

Prequalification Document

**for the Prequalification of Tenderers for the Supply of
Gas to Energocom**

June 2023



SECTION I: Instructions to Applicants

1. Scope of Prequalification
2. Source of Funds
3. Prohibited Practices
4. Eligible Applicants
5. Eligible Gas
6. Prequalification Document
7. Clarification of Prequalification Document
8. Amendment of Prequalification Document
9. Cost of Prequalification
10. Language of Prequalification
11. Documents Comprising the Application
12. Format and Signing of Applications
13. Submission, Sealing and Marking of Application
14. Initial deadline for Submission of Applications
15. Late application processing
16. Confidentiality
17. Clarification of Applications
18. Evaluation of Applications
19. Client's Right to Accept Any Application, and to Reject Any or All Applications
20. Notification of the Outcome of Prequalification
21. Invitation to Tender

SECTION II: Application Forms

1. Letter of Application
2. Covenant of Integrity

**INVITATION FOR PREQUALIFICATION
for the delivery of natural gas**

Location:	Republic of Moldova
Name of Project:	Moldova Security Supply
Business Sector:	Natural Resources
Project Number:	53417
Funding Source:	EBRD
Contract Type:	Commodities (Natural Gas)
Notice Type:	Invitation for Prequalification
Issue Date:	June 27, 2023
Closing Date:	July 13, 2023, 17:00 EET

This Invitation for Prequalification follows the General Procurement Notice for this project which was published on the EBRD website, Project Procurement Notices (<http://www.ebrd.com/work-with-us/procurement/notices.html>) on 11 March 2022 and updated on 27 June 2023.

Applicants who have been prequalified in the exercises already carried out within this project and have EFET type contracts signed with S.A Energocom, agreed with EBRD, will keep their prequalified status and do not have to submit their applications again.

The Government of Moldova has signed a loan agreement with the European Bank for Reconstruction and Development (the Bank) and intends using part of the proceeds towards the cost of natural gas. Extension of the project by an additional amount of up to EUR 200 million (to be financed by the Bank and other potential donors) is currently under consideration by the Bank. The procurement process will be undertaken in accordance with the EBRD's Procurement Policies and Rules (PP&Rs).

Prequalification and tendering for contracts to be financed with the proceeds of a loan from the Bank is open to firms and joint ventures of firms from any country.

Upon request, prequalification documents will be dispatched electronically, on a free of charge basis, or may be downloaded from the internet using the following link <https://energocom.md/?p=2221>

The prequalification documents must be duly completed and submitted electronically to the e-mail address below on or before: **13 July 2023, 17:00 EET**.

Interested firms or individuals may obtain further information from the following office: tenders@energocom.md.

No interested party may proceed to the next steps in the procedure purchase of natural gas if it is not included in the list of pre-qualified suppliers.

Acting General Director

Victor BÎNZARI

SECTION I

INSTRUCTIONS TO APPLICANTS¹

1. Scope of Prequalification

- 1.1 Energoecom (hereafter referred to as “the Client” or “the Borrower”) hereby issues this Prequalification Document for the procurement of natural gas. The Client intends prequalifying firms and joint ventures for the contract(s).

2. Source of Funds

- 2.1 Government of Moldova has signed a loan agreement for financing (hereinafter called “funds”) from the European Bank for Reconstruction and Development (hereinafter called the “Bank”) toward the cost of the Project. The Client intends to use the funds to finance eligible payments under the contract(s) for which this Prequalification Document is issued.

Extension of the project by an additional amount of up to EUR 200 million (to be financed by the Bank and other potential donors) is currently under consideration by the Bank.

