

Annex №2 - Draft State Procurement Contract

(The terms and conditions of the State Procurement Contract may be adjusted by the time of signing the contract, based on the negotiations between parties)

Tbilisi

_____ **2018**

JSC “Georgian Oil and Gas Corporation” (hereinafter referred to as “Purchaser”) represented by -----
-----, on the one hand and

on the other hand [_____] (hereinafter referred to as “Supplier”)

Whereas, _____ is announced to be the successful bidder with the price of GEL _____ excluding VAT in the tender announced by Purchaser for the year 2018 in accordance with paragraph “__” of article __ of the Law of Georgia on “State Purchases”,

The Contract shall be concluded in USD, in accordance with the official exchange rate of GEL at the level of USD established by the National Bank of Georgia on 2018 (on the date of opening of the Tender) (1 USD ----- GEL).
we agree on the following:

1. Subject of the Contract

1.1. The subject of this Contract is Procurement of Fittings (hereinafter referred to as “Goods”) required for gas pipeline construction/rehabilitation works (CPV44163200).

1.2. Goods description, technical parameters, specifications, quantity and price per unit are specified in Annex №-- (Table of Prices) of this Contract, attached hereto and representing its integral part.

2. Obligations of Parties

2.1. In accordance with the Contract Supplier is obligated to supply timely and completely flawless goods and accompanied documentation to the Purchaser under the Contract provisions and Purchaser shall be responsible timely and completely to pay Supplier amount specified under this Contract and to accept the Goods.

3. Provisions of Goods Delivery

3.1. Supplier shall supply goods on DDP (Incoterms 2010) provisions excluding VAT.

3.2. Supplier shall be responsible to:

3.2.1 Ensure customs clearance of goods on its own expenses on the name of Purchaser in accordance with the Legislation of Georgia, in case the Supplier is non - resident entity;

3.2.2. To unload goods and store on its own expenses on the following address: GOGC’s Pipe yard, Lanchkhuti, Guria region, Georgia. All Goods shall be delivered not later than 120 (one hundred and twenty) calendar days after contract signature.

3.2.3. Supply the goods to the Purchaser packed according to the Contract and/or its specifications and with the following data printed on or with respective documentation attached:

a) Identification number;

b) Diameter;

c) Length;

d) Degree;

e) Wall thickness;

f) Steel quality;

g) Other technical and qualitative specifications of the Goods considered under the clause 1.2 of the Tender Documentation and other normative requirements.

3.2.4. The Goods to be delivered shall have the Certificates of Origin and Quality.

3.3. In case the Supplier is non - resident entity, prior to goods customs clearance, the Purchaser shall grant authority to the customs officer named by Supplier for goods customs clearance on the Purchaser’s name.

3.4. The Supplier shall deliver Goods to the Address as defined in the clause 3.2.2. from 9:00 until 19:00. Due to the Safety requirements, the purchaser reserves the right to refuse the receipt of Goods, if the Supplier delivers the Goods after 19:00.

3.5. After Acceptance Certificate is signed and stamped, security of goods, at the store shall be at Purchaser's responsibility and account.

3.6. During customs clearance procedures of the goods, the Purchaser shall be responsible to pay VAT in accordance with legislation of Georgia.

4. Goods Quality

4.1. Goods quality shall meet the requirements and standards specified in the clause 1.2 of the Tender Documentation of the Tender Documentation and Annex №1 of the Contract.

5. Supplier's Warranties

5.1. Supplier shall warrant that Goods supplied to Purchaser are flawless and corresponds the quality, technical specifications and requirements specified under clause 4.1. of the Contract.

5.2. Provisions of claim arisen due to goods flaw/defect shall be regulated under this Contract and Legislation of Georgia.

5.3. In case of any flaw/defect whatsoever Supplier shall on its expenses and under its responsibility ensure its elimination within reasonable timeframe defined in written notification (about flaw/defect revealing) received from Purchaser. Flaw/defect shall be corrected in accordance with Purchaser's request through goods replacement with the new one or through repair/correction.

5.4. Warranty period on the goods delivered to Purchaser by Supplier shall be 12 months after goods installation completion or 24 months after goods delivery, which comes earlier

5.5. Supplier warrants/guarantees that it shall protect Purchaser from any claim arisen by any third party and/or reimburse Purchaser any expense (including costs incurred due to sanction imposed by State Competent Authority) that may be incurred due to breach or improper performance of contract provisions by Supplier.

6. Delivery-Acceptance of the Goods

6.1. Acceptance Certificate shall be executed between Supplier and Purchaser upon goods delivery to Purchaser that shall be signed by authorized persons of the parties. Acceptance Certificate shall be signed and stamped within 30 days after each partial delivery of the goods to the warehouse, provided that the delivered Goods are in accordance with the requirements undertaken by the Supplier in the Agreement.

6.2. Purchaser shall be entitled to reject low quality goods acceptance or acceptance of the goods rejected by Purchaser's inspection group, that don't correspond to the requirements specified under the Contract.

