

Government of the Republic of Moldova

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TENDER BOOK

for the acquisition of the financial and legal audit services related to debt of Moldovagaz to Gazprom and Factoring Finance for gas deliveries to consumers of the Republic of Moldova from the right bank of the Nistru River

Contents

Chapter. 1. General information	3
1.1 The services	3
1.2 Brief explanation of the necessity and opportunity/context of the acquisition	3
Chapter. 2. Description of the services	4
2.1 The purpose of the services and their description	4
2.2 The results to be obtained from the provision of services	5
2.3 Deliverables	6
2.4 Developing of the tender and attribution criteria	6
2.5 Evaluation Criteria	9
2.5 Attributes and responsibilities of the Parties	9
2.6 Place of provision of services	9
2.7 The necessary resources/ expertise required for the performance of the activities	10
2.8 Transfer of intellectual property rights	10
2.9 Duration of the contract	10
Chapter. 4. Miscellaneous	10
Annex 1. List of sources	11
1. Corporate documents of Gazsnabtransit and Moldovagaz	11
2. Moldovagaz's accounts	11
3. Agreements, contracts and protocols concerning Moldovagaz and/or the Republic of Moldova	11
4. Arbitration awards concerning Moldovagaz's debt to Gazprom and/or Factoring Finance	11
5. Decisions by the Government and/or Parliament of the Republic of Moldova.....	12
6. Technical data	12
7. Public sources	12

Chapter. 1. General information

1.1 The services

The object of the acquisition consists of entering into a service contract for the financial and legal audit of the debt of JSC Moldovagaz ("Moldovagaz") to PJSC Gazprom ("Gazprom") and LLC Factoring Finance ("Factoring Finance") for gas deliveries and consumers of the Republic of Moldova on the right bank of the Nistru River (the Right bank) and the Transnistrian region. The Beneficiary of the audit services is the Government of the Republic of Moldova (the "Government").

"The Right bank" means the areas of Moldovan territory mainly on the right bank of the Nistru river which are de-facto controlled by the constitutional and internationally recognized Moldovan Government in Chisinau. Conversely, "the Left bank" is used hereinafter to mean the areas of Moldovan territory on the left bank of the Nistru River, in the Transnistrian region, which is de-facto controlled by the self-proclaimed unconstitutional authorities in Tiraspol.

1.2 Brief explanation of the context of the acquisition

On 29 October 2021, Moldovagaz and Gazprom signed the Addendum No. 19 to the natural gas delivery contract and extended the contract for 5 years. During the negotiation process, both sides discussed and agreed that:

1. At the latest by 1 May 2022, Moldovagaz and Gazprom sign an agreement on the settlement of Moldovagaz's debt to Gazprom and Factoring Finance for gas delivered to consumers on the Right bank, assuming the repayment of the debt within 5 years, taking into consideration also the penalty interest; and
2. Before the conclusion of the above-mentioned agreement, the Moldovan side performs an independent audit of Moldovagaz's debt to Gazprom and Factoring Finance for gas delivered to consumers on the Right bank. The final audit report will be coordinated with Moldovagaz's Supervisory Board.

Moldovagaz has 3 main shareholders: Gazprom – 50%; Public Property Agency of the Republic of Moldova¹ – 35,33%; Property Management Committee from the Transnistrian region – 13,44%.

The main objective of the audit, announced by the Public Property Agency, as the shareholder of Moldovagaz, is to establish the exact scope of Moldovagaz's debt to Gazprom and Factoring Finance for gas delivered to consumers on the Right bank, in the period 1993 (inclusive) - 31 October 2021 (the "Debt").

Establishing the exact scope of the Debt requires, *inter alia*:

¹ The Public Property Agency is the central administrative authority subordinated to the Government that implements the state policy in the fields of state property management.

1. Verification of Moldovagaz's (its predecessors') allocation of payments for gas consumption between consumers on the Right and the Left banks;
2. Verification of the valuation of assets previously transferred to Gazprom as (partial) settlement of debt for gas delivered to consumers on the Right bank, and, if necessary, revaluation of such assets;
3. Verification that previous payments have been correctly allocated to settle debts accrued for gas deliveries to consumers on the Right bank; and
4. Verification of the legality of Gazprom's assignment(s) of claims to Factoring Finance.

An additional objective of the audit is to report on reasons for the accrual of the Debt which may render parts of the Debt subject to legal challenge, *inter alia*:

1. The legality and/or conformity with custom and practice of the penalty interest rates charged;
2. Costs incurred by Moldovagaz management beyond the costs which can be recovered through the Moldovan regulated gas tariffs;
3. Moldovagaz management's handling of foreign currency procurement and gas losses; and
4. The legality and conformity with international practice of the distribution of Gazprom's transit tariff payments between Moldovagaz and the de-facto operator of the parts of the Moldovan gas transmission system situated on the left bank of the Nistru River.