- 2.2 Payments by the Bank will be made only at the request of the Borrower and upon approval by the Bank in accordance with the terms and conditions of the financing agreement between the Borrower and the Bank (hereinafter called the “Loan Agreement”) and will be subject in all respects to the terms and conditions of that Loan Agreement. No party other than the Borrower shall derive any rights from the Loan Agreement or have any claim to the funds. The proceeds of the Bank’s loan will not be used for payments to persons or entities, or for any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

3. Prohibited Practices

- 3.1 The Bank requires that Borrowers (including beneficiaries of Bank’s loans or grants administered by the Bank), as well as Participants, suppliers, sub-suppliers, contractors, sub-contractors, concessionaires, consultants and sub-consultants under Bank financed contracts, observe the highest standard of transparency and integrity during the procurement, execution and implementation of such contracts.
- 3.2 The Borrower (including beneficiaries of Bank’s loans or grants administered by the Bank), as well as Participants, suppliers, sub-suppliers, contractors, sub-contractors, concessionaires, consultants, or sub-consultants, shall not, and shall not authorise or permit any of their officers, directors, authorised employees, affiliates, agents or representatives to, engage in Prohibited Practices with respect to the procurement, award, or execution of the Contract.
- 3.3 The Bank may declare any contract subsequently awarded to be ineligible for financing, and the Bank may take any of the Enforcement Actions and Disclosure

¹ The Instructions to Applicants hereinafter referred to as “ITA”.

Actions set out in the Enforcement Policy and Procedures, if in accordance with the Enforcement Policy and Procedures the Bank determines that:

(a) the Borrower (including beneficiaries of Bank's loans or grants administered by the Bank), Participants, suppliers, sub-suppliers, contractors, sub-contractors, concessionaires, consultants, or sub-consultants have engaged in Prohibited Practices with respect to the procurement, award, or execution of the Contract;

(b) a Third Party Finding has sufficient relevance and seriousness for the Bank to warrant Enforcement Actions and Disclosure Actions against entities or individuals;

3.4. In accordance with the Enforcement Policy and Procedures, the Bank may enforce debarments from Mutual Enforcement Institutions by declaring entities or individuals ineligible, either indefinitely or for a stated period of time, to be awarded a Bank-financed contract.

3.5. In contracts financed by the Bank, the Bank requires a provision mandating Participants, suppliers, sub-suppliers, contractors, sub-contractors, concessionaires, consultants, and sub-consultants to permit the Bank or persons appointed by the Bank to inspect the Site and/or to inspect their assets, books, accounts and records relating to the Contract and to have such assets, books, accounts and records audited by auditors appointed by the Bank if required by the Bank.

The Participants, suppliers, sub-suppliers, contractors, sub-contractors, concessionaires, consultants, and sub-consultants shall require their officers, directors, employees or agents with knowledge of the Contract to respond to questions from the Bank and to provide to the Bank any information or documents necessary for (i) the investigation of allegations of Prohibited Practices, or (ii) the Bank's monitoring and evaluation of the Contract and to enable the Bank to examine and address any project related complaints made under the Bank's Project Complaint Mechanism.

The Participants, suppliers, sub-suppliers, contractors, sub-contractors, concessionaires, consultants, and sub-consultants shall maintain all books, documents and records related to the Contract in accordance with applicable law but in any case for at least six years from the date of substantial performance of the Contract.

3.6. Prohibited Practices and other terms in this provision have the meaning defined in the Enforcement Policy and Procedures or in the Prequalification Document. The applicable version of the Enforcement Policy and Procedures is the 2017 edition.

4. Eligible Applicants

4.1 An applicant may be a private entity, government-owned entity or any combination of such entities in the form of a joint venture, consortium, or association (JVCA).

In the case of a JVCA:

