

# **Energy Community**

**Tender documents and conditions for**

**Study on the final development and establishment of a Coordinated  
Congestion Management in the SEE Region**

**Vienna, 06 October 2008**

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## A. Introduction

The Energy Community is an international organisation created by the Treaty establishing the Energy Community of 2005. The Energy Community has legal personality as recognized in the Headquarters Agreement with the Republic of Austria of 2007. Its Parties are the European Community on the one side and Albania, Bosnia & Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and UNMIK on the other side. The Treaty creates institutions such as the Ministerial Council, the Permanent High Level Group, the Regulatory Board (hereinafter “ECRB”) and the Secretariat (hereinafter “ECS”).

The ECS, in accordance with Article 67 of the Energy Community Treaty, supports the Parties and the other institutions. It is responsible for executing the budget of the Energy Community (approved by the Ministerial Council) and will act as the project coordinator towards the consultant conducting the project.

## B. Applicable law

According to Article 66 of the Procedural Act of the Ministerial Council of the Energy Community on Procedures for Establishment and Implementation of Budget, Auditing and Inspection, procurement shall be done in accordance with the relevant provisions of the Austrian Federal Public Procurement Law (*Bundesvergabegesetz 2006*, Federal Law Gazette I No. 17/2006) in its most recent version (“hereinafter “the Law”). The Law, which implements EU public procurement law, is available on the Internet (in German) at [www.bva.gv.at](http://www.bva.gv.at).

The procedure takes place below the threshold of € 206.000 triggering the applicability of the European Community Directives.<sup>1</sup>

## C. Award procedure

Based on a prior estimation of the value, the ECS decided to award the contract through an **open procedure** (§ 25(2) of the Law).

The procedure is structured as follows:

On 6 October and 8 October 2008 respectively, the call for tenders has been published in the online and print edition of the “Wiener Zeitung” as the official publication organ in Austria. By this publication, interested undertakings are invited to download the present tender documents and submit their tenders by **12 November 2008 (not later than 18.00 hrs)**. Tenders must be submitted by regular mail (no faxes or electronic mail) The risk of timely submission is with the bidders. Tenders arriving at the ECS after 12 November 2008 at 18.00 hrs will not be considered.

The opening of the tenders<sup>2</sup> will take place on **13 November 2008 at 13.00 a.m.** at the **premises of the ECS, Am Hof 6, 1010 Vienna**. The bidders are entitled to be present at the opening. Upon evaluation of the tenders by the ECS and the eventual elimination of tenders not fulfilling the criteria laid down by the law,<sup>3</sup> the ECS will select the successful bid based on the award criteria. The ECS will notify the remaining bidders by electronic mails by **17 November 2008**. The contract shall be awarded not later than **1 December 2008**. The contract will be awarded only to one bidder/one bidding consortium.

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<sup>1</sup> § 12 of the Law.

<sup>2</sup> § 118(1) of the Law.

<sup>3</sup> § 129 of the Law.

## D. Contracting Authority

The contracting authority is the

Energy Community  
Am Hof 4 Level 6  
A-1010 Wien

Given the Energy Community's legal nature as an international organization and in line with Article 5 of the Headquarters Agreement with the Republic of Austria, the present public procurement procedure is not subject to review by the Austrian authorities.

## E. Contact Details

The tenders and all related documents shall be submitted in paper in two copies by mail or courier to the Energy Community Secretariat at the address given above. Submissions shall be made in a closed and sealed envelope bearing the following readable reference: "ECRB CAO Establishment Study 2008" and the remark "Do not open without explicit authorisation".

Within the ECS, the project manager and contact person for all submissions, requests and additional information is

Mr. Roland Matous  
[roland.matous@energy-community.org](mailto:roland.matous@energy-community.org)  
Fax: 0043 1 535 2222 11

Any inquiries and requests concerning the substance of these tender documents shall be sent by email or fax in English to the ECS and will be answered without delay by email. Inquiries and requests shall be made in due time and worded so as to not reveal the identity of the inquirer.