Chapter. 2. Description of the services

2.1 The purpose of the services and their description

The purpose of the financial and legal audit services is to assess the evolution of the debt of Moldovagaz to Gazprom and Factoring Finance, and its allocation between the Right and Left bank. For this purpose, the successful tenderer (the "Auditor") will examine documents and public information concerning the following matters:

- a. Debt formed before the incorporation of Gazsnabtranzit in 1995;
 - b. Correctness of assets evaluation, with which the Right bank participated in the creation of Gazsnabtranzit via debt-to-equity swap;
 - c. Registration of gas transmission pipelines after the formation of GazSnabTranzit (reevaluation of assets in 1996) and the impact on the gas debt towards Gazprom, including Right bank debt and Left bank debt;
 - d. Repayment of debts related to gas consumption on the Right bank and Left bank by issuing treasury bills by the Government of the Republic of Moldova in 1997 (USD 140 million);
 - e. Repayment of the debt of Right bank with money paid by consumers, and by delivering goods and services within barter transactions, as well as by providing gas transit services;
- 2.1.2. Gas debt accumulated by Moldovagaz between 1998-2005, including:

- a. Correctness of assets evaluation, with which the Right bank participated in the creation of Moldovagaz via debt-to-equity swap;
- b. Correctness of debt repayment in exchange for 50% stake in Moldovagaz, transmitted to Gazprom;
- c. Repayment of the debt of Right bank with money paid by consumers, and by delivering goods and services within barter transactions, as well as by providing gas transit services;
- d. Repayment of debts related to gas consumption on the Right bank and Left bank by issuing treasury bills by the Government of the Republic of Moldova in year 2000 (USD 90 million);
- e. Legality and correctness of the assignment of the gas debt from Gazprom to Factoring Finance in 2005;

2.1.3 Legality and conformity with international practice of the distribution of natural gas transit revenues between the Right bank and the Left bank during the years 2000-2020.

2.1.4 Legality and conformity with international practice of the revaluation of Moldovagaz's assets in 2009, in the context of the provisions of §3 of Government Decision no. 1068/1998.

2.1.5 The quality of Moldovagaz's management and the impact on the accumulation of gas debt, including:

- a. Expenses not accepted in gas tariffs;
- b. Natural gas losses in transmission and distribution networks;
- c. Procurement of foreign currency.

2.1.6 Impact on the gas debt of exchange rate fluctuations between the time of accumulation of debts to Gazprom (in USD) and the time of their settlement by Moldovan debtors (in MDL).

2.1.7 Accrual of penalties and correctness of the repayment of principal debt and penalties during the years 1993-2021.

The legality and conformity with international practice of transactions and records are to be measured according to the applicable Moldovan and international accounting standards, good practices and the law applicable to the relevant agreements.

A preliminary list of documents and sources of information relevant to the above matters is attached to this Tender Book as Annex 1.

2.2 The results to be obtained from the provision of services

The Auditor shall have the obligation to gain sufficient understanding of the terms and conditions of the contractual relations between Moldovagaz and Gazprom for the supply of natural gas to the Republic of Moldova (the "**Contractual Relations**") by analyzing them and the relevant documents, and other relevant information provided by the Beneficiary.

The Auditor shall ensure that they obtain a full copy of all documents relating to the Contractual Relations, and if the Auditor considers that the terms and conditions verified are not sufficiently clear, they shall be obliged to request clarification from the Beneficiary.

On the basis of the aspects specified in the description of the services, the Auditor shall draw up an accurate financial and economic analysis of the Contractual Relations, as well as other factors that led to an increase of the gas debt of the Right bank.

The economic and financial analysis will have to provide conclusions on the amount actually owed by Moldovagaz for the gas delivered to the Right bank. These conclusions will have to be described as thoroughly as possible, so that the Beneficiary can understand the basis of Gazprom's claims, including its subsidiary Factoring Finance, and the real amount of the debt of the Right bank.

2.3 Deliverables

The Auditor shall, within 30 days of the signing of the contract, draw up a preliminary report including the conclusions drawn up in line with the object of the financial audit contract. The preliminary report shall be essentially complete and include the accurate economic and financial analysis outlined in Section 2.2 above.

The Government and Moldovagaz will analyze the preliminary report and, where appropriate, submit to the Auditor, the related observations within a maximum period of 10 business days from the receipt of the report. The Government may include observations from its legal advisors in its feedback to the preliminary report.