(a) the application shall be signed by all JVCA partners; and

- (b) the JVCA shall nominate a Representative who shall have the authority to conduct all businesses for and on behalf of any and all the partners of the JVCA during the Prequalification process.
- 4.2 In accordance with the Bank's *Procurement Policies and Rules* an applicant from any country may apply for Prequalification. An applicant shall be deemed to have the nationality of a country if the applicant is a citizen of, or is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed sub-suppliers for any part of the contract(s).
- 4.3 An applicant shall not have a conflict of interest. All applicants found to have a conflict of interest shall be disqualified. An applicant may be considered to have a conflict of interest with one or more parties in this Prequalification process, if:
- (a) they have controlling partners in common; or
 - (b) they receive or have received any direct or indirect subsidy from any of them;
or
 - (c) they have the same legal representative for purposes of this prequalification;
or
 - (d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the prequalification of another applicant, or influence the decisions of the Client regarding this Prequalification process; or
 - (e) an applicant, its affiliates or parent organisation has participated in the design stages of the Project. In which case that applicant, its affiliates or parent organisation shall not be eligible to participate in this prequalification process unless it can be demonstrated that such participation would not constitute a conflict of interest. Such determination must be made prior to the submission of a prequalification application;
- 4.4 Notwithstanding the provisions of ITA 4.3 above, a firm may apply for prequalification both individually and as part of a JVCA. However, a prequalified firm or a member of a prequalified JVCA may participate as a tenderer in only one tender, either individually or as a partner in a JVCA, for a contract. Submission or participation by a tenderer in more than one tender for a contract will result in the disqualification of all tenders for that contract in which the party is involved.
- 4.5 An applicant shall be disqualified if the applicant, an affiliate of the applicant, a party constituting the applicant or an affiliate of a party constituting the applicant, is under a declaration of ineligibility by the Bank in accordance with ITA 3, at the date of the initial deadline for application submission or thereafter.
- 4.6 No affiliate of the Client shall be eligible to participate in a prequalification in any capacity whatsoever unless it can be demonstrated that there is not a significant degree of common ownership, influence or control amongst the affiliate and the Client.
- 4.7 Applicants shall provide such evidence of their eligibility satisfactory to the Client, as the Client may reasonably request.
- 4.8 Firms shall be excluded if:

- (a) it has been convicted of an intentional crime, or an affiliate of the firm has been convicted of an intentional crime, and any such criminal conviction is final in the relevant national jurisdiction, with no more than ten years having lapsed between the date on which the criminal conviction became final and the date of eligible assessment, and the Bank concludes that the judicial proceedings provided for adequate due process acceptable to the Bank;
- (b) it is prohibited under relevant national law from entering into commercial relations with the Client, provided the prohibition relates to a Prohibited Practice, which had been determined through judicial or administrative proceedings with adequate due process acceptable to the Bank;
- (c) any import of goods from the Participant's country or any payments to persons or entities in that country are prohibited by sanctions imposed by a resolution of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations;

Applicants who have been prequalified in the exercises already carried out within this project and have EFET type contracts signed with S.A Energocom, agreed with EBRD, will keep their prequalified status and do not have to submit their applications again.

5. Eligible Gas

- 5.1 All gas to be supplied under the contract(s) and financed by the Bank's loan shall have as its country of origin an eligible country of the Bank, in accordance with the Bank's *Procurement Policies and Rules*. The term "country of origin" for the goods means the country where the gas has been produced or processed. The nationality of the firm that has produced the gas shall not determine their origin.

6. Prequalification Document

- 6.1 The Prequalification Document which includes all the Sections indicated below should be read in conjunction with any addenda issued in accordance with ITA 8:
 - Section I: Instruction to Applicants
 - Section II: Application Forms
- 6.2 The Invitation for Prequalification issued by the Client is not part of the Prequalification Document.
- 6.3 The applicant shall obtain the Prequalification Document from the Client otherwise the Client is not responsible for the completeness of the Prequalification Document.
- 6.4 The applicant is expected to examine all instructions, forms, terms and information in the Prequalification Document. Failure to furnish all information or documentation required by the Prequalification Document may result in the rejection of the application.

7. Clarification of Prequalification Document

- 7.1 A prospective applicant requiring any clarification of the Prequalification Document shall contact the Client in writing through the following e-mail address: tenders@energocom.md. The Client will respond to any request for clarification,

provided that such request is received at least 5 (five) days prior to the deadline for submission of applications. The Client's response shall be in writing with copies to all applicants who have acquired the Prequalification Document in accordance with ITA 6.3, including a description of the inquiry but without identifying its source. Should the Client deem it necessary to amend the Prequalification Document as a result of a request for clarification, it shall do so following the procedure described under ITA 8.

