

Ljubljana, 19 July 2018
ACER-2-2018

Booking Platform

By e-mail only

Subject: Selection of the capacity booking platform to be used at ‘Mallnow’ interconnection point and ‘GCP’ virtual interconnection point

Dear Booking Platform Operator,

The Agency for the Cooperation of Energy Regulators (‘the Agency’) invites you to submit an offer for capacity booking services at ‘Mallnow’ IP and ‘GCP’ VIP. In this letter, the Agency will explain the background, the process and what services are required from you to be eligible to make an offer.

Background

The Agency has been called upon to adopt a decision concerning the capacity booking platform to be used at ‘Mallnow’ physical interconnection point (‘IP’) and ‘GCP’ virtual interconnection point (‘VIP’), in accordance with Article 8(1) of Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators. The Agency is competent to decide on the capacity booking platform to be used, if no agreement has been reached by the respective transmission system operators (‘TSOs’) or the national regulatory authorities (‘NRAs’) in due time. Article 37(3) of Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013 (‘CAM NC’) establishes this competence.

The competence to decide on the capacity booking platform to be used was transferred to the Agency on 19 April 2018, and the Agency shall provide its decision within a period of 6 months from this date according to Article 8(3) of Regulation (EC) No 713/2009. The Agency’s decision should therefore be provided by 19 October 2018.

The decision of the Agency will bind the TSOs concerned for a period no longer than three years. The TSOs shall reach a contractual agreement on the use of a capacity booking platform before the end of this period, in accordance with Article 37(4) CAM NC.

Process

Provided the offers submitted by the Capacity Booking Platform Operators meet the submission criteria (section 1), the Agency will check if they comply with a set of selection criteria (section 2) and will evaluate (section 3) the offers that fulfil these requirements.

The offer with the best result according to section 3 will then be identified and the capacity booking platform on which that offer relies will be selected.

Confidentiality

This procedure is not a tender. It is a part of the ongoing administrative proceeding during which the Agency collects and evaluates the evidence necessary for the selection of a capacity booking platform. Hence, the offers will be included in the administrative proceedings documentation and may be published along with the decision. In order **to claim confidentiality** for parts of information in the documents that you regard as business secrets or otherwise confidential, please carefully read the description in annex 5.1 on how to claim confidentiality.

In case you have any question relating to this letter, please contact [REDACTED] or [REDACTED].

Please note that, for the sake of transparency, all clarification questions raised by any of the Capacity Booking Platform Operators will be answered and shared with all the Capacity Booking Platform Operators (in copy).

Yours sincerely,

Head of Gas Department

1 Formal submission criteria

Your offer shall adhere to the following requirements:

1.1 Subject of the offer is the provision of capacity booking platform services pursuant to Article 37 of the CAM NC for 'Mallnow' IP operated by GASCADE Gastransport GmbH and OGP GAZ-SYSTEM S.A. and 'GCP' VIP operated by ONTRAS Gastransport GmbH and OGP GAZ-SYSTEM S.A. The scope of capacity booking services provided by means of the platform shall be compliant with the scope established in European Union acts on the common rules for the internal market in natural gas, even if those change. In particular:

- Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005,
 - Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013,
 - Commission Regulation (EU) 2015/703 of 30 April 2015 establishing a network code on interoperability and data exchange rules,
 - Commission Regulation (EU) No 312/2014 of 26 March 2014 establishing the Network code on Gas Balancing of Transmission Networks,
- Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency and Commission implementing Regulation (EU) No 1348/2014 of 17 December 2014 on data reporting implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency.

1.2 The offer shall be binding to the benefit of the concerned TSOs until the conclusion of the service contract between the involved TSOs and the chosen Capacity Booking Platform Operator. The commitments stemming from the offer cannot be changed unless such a modification of the offer is required jointly by the involved TSOs or by an amendment of any relevant EU legislation that impacts the services provided by the Capacity Booking Platform Operator, if it enters into force in the period of reference. The binding nature of the offer expires if the Agency does not issue a decision before 20 October 2018.

1.3 The offer shall cover a contract term of 3 years from the date of applicability of the Agency's decisions pursuant to Article 37(3) of the CAM Regulation.

1.4 The offer of capacity booking platform services shall cover both the 'Mallnow' IP and the 'GCP' VIP in a joint offer. The offer shall cover both sides of the IP and VIP, regardless of

any existing service contracts between the Capacity Booking Platform Operator and the TSOs concerned.