Within 15 days of receipt of the Government's and Moldovagaz's observations, the Auditor shall submit a final report.

The final report will be provided in two original copies, as well as in electronic format within a maximum of 5 business days after the submission of the observations by the Government and Moldovagaz. The delay by one party shall not constitute motive for the submission of the final report.

The final report and all relevant reports and documents prepared by the Auditor for the project will become the property of Public Property Agency.

The auditor may request an extension of the deadline for submitting the final report, taking into account the complexity of the services provided.

2.4 Developing the tender and attribution criteria

Eligibility criteria:

- International company or consortium of companies registered and licensed/certified in a European Union Member State, the UK, EFTA Member State, and the USA.
- More than 10 years' experience in auditing, financial investigations and legal analysis.

- Only international or regional head office of the companies can apply and lead the project. Local offices or representatives are not eligible under the current tender due to risks associated to conflict of interest.
- Conflict of interest avoidance requirements:
 - 1) No previous contractual relationships with Moldovagaz and Gazprom;
 - 2) No ownership (shareholders) connected to Gazprom or subsidiaries controlled by Gazprom.

The Tenderer will submit the following documents:

a) For key expert No. 1 – Project Manager

- Degree of undergraduate economic /financial or the equivalent studies – copy;
- Documents showing at least 10 years of experience in financial and economic analysis - copy;
- Documents showing involvement, as project manager, in at least 5 international projects at whose level (s) he carried out activities similar to those covered by the contract - copy.

b) For key expert No. 2 - Financial and Economic analyst

- Degree of undergraduate economic /financial or the equivalent studies – copy;
- Documents showing at least 5 years of experience in financial and economic analysis - copy;
- Document showing involvement, as Financial and Economic Analyst, in at least 5 international projects at whose level (s) he carried out activities similar to those covered by the contract - copy.

c) For Key Expert No. 3 – Legal expert

- Degree of undergraduate legal studies – copy;
- Documents showing at least 10 years of experience in large-scale legal investigations, due diligence, commercial arbitration and/or litigation or similar legal work requiring analysis of complex contractual relationships - copy;
- Documents showing involvement, as project manager or in a similarly leading role, in at least 5 international projects at whose level (s) he carried out activities similar to those covered by the contract – copy.

d) For key expert No. 4 - Legal analyst

- Degree of undergraduate legal studies – copy;
- Documents showing at least 5 years of experience in legal investigations, due diligence, commercial arbitration and/or litigation or similar legal work - copy;
- Document showing involvement, as Legal Analyst, in at least 5 international projects at whose level (s) he carried out activities similar to those covered by the contract - copy.

The Tenderer must demonstrate expertise in Moldovan accounting rules and in Moldovan and Russian law, either by way of the credentials of team members with such expertise, or by submitting documents showing that such expertise will be provided by a sub-contractor, see article e) below.

e) Other documents:

- CVs of any further Financial and Economic experts and analysts and/or legal experts and analysts the Tenderer proposes to involve in the performance of the contract;
- copy of the extract from the state registry of legal persons;
- copy of the auditor's certificate;
- the copy of the risk insurance certificate, covering the entire contract value;
- declaration of compliance with applicable law throughout the period of performance of the contract;
- List of clients affiliated with Gazprom, with whom the Tenderer has/had contractual relations within the last 5 years;
- statement on conflict of interest;
- the technical tender (the technical proposal will be submitted in such a way that it fully complies with the requirements set out in this Tender Book);
- financial tender (the Tenderer will prepare the financial proposal in such a way that it provides all the information required regarding the price and other financial and commercial conditions related to the subject-matter of the service contract);
- a list of at least 10 relevant contracts/projects carried out over the last 3 years by the Tenderer, in terms of financial and/or legal audit. The following information shall be included: Description of the contract/project, including the list of services covered by the contract/project, dates and beneficiaries, public or private entities;
- a description of the quality control and quality assurance procedures for the provision of audit services of the financial reports;
- if applicable, an agreement or letter of intent with a third party providing Moldovan accounting expertise and CVs of the expert(s) offered by that third party;
- if applicable, an agreement or letter of intent with a third party providing Moldovan and/or Russian legal expertise and CVs of the expert(s) offered by that third party.

The amount will be equivalent in lei (MDL) to 800,000 Euros, specified in the contract, and payment will be made in 30 working days from the receipt of the final report by the Beneficiary, based on the fiscal invoice and the act of providing the services.

If a lack of access to relevant documents, which the Tenderer shall make its best efforts to obtain, means that the work required to prepare the final report is significantly reduced compared to the work required to prepare the final report with access to all relevant documents, then the Tenderer and the Beneficiary will agree on a reasonable revised price, proportional to the amount of work actually performed by the Tenderer.