8. Amendment of Prequalification Document

- 8.1 At any time prior to the initial deadline for submission of applications, the Client may amend the Prequalification Document by issuing addenda. Any addendum issued shall be part of the Prequalification Document and shall be communicated in writing to all applicants, who have obtained the Prequalification Document in accordance with ITA 6.3. To give prospective applicants reasonable time in which to take an addendum into account in preparing their applications, the Client may, at its discretion, extend the initial deadline for the submission of applications.

9. Cost of Prequalification

- 9.1 The applicant shall bear all costs associated with the preparation and submission of its application, and the Client shall not be responsible or liable for those costs, regardless of the conduct or outcome of the Prequalification process.

10. Language of Prequalification

- 10.1 The applications, as well as all correspondence and documents relating to the Prequalification exchanged by the applicant and the Client, shall be written in the English language. Supporting documents and printed literature that are part of the application may be in another language provided they are accompanied by an accurate translation of the relevant passages in that language, in which case, for purposes of interpretation of the application, such translation shall govern.

11. Documents Comprising the Application

- 11.1 The application shall comprise the following documents:

- (a) Power of Attorney (in accordance with the requirements of ITA 12.1)
- (b) Covenant of Integrity (in the format provided in Section II: Application Forms)
- (c) Copy of license(s) and/or relevant applicable documentation required for delivery natural gas through territories of Romania and Ukraine, or statement to confirm attaining necessary licenses and necessary documents (shipper codes, EIC, EAN, etc) prior to tendering.
- (d) Company registration certificate or equivalent registration document;
- (e) Constitutional documents (e.g. memorandum of association, memorandum of incorporation) and articles of association or equivalent;
- (f) List of ultimate beneficial owners, i.e. those owning more than 5%, incl. their name, address and date of birth, and organizational structure.
- (g) Submission of audited financial statements, or if not required by the law of the applicant's country, other financial statements acceptable to the Client, for the last three years;
- (h) Declaration that the company is not in the process of declaring bankruptcy
- (i) Completed Form 3: Gas trading & supply experience

(j) Completed Form 4: Historical Contract Non-Performance & Pending Litigations

Failure to provide information, which is essential to evaluate the applicant's qualifications, may result in the disqualification of the applicant. Notwithstanding, provided that an application is substantially responsive, the Client may request an applicant to submit any necessary missing information or documentation, within a reasonable period of time.

12. Format and Signing of Applications

- 12.1 The applicant shall submit one copy of the documents comprising the application as described in ITA 11. The application shall be **typed and shall be signed** by a person duly authorised to sign on behalf of the applicant as evidenced by a duly authorised power of attorney, indicating that the person(s) signing the application has the authority to sign the application and the application is thus binding upon the applicant. The name and position held by each person signing the authorisation must be typed or printed below the signature. An application submitted by a JVCA shall be signed so as to be legally binding on all partners.

13. Submission, Sealing and Marking of Application

- 13.1 Applicants shall submit their applications by e-mail in a PDF format to the following e-mail address: tenders@energocom.md

14. Deadline for Submission of Applications

- 14.1 Applications shall be received by the Client no later than **13 July 2023, 17:00 EET**. The Client may, at its discretion, extend the deadline for the submission of applications by amending the Prequalification Document in accordance with ITA 8.

15. Late applications

- 15.1 The Client shall not consider any application that arrives after the deadline for submission of applications.

16. Confidentiality

- 16.1 Information relating to the evaluation of applications shall not be disclosed to applicants or any other persons not officially concerned with such process until information on the outcome of Prequalification is communicated to the applicants. Any attempt by an applicant to influence improperly the Client in the evaluation of the applications decisions may result in the rejection of its application. Notwithstanding the above, from the time of application submission to the time, when information on the outcome of Prequalification is communicated to the applicants, if an applicant wishes to contact the Client on any matter related to the prequalification process, it should do so in writing.

