 and read out loud in the presence of the Bidder's representative(s) the name and address of each Bidder having submitted a

Withdrawal Notice, including if the Withdrawal Notice has been received within Bids Submission Deadline pursuant to the Instructions to Bidders.

8.2 Opening Results Registration

The Bid Evaluation Commission shall register:

1. The total number of Bids and Withdrawal Notices received;
2. The total number of Bids and Withdrawal Notices received after Bids Submission Deadline, with names and addresses of relevant Bidders;
3. The total number of Bids and Withdrawal Notices received within Bids Submission Deadline, with names and addresses of relevant Bidders;

8.3 Opening and Evaluation of the Inner Envelopes

Immediately after the completion of the opening procedures under Section 8.1, with respect to only the Bids under item 3 of Section 8.2 above, with respect to which a Withdrawal Notice has not been received, the Bid Evaluation Commission shall then simultaneously open:

1. the envelopes described in Section 7.1.3 containing the original copy of the Bid; and
2. the inner envelopes described in 7.1.1(i) containing the original Technical Bid;

8.4 Technical Bids

The Bid Evaluation Commission shall read out loud, in the presence of the Bidder's representative(s), and register the content of each Technical Bid opened pursuant to Section 8.3.

8.4.1 Compliance Review

The Bid Evaluation Commission shall review the documents comprising the envelope of Technical Bids opened pursuant to Section 8.3 and determine whether they are complete and formally and substantially responsive to these Tender Procedures as well as to Instructions to Bidders (including annexes thereto).

The Bid Evaluation Commission shall particularly ensure that the Technical Bid documents comply with requirements of Section 6.1.2 and of the Instructions to Bidders (including annexes thereto) and that Bidders continue to meet the requirements set forth in Section 4 above. The Bid Evaluation Commission shall

also ensure that the wording of the initialed Share Purchase Agreement matches the final version of the Share Purchase Agreement issued to the Bidders ahead of the Bid Submission Deadline.

8.4.2 Evaluation Criteria

The evaluation of Technical Bids shall be based on a *pass or fail* criteria, and no award of points shall apply to the Technical Bids.

Technical Bids that failed to comply with minimal requirements of Section 8.4.1 above shall be declared as invalid or non-responsive to the Bidding Documents as the case may be, and rejected by the Bid Evaluation Commission.

8.4.3 Qualified Bids

The Bid Evaluation Commission shall then declare, in the presence of the Bidder's representative(s), and register name and address of each Bidder having passed the Compliance Review of the Technical Bids pursuant to Section 8.4.1.

8.5 Financial Bids

8.5.1 Opening and Formal Compliance

The Bid Evaluation Commission shall, with respect to only the Bids that have passed the Compliance Review pursuant to Section 8.4.1, then open the inner envelopes described in Section 7.1.1(ii) containing the Financial Bids resulting from the opening procedure under Section 8.3.

No Financial Bid shall be opened if the Technical Bid of the respective Bidder has failed the Compliance Review pursuant to Section 8.4.1.

The Bid Evaluation Commission shall read out loud, in the presence of the Bidder's representative(s), and register the content of each Financial Bid opened pursuant to Section 8.5.1.

8.5.2 Purchase Price

The Bid Evaluation Commission shall review the compliance of documents comprising the Financial Bid with requirements of these Tender Procedures as well as Instructions to Bidders (including annexes thereto) and if compliant, in the presence of the Bidder's representative(s), read out loud the amount of the Purchase Price offered by each Bidder.

The Bid Evaluation Commission shall register the name and address of each Bidder having submitted a valid Financial Bid, together with the Purchase Price offered by the Bidder.

8.5.3 Return of Documents

Within 10 (ten) business days from the day of completion of opening and evaluation of the Bids pursuant to this Section 8, the Bid Evaluation Commission shall officially notify in writing the Bidders, whose Bids have been declared late, invalid and/or non – responsive to the procedures and/or the Instructions to Bidders (including annexes thereto) on its final decision for the Bidder’s exclusion from the further procedures of the Bidding Process.