The Tenderer shall specify the period of validity of the tender which may not be less than 90 days from the date of opening. The validity of the tender shall be specified by the Tenderer in the tender form submitted. The tender and the required qualification documents are to be drawn up clearly, without corrections, with the number and date of exit.

The offer shall be submitted electronically through SIA RSAP Platform achizitii.md.

Tenders which do not meet the minimum technical requirements set out in this Tender Book shall be deemed not to comply with the specifications.

2.5 Evaluation Criteria

The Beneficiary's objectives for this tender process are to secure a high-quality provider of audit services that can demonstrate a clear understanding of the purpose of the services, whilst achieving excellent value for money.

The Tenderer will be evaluated under the following headings based on a percentage split between the quality aspects to tender and the pricing thereof:

Evaluation area	%
Fees	40 % ²
Experience in successfully managing similar audit mission, specifically in gas industry	30 %
Quality of team involved	30 %

2.6 Attributes and responsibilities of the Parties

The Tenderer is entitled, before submitting the offer, to document the accuracy and completeness of the documentation drawn up by the Beneficiary in order to take into consideration everything necessary to fulfill the conditions required by the audit service contract and to include in its financial proposal all costs and expenses of any nature relating to the performance of the services necessary for the completion of the contract.

The Tenderer undertakes to deliver a comprehensive financial and legal report in line with international legal requirements (including International Auditing Standards – ISA 805) and national requirements, which include all relevant information on the situation and the amount of debt of Moldovagaz to Gazprom and Factoring Finance.

The Beneficiary will provide to the Tenderer all the requested documents, which are in Beneficiary's possession, and shall facilitate access to information in possession of other relevant parties.

The Beneficiary and the Tenderer acknowledge that other relevant parties may not grant access to all relevant information, and that the above-mentioned financial and legal report therefore may not be complete in terms of information and/or the amount of debt.

The Tenderer (and any third parties engaged by the Tenderer) will sign a non-disclosure agreement to preserve the confidentiality of all the information to which they have access.

2.7 Place of provision of services

The place of business of the Tenderer and/or the Beneficiary. As necessary and in accordance with the instructions of the Beneficiary, the Tenderer shall make as many visits as necessary to the Beneficiary's premises or Moldovagaz's offices to examine the documents relating to the gas debt of Moldovagaz to Gazprom and Factoring Finance.

² According to the Law on Public Procurement, art. 26, p.12, c.

In accordance with the Beneficiary's instructions, certain documents will be made available to the Tenderer only at the registered office of the Beneficiary.

2.8 The necessary resources/ expertise required for the performance of the activities

The Tenderer undertakes to provide the personnel and logistics necessary for the fulfillment of the object of the contract at the requested standard of quality and in line with the International Auditing Standards – ISA 805.

The Tenderer's team shall comprise at least a Project Manager, three Financial and Economic Analysts, a Legal Expert and a Legal Analyst with the qualifications described in Section 2.4 above.

Note: The audit firm as well as the auditors must have no record of criminal offences for the last 3 years, as confirmed either by the competent authorities or by a certified statement of the company/auditors.

2.9 Transfer of intellectual property rights

All documents submitted by the Auditor to the Beneficiary shall be the exclusive property of the Beneficiary.

2.10 Duration of the contract

The contract shall take effect on the date of signature of the contract, being valid until December 31, 2022 with the possibility of extending the term, taking into account the complexity of the services.

Chapter. 3. Miscellaneous

The Tenderer may contact the designated representative of the Beneficiary for establishing the details concerning the auditing.

During the audit, the Tenderer may apply techniques such as investigation and analysis, (re)calculation, comparison, other verifications, observations, inspection of records and documents and obtaining of confirmations, other techniques required by the International Audit Status — ISA 805 necessary to obtain adequate and sufficient evidence from these procedures to be able to draw up the report.

Note: In the contract for the provision of financial audit services, the clause of unilateral termination by the Beneficiary shall be included if during the performance of the financial audit service, the Tenderer has been withdrawn and/or the Tenderer no longer has the status of financial auditor recognized by the competent body.

Annex 1. List of sources

The following list of sources will be made available to the Auditor at the outset of the audit. The list may be expanded with additional sources as the audit progresses, and to the extent necessary. The list may also be expanded upon suggestion by the Beneficiary.