17. Clarification of Applications

- 17.1 To assist in the examination and evaluation of the applications, the Client may, at its own discretion, ask any applicant for a clarification of its application, allowing a reasonable time for response. Any clarification submitted by an applicant that is not in response to a request by the Client may not be considered. The Client's request for clarification and the response shall be in writing. If an applicant does not provide clarifications of its application or substantiations of the information supplied, by the date and time set in the Client's request for clarification, its application may be rejected.

18. Evaluation of Applications

- 18.1 To be prequalified for tendering for the contract(s), the applicant must demonstrate to the Client that it substantially satisfies the requirements, specified below:
- (a) Ability to transport and supply sufficient volumes of gas required by evidencing supply of a minimum of 150 mcm or equivalent per annum, in the past three years (2020, 2021, 2022);
 - (b) Ability to transport and supply sufficient volumes of gas required by evidencing supply of a minimum of 50 mcm or equivalent in a single month, per annum, in the past three years (2020, 2021, 2022);
 - (c) Sufficient financial position/soundness, through the submission of audited financial statements, or if not required by the law of the applicant's country, other financial statements acceptable to the Client, for the last three years (2020, 2021, 2022). The submitted annual financial statements for the required period must demonstrate the soundness of the applicant's financial position, showing long term profitability. Consistent losses or a risk of insolvency shown in the accounts may result in the disqualification of the applicant.;
 - (d) Evidence of ability to supply at named delivery points in Romania and Ukraine (including necessary licenses, registrations and actual trades conducted). In the absence of the necessary licenses, registrations etc., a statement to declare willingness to obtain and resources to conduct such trading prior to the issue of any invitation to tenders, will suffice for prequalification. Subject to meeting all other criteria, such applicants will be considered as "conditionally prequalified" as provided for in ITA 18.4, on the condition that the necessary licenses, registration etc. are obtained prior to the issue of invitations to tender. If the necessary licenses, registration etc. are not obtained prior to the issue of invitations to tender, the applicant will not be invited to participate in the tenders.
This requirement does not mean that the client limits the delivery points for the gas to only Romania and Ukraine.
 - (e) The applicant, or any partner in a JVCA, shall not have a consistent history of litigation and/or arbitration resulting in awards against the applicant, or any partner in a JVCA. A consistent history of litigation and/or arbitration awards against the applicant or any partner of a JVCA may result in rejection of the application.

The applicant shall provide full details demonstrating its compliance with 18.1 (a) and 18.1 (b) in a completed Form 3: Gas Trading & Supply Experience and 18.1 (e) in a completed Form 4: Historical Contract Non-Performance & Pending Litigations.

EFET General Agreement: In addition to the above, to obtain prequalification status applicants must confirm in their prequalification applications that, in principle, they are prepared to enter into an EFET General Agreement with the Client in a

standard format agreed by EBRD and published on <https://energocom.md/?p=2221>, which will be used by all prequalified entities under this facility. The only permitted amendments will be those that will not convey a material economic advantage over the standard form which will be used by all tenderers under the facility.

All applicants that are determined to substantially meet the above criteria will be invited by the Client to negotiate a standard version of the EFET General Agreement prior to the issue of any invitation for tenders. If, in the Client's opinion, during the contract negotiation phase any applicant attempts to introduce any unacceptable conditions or any that convey a material economic advantage over the standard form, the negotiations may be terminated and the prequalification application may be rejected."

A JVCA must satisfy collectively all the above mentioned qualification criteria, for which purpose the relevant figures for each of the partners shall be added to arrive at the joint venture's total capacity.

- 18.2 The Client's evaluation of an applicant's qualification shall be based on the contents of the application itself, as defined in ITA 11 and any clarifications thereof.
- 18.3 The Client reserves the right to waive:
- (a) any omissions in applications that do not preclude his evaluation of an applicant's qualification;
 - (b) any minor deviations from the criteria, if they do not materially affect the capability of an applicant to perform the contract (s).
- 18.4 An applicant may be prequalified conditionally, if he fails to meet some criteria, that may be corrected in future before the invitation to submit tenders.
- 18.5 An affirmative determination whether the applicants meet conditionally or unconditionally the qualifying criteria specified under ITP 18.1 shall be a prerequisite for inviting the applicants to tender. A negative determination shall result in the disqualification of the applicant.