## F. Content and Format of Tenders

All documents submitted during the public procurement procedure, including the bids, the annexes, declarations etc. as well as the oral communication throughout the whole procedure must be in English only.

The bidders are required to submit a fully elaborated tender based on the present tender documents including the tender specifications. The content and format of tenders shall comply with the stipulations of the Law.

The tender shall contain in particular

- Name of the bidder, seat and address;<sup>4</sup>
- Duly authorized contact person(s)<sup>5</sup> together with telephone and fax number and email address; (in accordance with template in Annex 3)
- Detailed description on how to provide the services and deliverables required by the tender specifications;<sup>6</sup>
- A detailed time schedule for the deliverables to be provided in line with the tender specifications;
- All-inclusive price<sup>7</sup> in Euro, based on a detailed and commented break down for each cost position for services and deliverables necessary to fulfil the requirements of the tender specifications (see Annex 4);<sup>8,9</sup>
- Evidence for the authorization, capability and reliability in form of
  - Recent extract from commercial register in the country of origin not older than one month, if applicable;
  - Documents providing evidence for the authorization to provide the services requested in the country of origin, if applicable;
  - Affirmation that the bidder or its management and board members have not been convicted for acquisitive crime or any other offense of the kind mentioned in § 68(1) No 1, 4, 5, 6 and 7 of the Law;
  - Affirmation that the bidding undertaking is not subject to pending insolvency or is in the process of or has already been wound up
- Evidence for specific experience gained by the bidder in the field covered by the tender specifications and related fields;<sup>10</sup>
- List of name of the persons to be entrusted with the preparation of the study as well as evidence for their qualification, including their curricula vitae;
- Declaration of the bidder assuring the completeness of his/her tender;
- List of annexes;
- Date and legally valid signature.

Alternative<sup>11</sup> and modification bids<sup>12</sup> are not permitted.

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<sup>4</sup> Any change in address shall be disclosed immediately to the ECS.

<sup>5</sup> The contact persons must be authorized to represent the bidder, to negotiate and to conclude the contract on his/her behalf. Authorization shall be duly evidenced, e.g. by a copy of the register or certificate of authority.

<sup>6</sup> The most relevant elements shall be highlighted.

<sup>7</sup> VAT listed separately.

<sup>8</sup> The detailed price calculation shall include the man-hours allocated the hourly rates of the staff used, as well as on other expenses. Costs for business trips foreseen shall also indicate any daily allowances to be paid.

<sup>9</sup> Errors in the calculation shall not lead to the exclusion of the tender.

<sup>10</sup> The evidence shall be made in the form of actual list of references including, where applicable, the value of the respective projects, the delivery dates as well as the names of clients. For consortia, the proportion of the total project which was conducted by the bidder shall be indicated.

<sup>11</sup> § 81 of the Law.

## G. Contract Award Criteria

The contract will be awarded to the **most economically advantageous tender**.<sup>13</sup> In applying the award criteria as defined below, the Energy Community will award the contract to the tender offering the most appropriate and economic solution of the highest quality to the task as specified in the tender specifications.

The award criteria (§ 2 No 20 lit. d) aa) of the Law) for selecting the most economically advantageous tender are the following (in order of their relevance):

Contract award criteria	Weighting in %
<b>Quality</b>	<b>70%</b>
- Compliance with the tender specifications	30%
- Specific experience of the bidder	30%
- Qualification of the bidder's employees	10%
<b>Price</b>	<b>30%</b>

## H. Tender specifications

The study to be developed shall comply with the attached service specifications forming an integral part of the tender documents (see Annex 2).

## I. Budget envisaged

The budget foreseen for this study is 120.000 €

## J. Other contractual arrangements

### **Subject-matter**

The bidder to which the contract will be awarded (hereinafter "the consultant") provides the ECS consulting services in the form of the preparation of a study on the Final development and establishment of a Coordinated Congestion Management in the SEE Region. The bidder will cooperate with the SEE TSOs under the umbrella of SETSO TF in order to fulfill all objectives described within Annex 2.