6.3. Until Acceptance Certificate is signed and stamped the Supplier shall be fully responsible for the damaged or destroyed goods.

6.4. After Acceptance Certificate is signed and stamped, any damage of the goods that might occur due to the security of the warehouse store shall be at Purchaser's responsibility and account.

6.5. In case of any delay of signing the Act of Acceptance by the Purchaser, resulting by the latter's fault, the responsibility of subsequent damage shall transfer to the Purchaser.

7. Contract Price and Payment

7.1. According to the provisions stipulated by the Contract the total price of the Contract shall constitute USD excluding VAT.

7.2. Payment to Supplier shall be made based on actually delivered goods in non cash form via bank transfer.

a) In case of Supplier being a Georgian resident company, payment shall be made in Georgian National Currency in accordance with the official exchange rate of National Bank of Georgia by the date of signature the act of acceptance.

b) In case of Supplier being a non-resident company, payment shall be made in US dollar.

7.3. For the payment purposes, Supplier along with the goods shall deliver the following documentation to the Purchaser:

- a) Invoice;
- b) Waybill (packing list);
- c) Acceptance Certificate;
- d) Goods Quality Certificates;

- e) Goods Inspection certificates 3.2 “type 3.2” (according to the clause 12.1.1. of the contract);
- f) Goods Certificate of Origin;
- g) Goods Warranty Certificates;
- h) Customs declarations of goods clearance in import mode.

7.4. Payment shall be made within 14 business days after submission to Purchaser of the Goods and documentation specified in clause 7.3.

8. Contract Performance Bank Guarantee

8.1 As a performance security Supplier shall submit to Purchaser unconditional and irrevocable bank guarantee in an amount of 5% from Contract value.

8.2. The validity of the bank guarantee provided by Supplier shall exceed Goods delivery deadline for at least 60 (sixty) calendar days.

8.3. The bank guarantee shall be issued by a commercial bank/insurance company operating in Georgia and in case the entity issuing the guarantee is not a commercial bank/insurance company operating in Georgia, the bank issuing the guarantee shall have the minimum rate "B+" of Fitch Rating or other equivalent international rating agency.

8.4. Purchaser shall be entitled to apply Contract performance bank guarantee specified in clause 8.1. If Supplier breaches provisions of this Contract or fails to perform properly responsibilities imposed hereunder without a need to prove or to show ground or reasons for the demand or the sum specified in the guarantee.

8.5. Payment effected under Contract performance bank guarantee shall not release Supplier from the liability to reimburse damage (loss) incurred by Purchaser due to Contract nonperformance or uncovered by guarantee amount.

8.6. If Supplier cannot manage to completely supply goods specified herein to Purchaser within 120 days following the signature of the Contract by both parties, then Supplier shall be responsible to extend Contract performance bank guarantee terms within 5 calendar days, in such a way to meet the requirements specified in NAT.... Tender Documentation and the validity of bank guarantee exceeds Goods delivery deadline for at least 60 (sixty) calendar days.

8.7. JSC “Georgian Oil and Gas Corporation” (Purchaser) shall be indicated as beneficiary in Contract performance bank guarantees.

9. Nonperformance of Contract Provisions

9.1. If within reasonable period defined in written notification Supplier fails to perform procedure specified in clause 3 of article 5, Purchaser shall be entitled to impose Supplier to pay penalty in an amount of 5% of the total price of the Contract which shall be calculated in USD and shall be paid not later than 10 calendar days after written notification receipt by Supplier about fine imposture. In case of Supplier being a Georgian resident Company payment of penalties shall be made in accordance with official exchange rate of National Bank of Georgia by the date of penalty payment. If the Supplier refuses payment of penalties, the amount shall be deducted in GEL in accordance with official exchange rate of National Bank of Georgia by the date of signature of act of acceptance (if applicable) or termination of the contract by the Purchaser. Amount of fine may be deducted by Purchaser from the submitted bank guarantees of the Supplier.

9.2. In case of goods delivery delay or incomplete delivery, Supplier shall be imposed penalty in an amount of 0.1% of delayed or undelivered goods price per each delayed calendar day. Amount of fine may be deducted by the Purchaser from the submitted bank guarantees of the Supplier or may be subtracted from the amount to be paid in accordance with principle stated in clause 9.1 above.

9.3. In case the Purchaser delays payment, the Supplier shall be entitled to impose the Purchaser the penalty in an amount 0.1% of price to be paid per each delayed calendar day.

9.4. Either party may request reimbursement of damage incurred due to nonperformance or improper performance of responsibilities of the other party.

9.5. In case of breach of Contract provisions by Supplier, penalty payment shall not release it, except in cases specified under Civil Code, from the responsibility to perform Contract provisions.

10. Contract Termination

10.1. In case nonfulfillment by the party of Contract provisions or undertaken responsibilities, the other party shall be entitled to indicate in writing on such circumstances and to request its correction (notification thereof shall be

sent to the other party). After expiration of the term specified in the notification the party shall be entitled to terminate this Contract. In cases defined under Civil Code of Georgia Party shall be entitled to terminate Contract without such notification.