1.5 The offered capacity booking platform services shall include:

- the required technical platform features listed in annex 5.2
- the other services listed in annex 5.4, if the services are available on the booking platform at the moment.

1.6 The Capacity Booking Platform Operator shall offer the capacity booking platform services within the scope described in points 1.1 and 1.5 in the period indicated in point 1.3, to the concerned TSOs without discrimination, within the same scope of liability as stems from its platform Rules.

1.7 If the price for the capacity booking platform services consist of multiple components (such as entrance fees and yearly fees), these shall be summed up to get a total price.

1.8 The price for the capacity booking platform services shall be specified in euro.

1.9 The submission has to include:

- the offer
- the filled in "Template on Compliance"
- the filled in "Template on Evaluation"
- any other additional information or documents for substantiation
- documents confirming the entitlement of legal representation of the Capacity Booking Platform Operator

1.10 All documents may be submitted in any one of the official languages of the European Union, and should, to the extent possible and in order to render more effective the evaluation process of the offers, include copies in English. All documents should be signed by persons duly authorized to represent the Capacity Booking Platform Operator.

1.11 All submissions have to be sent to the following address:

Agency for the Cooperation of Energy Regulators

Trg republike 3

1000 Ljubljana, Slovenia

With a courtesy copy sent to:
bookingplatform@acer.europa.eu

1.12 For an offer to be considered as submitted on time, the offer must be received by the Agency on or before 10 August 2018 EOD. An offer will be considered submitted on time if the courtesy email is received on time. However, in case of technical malfunctions etc. whereby the email is not received on time, an offer will be considered received using the following principles:

- For offers received by registered mail: The stamp of the post-office is accepted as evidence that the offer has been posted in time (not later than the final time and date for the submission of offers).
- For offers delivered through a private courier service: Proof of compliance with the deadline is the date specified on the deposit slip with the courier service.

The Agency will confirm that your offer has been submitted on time by sending you a confirmation through email.

2 Selection criteria

The Capacity Booking Platform Operator is expected to (1) submit an offer that meets the requirements listed in annex 5.2 and (2) show sufficient proof that verifies or explains how the offer meets the requirements. It should be noted that bare statements and unsubstantiated confirmations will be regarded as insufficient. For a capacity booking platform to be eligible, all these requirements need to be met.

The selection criteria consist of 22 technical platform features. The required technical platform features are subdivided into two categories:

- a) Requirements stemming from EU law (rows 1-18; hereinafter referred to as “EU legal requirements”) – to be fulfilled by the Capacity Booking Platform Operator on the date of submission of the offer;
- b) Requirements stemming from national legislation (rows 19-22; hereinafter referred to as “national requirements”) – to be fulfilled by the Capacity Booking Platform Operator within 3 months from the conclusion of the service contract between the involved TSOs and the Capacity Booking Platform Operator.

In the area of Energy, the Union and the Member States have shared competence. The Member States may legislate and adopt legally binding acts, to the extent that the Union has not yet exercised its competence.¹ Because of the shared competence, the Member States

¹ TFEU Article 2(2) and 4(2)(i)

may further specify the legal requirements the Agency has already adopted. Because of the shared competence, the Agency regards the Member States national requirements equally as important as the EU legal requirements, and they must therefore be taken into consideration in the assessment of the booking platforms.

If the TSO contracts a third party, rather than providing the booking platform service on its own, the booking platform must act on behalf of the TSO towards the network users and accordingly carry out the relevant TSO obligations towards the network users. The latter should indeed be able to legitimately expect that the requirements of the network code will be entirely met and that their rights will not be limited, regardless of which entity is ultimately performing the task.

To verify compliance with EU legal requirements and the national requirements, the Capacity Booking Platform Operator should fill in, and include the verification of their claims, in the provided “Template on Compliance”, in annex 5.3. Please note that if you wish to refer to the Baringa study², you are requested to provide copies of the information given to Baringa for each assessed requirement and what measures, if any, have been taken since to make sure the requirement is still met today. If a functionality is still functioning in the same way as during the Baringa study, it is sufficient to state that no change was made to the functionality, as a way of confirming that the requirement is still met today. Any statement about the capacity booking platforms compliance with a requirement has to be duly signed by a relevant representative of the capacity booking platform. If the information provided to Baringa is no longer available, as a fall back you could rely on the evidence proposed in Annex 5.3. If the piece of evidence suggested in the table is hard to provide, an explanation on why this is should be provided and the requirement can be fulfilled by providing a statement on how the requirement is fulfilled, duly signed by a relevant representative of the capacity booking platform.