The consultant undertakes to provide the services as described in the attached service specifications.

The consultant shall perform its tasks under the operational guidance of the ECS throughout the whole duration of the contract.

<sup>12</sup> § 82 of the Law.

<sup>13</sup> § 100 of the Law.

## **Representation of the ECS**

The Energy Community shall be represented solely by the Director of the Secretariat in all matters related to the contract.

## **Quality of services**

The consultant undertakes to provide the services required on the highest level of professionalism, relying only on staff possessing the qualification and experience necessary to fulfil the objectives of the contract.

## **Deliverables**

The Consultant shall provide the following deliverables:

### (a) Inception Report

The Consultant shall provide an inception report one month after the signature of the Contract. Within this report the consultant will describe his working concept and provide a draft *time schedule* for performing all necessary tasks including all relevant milestones.

### (b) Final Report

The Consultant shall provide a final report describing all tasks performed and the progress reached during the project 9 month after the signature of the Contract. The Consultant will provide within this report his findings concerning the objectives described within Annex 2.

### (c) Relevant Documents

The Consultant will submit all relevant documents elaborated during the project (e.g. Business Plan, presentations, etc.)

Draft and final reports in English (the text source in MS Word and source of all figures and tables produced accordingly); intermediate discussions and progress reporting.

All deliverables shall require acceptance by the Director of the ECS in accordance with the service specifications.

In case the consultant does not comply with the accepted time frame, the ECS may unilaterally reduce the overall price by 10% for each beginning week of delay.

## **Place of delivery**

Place of delivery is the seat of the Energy Community Secretariat, Am Hof 4, 1010 Vienna, Austria unless otherwise agreed by the parties in writing. Upon prior information of the consultant by the ECS, meetings and presentations may take place at another location as determined by ECS.

## ***Language regime***

The deliverables as well as all communication – both in writing and orally - shall be made in English only.

## ***Information requirements***

The consultant will report to the Energy Community periodically on the status of work and on all developments relevant for the accomplishment of the project, and will coordinate the work with the Energy Community.

The Energy Community may request the consultant to report on the performance of the contract at any time. The consultant shall comply with such request without delay.

The consultant shall inform the Energy Community immediately and on his/her own initiative of any problems occurring in connection with the performance of the contract.

Any reporting or information mentioned in this provision shall be at the sole cost of the consultant.

## ***Staff of the consultant***

The consultant shall inform the Energy Community of any change in staff assigned to the project. Staff not satisfying the professional standards necessary for the execution of the tasks assigned to him/her provision of the services as agreed shall be replaced. The consultant shall replace staff without delay at the reasoned request of the ECS. The consultant shall be responsible for any delay in the implementation of the contract due to replacement of staff in accordance with this provision.

## ***Labour law standards***

The consultant shall comply with internationally recognized labour law standards as defined in the framework of the ILO, in particular Conventions No. 29, 87, 94, 95, 98, 100, 105, 111, 138, 182 and 183.<sup>14</sup>

## ***Further responsibilities of the consultant***

The consultant shall be solely responsible for the compliance with all legal obligations required for the performance of the services under the contract, such as the possession and the acquisition of licenses and authorizations, the existence of insurances, the grant of visas, etc.

## ***General terms and conditions***

General terms and conditions of the consultant shall not apply to the contract.

## ***Subcontracting***

Subcontracting of the services to be provided in whole or in parts shall be permitted up to 20% of the overall price and only upon prior written consent by the Energy Community.

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<sup>14</sup> § 84(1) of the Law.

## ***Payment***

Payment of the price agreed shall be made in two stages, namely 30% within two weeks following the acceptance by the Energy Community of the Inception Report and 70% within two weeks following the acceptance by the Director of Final Report and the delivery of all relevant documents. The acceptance by the Director shall depend on the full achievement of the tasks outlined within the tender specification.

Payment shall be made through bank transfers upon an invoice by the consultant.