10.2. Purchaser shall be entitled to terminate Contract in case if Supplier doesn't or cannot perform undertaken responsibilities hereunder, including:

- a) Supplier fails to meet requirements defined in flaw/defect elimination notification;
- b) Amount of penalty to be paid by Supplier exceeds 5% of undelivered and/or delayed goods value;
- c) Supplier fails to deliver goods to Purchaser in time;
- d) The quality of the product delivered is not in compliance with the quality mentioned in quality and conformity certificates;
- e) Other cases defined under Legislation of Georgia.

10.3. Purchaser and Supplier may terminate this Contract mutually at any stage of its implementation upon agreement.

11. Exemption From Responsibilities

11.1. Parties shall be exempted from responsibilities for complete or partial nonperformance if such nonperformance is resulted from force-majeure circumstances (earthquake, floods, insurrection and other circumstances that are not under the control of the parties, it is impossible to foresee them and are considered to be force-majeure circumstances).

11.2. Party that is under force-majeure circumstances, shall immediately but not later than within 3 (three) calendar days notify the other party in writing or by e-mail about such circumstances and estimated term of its elimination. Otherwise, party shall not be exempted from responsibility for complete or partial nonperformance under the Contract.

11.3. The parties are responsible to determine the issue of applicability of Force Majeure to the present agreement. The Party to whom force majeure applies is, to the extent possible, responsible to find alternative ways in order to fulfill its obligations

11.4. Unless otherwise agreed between the parties, in case of force-majeure circumstances responsibilities performance period shall be suspended with the period during which such circumstance lasts.

11.5. Facts specified in written notification shall be certified by competent authority. Such certification shall not be necessary if facts are publicly known.

11.6. Parties shall proceed responsibilities performance upon force-majeure circumstances elimination.

12. Provisions of Contract Inspection

12.1. Purchaser or its authorized person shall be entitled to control goods volume, quality and delivery terms, as well as inspects goods and issue respective conclusion.

12.1.1. Supplier shall perform inspection according to EN 10204:2004 3.2. Document prepared by both the manufacturer's authorized inspection representative, independent of the manufacturing department and inspector designated by the official regulations and in which they declare that the products are in compliance with the requirements of the order and in which test results are supplied.

12.1.2 Purchaser reserves the right, at any time, at his own expense to carry out inspection of the manufacturing process of the Goods. The Supplier is obliged to notify the Purchaser in advance of the start of production of the Goods to be supplied and upon Purchaser's request Supplier shall provide access for the authorized representative of the Purchaser to the respective manufacturing factory.

12.2. Inspection group established by Purchaser's organization shall perform control over State Purchases Contract and its annexes performance by supplier.

12.3. Functions of inspection group shall be:

- a) Proper control and surveillance of goods volume, quality and delivery terms with the Contract requirements and in case of Purchaser's authority assignment acceptance certificates signing;
- b) Goods inspection prior to the signature of acceptance certificate and its rejection in case of low quality;
- c) If necessary, record and storage of periodic documentation with respect to this Contract performance;
- d) Performance of other powers for the purpose of effective performance of this Contract.

12.4. Supplier shall be liable for reimbursement of any expenses related to revealed defect elimination and inspection.

13. Contract Amendments

13.1. Neither party hereto shall be entitled to alter Contract provisions unilaterally.

13.2. Amendments shall not be affected if such alteration shall increase Contract value for Purchaser or shall deteriorate Contract provisions, except cases defined under article 398 of Civil Code.

13.3. Upon occurrence of cases defined under article 398 of Civil Code of Georgia, it shall be prohibited to increase Contract total value for more than 10%.

13.4. Any amendment to the Contract shall be executed in the form of written agreement, shall be attached to the Contract and shall constitute integral part thereto.

13.5. All amendments to the Contract shall be legally binding only upon parties signing thereon.

14. Entering into Force and Term

14.1. Contract shall enter into force upon parties signing thereon and shall be valid till

14.2. Relevant provisions of the Contract shall remain valid until complete fulfillment of responsibilities undertaken by the parties.

15. Dispute Settlement, Governing Law

15.1. Any dispute arisen between the parties shall be settled through amicable negotiations.

15.2. If, within 30 days from the day when the dispute arises, settlement is not reached, all disputable issues shall be discussed in the Courts of Georgia.

15.3. Contract is executed in accordance with the Legislation of Georgia and shall be interpreted under the Legislation of Georgia.

16. Final Provisions

16.1. The contract is made in Georgian and in English languages, in 2 (two) identical specimens having equal legal capacity. In case of any controversy between English and Georgian versions, Georgian version shall prevail.

16.2. If any article, clause and/or provisions of this Contract are deemed invalid and/or void, this shall not affect validity of the remaining articles, clauses and/or provisions of the Contract.

16.3. Any communication between the parties required under the Contract shall be performed in writing via mail or through e-mail (Purchaser - public@gogc.ge; Supplier -)

16.4. Any annex and/or amendment and/or addition to this Contract represent integral part thereto.

17. Requisites of Parties