19. Client's Right to Accept any Application, and to Reject any or all Applications

- 19.1 The Client reserves the right to accept or reject any application, and to cancel the Prequalification process and reject all applications at any time prior to the time, when information on the outcome of Prequalification is communicated to the applicants, without thereby incurring any liability to the applicants. The Client may cancel the Prequalification process and reject all applications in the event that it deems that the number of prequalified applicants is inadequate or insufficient.

20. Notification of Outcome of Prequalification

- 20.1 The Client shall notify all applicants about the outcome of Prequalification in writing. The notification shall include, as a minimum: the names of the prequalified applicants and their nationality.
- 20.2 In addition to information to be sent in accordance with ITA 20.1, the notification to be sent to rejected applicants shall state the specific reasons for the rejection of their applications.

- 20.3 Only firms and JVCA that have been prequalified under this Prequalification will be eligible to tender.
- 20.4 The Client shall make publicly available to any interested party and shall publish on the Bank's website the list of prequalified applicants immediately after information on the outcome of Prequalification is communicated to all applicants.
- 20.5 After publication of the outcome of Prequalification, unsuccessful applicants may request a debriefing from the Client seeking explanations on the grounds upon which their application was rejected. The Client shall promptly arrange a debriefing for any unsuccessful applicant who, after publication of the outcome of Prequalification, requests a debriefing.

21. Invitation to Tender

- 21.1 Following the prequalification process the Client shall enter into an EFET General Agreement with all prequalified applicants.
- 21.2 The Client shall only invite those applicants which have been prequalified under this procedure, and with whom an EFET General Agreement has been signed, to participate in the subsequent tendering phase.
- 21.3 At the time of submitting their tenders, prequalified tenderers shall verify that the information previously provided is still valid and correct. A tenderer may be disqualified at the time of contract award if it no longer meets the qualification requirements.

SECTION II

APPLICATION FORMS

1. Form 1 – Letter of Application
2. Form 2 – Covenant of Integrity
3. Form 3 – Gas Trading and Supply Experience
4. Form 4 – Historical Contract Non-Performance & Pending Litigations

[Letterhead of the Applicant, or a JVCA partner, including full postal address, telephone and fax numbers and e-mail address]

FORM 1 – LETTER OF APPLICATION

Date: *[insert the date]*

To: *[name and address of the Client]*

Sirs,

Being duly authorised to represent and act on behalf of *[insert the applicant's name]* (hereinafter “the Applicant”), and having reviewed and fully understood all the prequalification information provided, the undersigned hereby apply to be prequalified by yourselves as a tenderer for the supply of gas under the **Moldova Security Supply**.

You and your authorised representatives are hereby authorised to conduct any inquiries or investigations to verify the statements, documents and information submitted in connection with this application, and to seek clarification from our bankers and clients regarding any financial and technical aspects. This Letter of Application will also serve as authorisation for any individual or authorised representative of any institution referred to in the supporting information, to provide such information deemed necessary and as requested by yourselves to verify statements and information provided in this application, such as the resources, experience, and competence of the Applicant.

You and your authorised representatives may contact the following persons for further information:

<i>Authorised Representatives</i>	
<i>Contact 1</i>	<i>Telephone 1; E-Mail 1</i>
<i>Contact 2</i>	<i>Telephone 2; E-Mail 2</i>

The Applicant may provide one or more contact persons for clarifications on the above matters.

This application is made in the full understanding that:

- (a) tenders by prequalified applicants will be subject to verification of all information submitted for prequalification at the time of tendering;
- (b) you reserve the right to:
 - reject or accept any application; or
 - cancel the prequalification process;
- (c) you shall not be liable for any such actions and shall be under no obligation to inform the Applicant of the grounds for such actions.