The consultant shall not be authorized to incur any additional expenses to be reimbursed by the Energy Community without its prior written consent. When requesting such reimbursement, the consultant shall provide the Energy Community with a justification note and submit sufficient evidence after the expenses have been incurred.

## ***Ownership and intellectual property rights***

Ownership rights and copyright or other intellectual property rights in all material produced or purchased by the consultant in the performance of the contract shall rest with the Energy Community alone.

The consultant shall ensure that the deliverables under the contract are free from any rights of or obligations towards third parties or otherwise be liable for compensation.

To the extent this should be necessary, the consultant irrevocably assigns to the Energy Community all right and title and interest in and to all inventions and discoveries and all other work product of any nature, whether or not copyrightable, made, conceived, authored or acquired by the consultant in the course of performing the services subject to the contract, and all tangible embodiments of the foregoing, all patents, copyrights, trademarks, trade secrets and all other intellectual property rights and all ownership rights therein.

The Energy Community may use, publish, assign, transfer or make available such rights as it sees fit without geographical or other limitations.

## ***Liability and termination***

The consultant shall be liable for any breaching of or defaulting in the performance of this contract, including but not limited to cases of non-performance, late performance or faulty performance. The consultant shall be liable for any action or forbearance of his representatives, employees or other persons entrusted with tasks in performance of the contract or at the occasion of performance of the contract. Members of a consultancy consortium shall be subject to joint liability.

The Energy Community shall be liable for any breaching of or defaulting in the performance of this contract only in case of gross negligence or intention.

If a party fails to remedy the breach or default which it is liable for within five working days, the other party shall have the right to terminate the contract immediately after having notified the former party in writing of the breach or default. This right shall be without prejudice to the right to compensation and to recover payments already made.

Notwithstanding the above, the Energy Community may terminate the contract at any time upon 14 days' written notice. In the event of such termination the consultant shall be paid for any portion of the services that have been performed prior to the termination.

The consultant agrees at its sole expense to defend the Energy Community against and to indemnify Energy Community from any claims by a third party arising from the consultant's performance of services. In case of damages sustained, the consultant shall be liable to compensation.

### ***Assignment of claims***

No contractual party is entitled to assign any claims arising from the contract to a third party without a prior written consent of the other party.

### ***Offset***

The Energy Community may offset its payment obligations towards the consultant against any claims it might have against the consultant.

### ***Confidentiality***

The consultant shall not disclose to third parties without prior written consent any information on the study in whole or in parts. The consultant shall not disclose to third parties without prior written consent any information of non-public nature obtained from Energy Community or came across in the course of performing the services under the contract.

The confidentiality obligation shall continue to apply after the completion of the contract.

Additional legal commitments regarding data protection and secrecy remain unaffected.

### ***Use of the name of the Energy Community and its institutions***

The consultant shall not use the name of the Energy Community, Energy Community Secretariat or Energy Community Regulatory Board in any commercial advertisement or other promotional material.

### ***Applicable law and jurisdiction***

The contract shall be governed by its terms and conditions and, subsidiarily, by generally recognized principles of civil law.

Any disputes under this contract shall be settled exclusively by a tribunal composed of a single arbitrator appointed by the Secretary General of the Permanent Court of Arbitration in the Hague, in accordance with the relevant Optional Rules for Arbitration involving international organizations and private parties.

### ***Severability***

An invalid term or provision in the contract shall not affect the validity of the remaining contract. If any term or provision is deemed invalid by the arbitrator, the parties agree to renegotiate such provision in good faith.

### ***Modification of the contract***

The contract, including the annex thereto, constitutes the sole agreement of the parties. The contract may not be amended other than in writing and duly signed by both parties.

## **K. Bidding consortia**

The formation of bidding consortia is permitted. A consortium shall nominate one authorised representative in the tender and state that its members will, in case of being awarded the contract, carry out the project bearing joint liability. The tender shall clearly specify the tasks to be performed by the individual members of the consortium. One undertaking may only participate in one consortium.