Together with such notification, the Bid Evaluation Commission shall return also the Bidder’s envelopes described in Section 7.1.1, 7.1.2 and 7.1.3 which were unopened when the Bid was declared withdrawn, late, invalid and/or non – responsive, as the case may be.

9. FURTHER PROCEDURES

9.1 Invalidity and failure of the Bidding Process

The Bid Evaluation Commission may waive any minor informality, non-conformity or irregularity in a Bid that does not constitute a material deviation, and that does not prejudice or affect the relative ranking of any Bidder as a result of the Technical Bid and Financial Bid evaluation.

9.1.1 Invalid Bids

In addition to other cases specifically provided hereunder, a Bid shall be declared invalid when:

1. the Bidder has not provided the Bid Security;
2. the Bidder has violated the confidentiality or has provided false data in his/her offer;
3. the Bidder has not fulfilled any requirement contained in these Instructions to Bidders and other Bidding Documents;

9.1.2 Unsuccessful Bidding Process

The Bidding Process is considered unsuccessful, and therefore failed, if:

1. none of the Bids fulfills the requirements of these Instructions to Bidders and other Bidding Documents;
2. the Council of Ministers decides to terminate the Bidding Process; or
3. no bid is submitted;

9.2 Evaluation Report and Notification to Bidders

Not later than 10 (ten) business days from the date of the completion of procedures under Section 8, the Chairman of the Bid Evaluation Commission shall prepare a summary report, the "**Evaluation Report**" which shall include:

1. the object of the Bidding Process and the percentage of shares offered for sale for the Target Company;
2. a brief summary of the procedure and the number of Bids submitted for the Target Company;
3. a summary of the Bids submitted for the Target Company;
4. the main criteria for the evaluation of Bids and the evaluation of each Bid for the Target Company;
5. the criteria for the evaluation of the Financial Offer; and
6. a ranking of the Bidders according to the Purchase Price offered for the Target Company;

The Evaluation Report shall be presented to METE for further submitting to the Council of Ministers, together with a proposal of the Bidder having proposed the higher Purchase Price for the Target Company, pursuant to Section 8.5.2.

9.3 Approval / Rejection by the Council of Ministers

The Council of Ministers shall review the Evaluation Report proposed by the Bid Evaluation Commission, and, upon its sole discretion, alternatively:

1. Approve the evaluation report and the Bid of the Bidder offering the highest Purchase Price for the Target Company; or
2. Approve the evaluation report but, reject the Bid of the Bidder offering the highest Purchase Price for the Target Company, if the financial offer is deemed economically non viable; or
3. Reject the evaluation report, and request corrections. In such case the Bid Evaluation Commission shall make the necessary corrections, and resubmit the evaluation report for approval pursuant to this Section 9.3;

Following to the approvals by the Council of Ministers under item 1) above, METE shall be entitled to enter the Share Purchase Agreement with the Winning Bidder as provided by Section 9.5 below.

9.4 Termination of the Bidding Process

The Council of Ministers may, at any time before announcing the Winning Bidder, terminate the Bidding Procedures without providing any justifying arguments to the bidders.

METE shall not incur any liability whatsoever in exercising any rights under this Section.

9.5 Finalization Sessions

9.5.1 Notification to the Winning Bidder

METE shall issue, with respect to the Target Company, the Winning Bidder notification to the Bidder whose offer has been approved by the Council of Ministers pursuant to Section 9.3, the "**Winning Bidder**". The Winning Bidder will be invited for finalization sessions of the Share Purchase Agreement and to execute the Share Purchase Agreement not later than 5 (five) business days from the date of approval by the Council of Ministers of the Winning Bidder. Whereas METE may entertain minor drafting changes for the purposes of clarity and finalization of the Share Purchase Agreement, the Winning Bidder will be required to execute the Share Purchase Agreement in the form of the initialed copies submitted as part of its Technical Bid.