1. Corporate documents of Gazsnabtransit and Moldovagaz

- Shareholder's agreement – Gazsnabtransit, dated 15 May 1995;
- Shareholder's agreement – Moldovagaz, dated 23 October 1998;
- Moldovagaz's charter, dated 25 May 1999, and later changes;
- Moldovagaz's charter, as amended, dated 30 July 2021;
- Regulations of Moldovagaz's Supervisory Board, Board of Directors and Audit Committee.

2. Moldovagaz's accounts

3. Agreements, contracts and protocols concerning Moldovagaz and/or the Republic of Moldova

- Contract No. 1-Gaz of 9 December 1993
- Other gas sales contracts concluded between 1994 and 2006, if any
- Contract No. 1GM-07-11 between Moldovagaz and Gazprom, dated 29 December 2006, with Addenda No. 1-19;
- Transit contract(s) between Gazprom and Moldovagaz
- Protocolul din 4 mai 2000 a intrevederii delegatiilor de stat a R. Moldova si regiunii transnistrene si Decizia Consiliului de administrație al Moldovagaz nr. 70 din 16.05.2000 privind repartizarea venitului din transit 50/50 intre malul drept si regiunea transnistreana (studiul despre fraudele de la Moldovagaz, punctul 7.1 si anexa 9,
 - https://www.watchdog.md/wp-content/uploads/2019/09/Studiu-Moldovagaz-09-2019_compressed-1-1.pdf)
- Protocols from the 15th and 16th sessions of the Intergovernmental Commission on economic cooperation between Moldova and Russia, dated 19 September 2019, and 2 October 2020 respectively;
- Protocol from the negotiations between the Republic of Moldova, Moldovagaz and Gazprom in St. Petersburg, dated 29 October 2021.
- Mutual settlements reconciliation statements (Акты сверки взаимных расчетов) between Gazprom and Moldovagaz concerning debt and payments.

4. Arbitration awards concerning Moldovagaz's debt to Gazprom and/or Factoring Finance

Decisions by the International Commercial Arbitration Court at the Russian Chamber of Commerce, dated as follows:

- 3 July 2008, 28 July 2008 and 22 December 2008(https://www.gazprom.ru/f/posts/59/948424/repiv_2008.doc)
- 11 June 2010;
- 27 September 2010;
- 31 October 2014;
- 30 October 2015;
- 2 September 2016;
- 25 August 2017;

- 24 August 2018;
- 5 August 2019;
- 17 September 2020;
- 28 September 2021.

5. Decisions by the Government and/or Parliament of the Republic of Moldova

- Decision No. 749 of 7 October 1994 by the Government of Moldova *"On the establishment of a Moldovan-Russian Joint Stock Company for the supply of natural gas to Moldova and its transit through third countries"*;
- Decision No. 305 of 6 December 1994 by the Parliament of Moldova *"On the Government's proposal to establish a Moldovan-Russian Joint-Stock Company for the supply of natural gas to Moldova and its transit to third countries "*;
- Decision No. 302 of 12 May 1995 by the Government of Moldova *"On the establishment of the Joint Moldovan-Russian Closed Stock Company "Gazsnabtransit"*;
- Decision No. 611 of 27 October 1995 by the Parliament of Moldova *"On the Individual project of reorganizing and privatizing enterprises of the state concern "Moldova-Gaz""*;
- Decision No. 30 of 16 January 1996 by the Government of Moldova *"On the revaluation of basic assets"*.
- Decision No. 1556 of 2 April 1998 by the Parliament of Moldova *"On the reorganization and privatization of the gas industry in the Republic of Moldova"*;
- Decision No. 1068 of 21 October 1998 by the Government of Moldova *"On the reorganization and privatization of the gas complex in Moldova"*;
- Decision No. 275 of 21 March 1997 by the Government of Moldova *"On the procedure for issuing foreign government bonds in order to settle parts of the stock company concern "Moldova-gaz"'s debts towards Russian stock company "Gazprom"*.
- Decision No. 819 of 14 August 2000 by the Government of Moldova *"On the assumption by the Ministry of Finance of Stock Company "Moldova-gaz"'s debt towards Open Stock Company "Gazprom" (Russia)"*.

6. Technical data

Gas metering data for entry and exit to Moldova, and consumption on the Right bank, if available

7. Public sources

- Financial reports of Gazprom, Inter RAO UES, and Metalloinvest
- Impunity and renter understanding in the energy sector of the country, Policy Paper, IDIS "Viitorul", April 2017
- Moldova vs Gazprom: who actually has debts?, Watchdog.MD Community, October 2020
- Moldovagaz – 20 years of massive frauds under the protection of shareholders and state institutions [*Moldovagaz – 20 ani de fraude massive sub protecția acționarilor și instituțiilor de stat*], Watchdog.MD Community, September 2019

The head of the working group

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