## **L. Declaration by bidders**

By submitting a tender, the bidder declares that he/she is fully aware of the content of the present tender documents including the service specifications for the study, that he/she is authorized to prepare the study tendered, that he/she offers to prepare the study tendered at the conditions laid down in the tender documents including the service specifications, and at the price offered, and that he/she will be bound by his/her offer after the expiry of the deadline for submission of tenders until the expiry of the deadline for contract awarding, i.e. 1 December 2008.

By submitting a tender, the bidder further declares

- a) to accept Parts I and II of the Austrian Procurement Law as the legal basis for the present procurement procedure;
- b) to not make any arrangements regarding pricing or other informal agreements with other service providers contravening statutory provisions, conventions, or general principles of competition law, and that he/she is aware that such a contravention results in an exclusion from the tender procedure;
- c) that he/she has the economical, financial and technical ability to prepare the study and deliver the results in accordance with these tender documents.

## **M. Confidentiality during the procurement procedure**

All commercial and business secrets as well as other non-public information and data relating to or submitted by the companies involved in the tender as well as the Contracting Authority shall be handled strictly confidential by the companies addressed and the bidders during and after the tender. Additional legal commitments remain unaffected.

## **N. Final provisions**

The Energy Community reserves the right to correct possible obvious mistakes in the tender documents.

Costs incurred by the undertakings notified by the ECS and by bidders in the course of the present procurement procedure, including costs related to preparatory work, documentation and certificates, translations, participation in negotiations etc. will not be reimbursed.

## ANNEX 1

### Key data sheet

Subject of the tender:	Study on the final development and establishment of a Coordinated Congestion Management in the SEE Region
Contracting entity:	Energy Community A-1010 Vienna, Am Hof 4, Austria
Type of procedure:	Open procedure according to § 25(2) of the Austrian Federal Public Procurement Law
Submission of tenders:	12 November 2008
Latest date for contract awarding:	1 December 2008
Contract award criteria:	The contract is awarded to the most economically advantageous tender

## **ANNEX 2**

### Service specifications

#### **Study on the final development and establishment of a Coordinated Congestion Management in the SEE Region**

##### **1. Objectives**

The objective of the further consultancy support is to develop and analyse more into details proposed flow-based capacity allocation approach (MF). The final goal is to prove that the proposed MF-approach can work in the real-run operation (2010).

##### **2. Background**

The project of investigating flow-based coordinated auctions in South-East-Europe (SEE) on the basis of a dry-run has turned out to be a key-driver regarding further development of market based cross-border energy exchange in the region.

The dry-run flow-based coordinated auction process was mainly a project developed by the TSOs of the SEE region and TSOs from the neighbouring countries (Austria, Hungary and Italy). TSOs have started the project within the SETSO subgroup NACMPF and elaborated the necessary technical, economic and organisational aspects.

Verbund-APG has developed DrCAT simulation software for the dry-run amongst SEE TSOs during the year 2006, in order to test the concept of a load-flow based coordinated allocation system in the SEE area. At the starting phase, SEE TSOs acted as traders during the simulation of monthly flow-based coordinated auctions by submitting bids to the Auction Office, i.e. the electronic auction portal (DrCAT). In the following stage of the SEE dry-run the starting structure has been changed. Traders and market participants have been invited to be more actively involved into the dry-run process. Especially with the participation of the traders in the dry-run, this project added value to the market development in the SEE region, in terms of preparing the necessary preconditions for the establishment of the Auction Office for 2010.

For the 2008 dry-run EKC developed the software for the processing of the technical data for CA by using MaxFlow approach: Merging tool for UCTE network models, and PTDF/MF calculation tool. This is done with the support of USAID.

The dry-run in SEE region was supported by the consultants Consentec (Germany) and APCS (Austria) which have been financed by KfW (Germany).

By the end of March 2008 the contract of the Consultants with KfW have ended although certain technical, commercial and organisational details are not finalised yet.

Additionally, because of the latest development and experience, additional support is deemed as necessary, in particular related to support in developing the entire business process, either for the entire – to be defined – SEE region or for a sub region as an alternative if no joint solution can be found.