If there are any ambiguities in the provided proof of compliance, the Capacity Booking Platform Operator will be given the opportunity to address this ambiguity and submit additional proof that verifies or explains how the offer meets the requirements, provided this does not substantially alter the offer.

If a Capacity Booking Platform Operator does not fulfil all of the EU legal requirements on the date of submission of its offer, and/or if a Capacity Booking Platform Operator does not verify that it will be able to fulfil all the specific obligations indicated in the national requirements within the required 3 month period, its **offer will be rejected**.

² Only applicable when the booking platform received a full score on the requirement in question in the Baringa study.

3 Award criteria

The Agency will evaluate all offers that fulfil the submission and selection criteria (section 1 and 2).

The evaluation is based on the criteria listed in annex 5.4; offers will be awarded points in accordance with the fulfilment of the respective criterion. All Capacity Booking Platform Operators are expected to verify their claims on how they fulfil the criteria. It should be noted that bare statements and unsubstantiated confirmations will be regarded as insufficient. The Capacity Booking Platform Operator shall include the verification of their claims in the “Template on Evaluation”, in annex 5.5.

Since the selection criteria focus on the booking platforms compliance with EU legal requirements and national requirements, the offer evaluation will focus on (1) the price for the services listed under point 1.5 and (2) on the points awarded for the quality criteria relevant for the transmission system operators and the stakeholders (in particular peak service load, governance and security).

3.1 Price

Since the regulation of the gas market “aims to [...] achieve efficiency gains, competitive prices and higher standards of service, and to contribute to security of supply and sustainability” (Recital 1 of Regulation (EC) No 715/2009), the price must be part of the total consideration.

For this proceeding the total price for the capacity booking services shall cover all the costs that the involved TSOs shall pay to the Capacity Booking Platform Operator for using the services required by the EU legal requirements, the national requirements and any other services available on the platform, in a three-year period.

In the offer, the Capacity Booking Platform Operator shall state the total price for all three years. The Capacity Booking Platform Operator shall also specify what components the total price consists of (e.g. entrance fees, yearly fees etc.). In addition to the total price for all three years, the Capacity Booking Platform Operator shall specify the total price for each year separately.

The financial category is allotted 40 percent of the total points. The offers will be awarded points following this calculation:

$$\text{Points in price evaluation} = \frac{\text{total price for the lowest offer}}{\text{total price for the offer being evaluated}} * 40$$

3.2 Quality criteria

Since the regulation of the gas market “aims to [...] achieve efficiency gains, competitive prices and higher standards of service, and to contribute to security of supply and sustainability” (Recital 1 of Regulation (EC) No 715/2009), also the standard of the services must be part of the total consideration.

The quality criteria is subdivided into three categories that focuses on the quality of the capacity booking platform services offered by the Capacity Booking Platform Operators.

The quality category is allotted 60 percent of the total points. The category ‘Reliability and security’ will be regarded as the most important one, weighted at **[confidential]**. ‘Governance’ and ‘User friendliness’ will both be weighted at **[confidential]**.

3.2.1 Reliability and security

Articles 11-15, 17 CAM NC not only entail reporting obligations but also define which information may not be shared with the public or other market participants. For this reason, it is necessary to know which measures have been taken to avoid leaks of economically sensitive data, bids and offers in particular.

Apart from the above, security measures on the platform – such as IT security, are taken into account.

3.2.2 Governance

Article 37(1) CAM NC requires TSOs to offer capacity by means of one or a limited number of joint web-based booking platforms. TSOs, therefore, need to cooperate with TSOs from neighbouring states who may have different interests.

These different commercial interests need to be taken into account. This category encourages transparent business models and prevents the distortion of competition.

3.2.3 User friendliness

In this category, offers will be awarded points for the implementation of a set of features that facilitate and simplify capacity booking for the benefit of network users (Article 37(5) CAM NC). Furthermore, during the public consultation conducted by the Agency, network users mentioned several features they deemed important.

4 Timeline of the selection process

The timeline of the selection process is as follows:

Time	Description
10.08.2018	Submission deadline
13.08.2018 – 31.08.2018	Evaluation period
19.10.2018	Deadline for decision according to Article 8(3) of Regulation (EC) No 713/2009

5 Annexes

5.1 Confidentiality

5.2 Catalogue of selection criteria

5.3 Template on Compliance

5.4 Catalogue of award criteria for evaluation of offers

5.5 Template on Evaluation