If within 30 (thirty) calendar days from the date of the Notification as above, for any reason the Winning Bidder fails to comply with required term extensions of the Bid Security, if necessary, pursuant to Section 6.1.10, and/or to does not execute the Share Purchase Agreement, METE shall be entitled to forfeit the respective Bid Security of the Winning Bidder and invite for negotiations the other Bidders having submitted a valid Financial Bid pursuant to Section 8.5.2, in the order of their ranking of the approved Evaluation Report, until the Share Purchase Agreement is executed, or alternatively propose to the Council of Ministers the terminate the Bidding Process.

9.6 Contacting METE or the Authorities

From the time of opening of the Bids to the time of the execution of the Share Purchase Agreement, if any Bidder wishes to contact METE, it should do so by

e-mail the address indicated in the Instructions to Bidders, with copy of any correspondence sent to the IFC Project Team: albaniahpps@ifc.org.

9.6.1 Finalization of the SPA

The finalization of the Share Purchase Agreement with the Winning Bidder shall be carried out with the assistance of the International Finance Corporation (IFC).

Upon the execution of the Share Purchase Agreement by the Winning Bidder, METE will promptly inform in writing, pursuant to Instructions to Bidders (including annexes thereto), each of the other Bidders having submitted a valid Financial Bid pursuant to Section 8.5.2.

9.7 Bid Return and Forfeiture

METE will return the Bid Securities of the unsuccessful Bidders having submitted a valid Financial Bid pursuant to Section 8.5.2, as promptly as possible, but not later than 30 (thirty) calendar days after the expiration of the Bid Validity Period as defined in Section 6.2.1 as may be extended in accordance Section 6.2.2.

The Bid Security of the Winning Bidder (pursuant to Section 9.5) will be returned upon the closing of the signed Share Purchase Agreement.

The Bid Security may, at the discretion of METE, may be forfeited:

- if the Bidder (or any member of a Consortium thereof) makes any material misrepresentation in its Bids;
- if the Bidder withdraws its Bid during the Bid Validity Period;
- if the Winning Bidder fails to comply with required term extensions of the Bid Security, if necessary, pursuant to Section 6.1.10, and/or to execute the Share Purchase Agreement substantially in the form of the initialed copy included in its Bid, on a date not being later than 30 (thirty) calendar days after the announcement of the Winning Bidder pursuant to Section 9.5.1; or
- if the Winning Bidder fails to achieve the closing of the Share Purchase Agreement, pursuant to its terms and conditions, for reasons attributable to the Winning Bidder;

The Bid Security shall be callable upon first demand by METE in the event that one or more of the circumstances described in this Section has occurred.

Forfeiture of the Bid Security shall not preclude METE from pursuing any other remedies it may have against the Winning Bidder or another Bidder.

In addition to the above, if a Bidder or the Winning Bidder: (i) resorts to deceit and/or fraud in its dealings with METE, the Bid Evaluation Commission, its advisors, employees, consultants or agents or otherwise in relation to the Project; or (ii) is proven to have personally or through an intermediary, either directly or indirectly, offered or attempted to offer a bribe to any of METE's employee involved with the Bid or the Project, then the Bidder's or the Winning Bidder's Bid shall be cancelled and the Bid Security shall be forfeited.

9.8 Confidentiality

METE and the Bid Evaluation Commission shall maintain the confidentiality of all technical, economic and financial data originating from the Bids. Unless foreseen by law, court decision or in these Instructions to Bidders, METE and the Bidders shall not disclose to third parties technical information, data on the price and any other element subject to discussions without the consent of the other party, except to its advisors and counsels in relation to the Project.

9.9 Effective Date of the SPA

After the signing by METE and the Winning Bidders of the Share Purchase Agreement for 100% of the shares of the joint stock company HEC Bistrica 1 & Bistrica 2 Sh.a and its approval by the Parliament based on the proposal of the Council of Ministers.