### **3. Task Description**

Services requested from SETSO TF that will be provided by Consultants are described below.

#### **a. Commercial Tasks**

##### *aa. Distribution of the auction revenues*

SEE TSOs have proposed and analysed various mathematical keys for the distribution of auction revenues from flow-based coordinated auctions (using BC – i.e border capacity approach). It has turned out difficult to reach an agreement about the first-best possible solution (key) since the results (i.e. auction income share) calculated for a single TSO, can vary largely depending on the key applied. The distribution keys for auction revenues were divided into two groups:

- system-usage based keys (depending on the allocated power flows);
- price-signal based keys (depending on the economical value of congestion, i.e location and shadow price of congested lines).

The main improvements that have to be done regarding the distribution of the auction revenues:

- The list of the possible auction revenue distribution keys have to be modified taking into account complexity of the new capacity calculation approach as well as the main difference between BC-approach (border-wise) and MF-approach (line-wise). The initial list of the proposed keys has to be also extended using the features of MF-approach.
- It is necessary to further investigate proposed keys and to choose the proper weighting factors for the merging of few keys (tailor the initial revenue distribution, i.e combining system-usage and price-signal based keys).

##### *bb. Business Plan development*

The main goal is consultancy support of SETSO TF and NACMPF SG experts in the development of a common business plan.

##### *cc. Accounting and Risk Management issues*

Analysis of accounting and risk management issues for the CAO.

#### **b. Technical Tasks**

##### *aa. Comparison between Flow-based (MF) and NTC-based approach*

The aim of this scope is to compare the results of bilateral NTC based auctions (real historical data from yearly, monthly and daily level) with the results of flow-based auctions in terms of allocated capacity (if the MF-approach will restrict trading in the region), resulting network utilisation and financial outcomes.

It will also be necessary to perform network security analysis and feasibility test (pros and cons) with the so called MF-approach.

##### *bb. Adaptation to political/organizational decisions*

Adaptation to political/organisational decisions (e.g. geographical scope of SEE region, division into decentralised and centralised process steps).

*cc. Analysis of MF-approach technical parameter calculation concept*

Finalisation and further analysis of the technical parameter calculation concept (MF-approach).

Sensitive aspects which need further analysis:

- the UOF calculation based on estimation of min-max exchanges between CA-non CA and non CA modelled countries.
- analysis of dry run experience and suggestion of methodical improvements (especially regarding negative values of AMF).
- PTDF dependence on topology and generation distribution (intraday PTDFs recalculation, identification of elements whose disconnection imposes recalculation).
- the influence of generation in specific network model and worst-case hypotheses for different critical branches.
- operative post-event measures (redispatch, topology changes, etc.).
- feasibility of coordinated flow-based auctions at the different time-horizons (yearly, monthly and daily level).

### **c. Organizational Tasks**

With this WP it will be necessary to support decision-making among TSOs (participation to selected meetings of SETSO SG and/or SETSO TF). Additional tasks will be to facilitate coordination with Regulators and Market Participants:

- active participation to joint workshops of TSOs and Market Participants
- introduction to dry run updates or features of foreseen operational coordinated auctions features
- evaluation of comments/documents from Market Participants
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### **4. Project duration**

The time necessary for finalising the above mentioned task is estimated between 6 – 8 month, starting with the signature of the contract with the consultants.

## ANNEX 3 - Bidder Form

<b>Project Coordinator:</b>	<b>Energy Community Secretariat</b>
<b>Subject of Tender:</b>	Study on the Identification of Legal Obstacles to the Establishment and Operation of and the Participation in a Coordinated Auction Office in South Eastern Europe

<b>Bidder:</b>	
Company, Commercial Registry Number:	
Address:	
Telephone and Fax Number:	
UID-Number:	
<b><i>Person authorized for delivery:</i></b>	

## ANNEX 4 – Cover Sheet Pricing

	<b>Net price refers to:</b>	<b>Net price in EURO (excl. VAT)</b>
<b>Enclosure 1</b>		