In the event that we attain prequalification status we confirm that, in principle, we are prepared to enter into an EFET General Agreement with the Client in a standard format which will be used by all prequalified entities under this facility. We understand that the only permitted amendments to this standard format will be those that will not convey a material economic advantage over the standard form. We further understand that if, in the Client's opinion, during the subsequent contract negotiation phase we attempt to introduce any unacceptable conditions or any that convey a material economic advantage over the standard form, the negotiations may be terminated and our prequalification application may be rejected.

We confirm that the applicant is not subject to bankruptcy or insolvency proceedings.

Applicants who are not JVCA should delete the next paragraph.

We confirm that in the event that we tender, that tender, as well as any resulting contract, will be:

- (a) signed so as to legally bind all partners, jointly and severally; and
- (b) submitted with a signed JVCA agreement substantially in accordance with the JVCA details outlined in our Application and providing joint and several liability of all partners in the event the contract is awarded to us.

The undersigned declare that the statements made and the information provided in the duly completed application are complete, true, and correct in every detail.

Signed _____

Name _____

For and on behalf of

[name of the Applicant or the partner of a JVCA authorised to act for and on its behalf]

ENCLOSURES TO THE LETTER OF APPLICATION:

Please find attached to this Letter of Application, the following documents:

- Power of Attorney (in accordance with the requirements of ITA 12.1)
- Covenant of Integrity (in the format provided in Section II: Application Forms)
- Copy of license(s) and/or relevant applicable documentation required for delivery natural gas through territories of Romania and Ukraine, or statement to confirm attaining necessary licenses and necessary documents (shipper codes, EIC, EAN, etc) prior to tendering.
- Company registration certificate or equivalent registration document;
- Constitutional documents (e.g. memorandum of association, memorandum of incorporation) and articles of association or equivalent;
- List of ultimate beneficial owners, i.e. those owning more than 5%, incl. their name, address and date of birth, and organizational structure.
- Submission of audited financial statements, or if not required by the law of the applicant's country, other financial statements acceptable to the Client, for the last three years;
- Declaration that the company is not in the process of declaring bankruptcy
- Completed Form 3: Gas trading & supply experience
- Completed Form 4: Historical Contract Non-Performance & Pending Litigations

FORM 2 – COVENENT OF INTEGRITY

To: Energocom

We declare and covenant that neither we nor anyone, including any of our subsidiaries and affiliates, and all of our directors, employees, agents or joint venture partners, as well as any subcontractors, or suppliers or affiliates of the subcontracts or supplier, where these exist, acting on our behalf with due authority or with our knowledge or consent, or facilitated by us, has engaged, or will engage, in any Prohibited Practice (as defined below) in connection with the procurement process or in the execution or supply of any works, goods or services for [*insert the name of the Contract*] (the “Contract”) and covenant to so inform you if any instance of any such Prohibited Practice shall come to the attention of any person in our organisation having responsibility for ensuring compliance with this Covenant.

We declare that we have paid, or will pay, the following commissions, gratuities, or fees with respect to the procurement process or execution of the Contract:

Name of Recipient	Address	Reason	Amount
.....
.....

We declare that no affiliate of the Client is participating in our submission in any capacity whatsoever.

We shall, for the duration of the procurement process and, if we are successful in our tender, for the duration of the Contract, appoint and maintain in office an officer, who shall be a person reasonably satisfactory to you and to whom you shall have full and immediate access, having the duty, and the necessary powers, to ensure compliance with this Covenant.

We declare and covenant that, except for the matters disclosed in this Covenant of Integrity:

- (i) we, our subsidiaries and affiliates, and all of our directors, employees, agents or joint venture partners, where these exist, have not been convicted in any court of any offence involving a Prohibited Practice in connection with any procurement process or provision of works, goods or services during the ten years immediately preceding the date of this Covenant;
- (ii) none of our directors, employees, agents or a representatives of a joint venture partner, where these exist, has been dismissed or has resigned from any employment on the grounds of being implicated in any Prohibited Practice;
- (iii) we, our subsidiaries and affiliates and our directors, employees, agents or joint venture partners, where these exist, have not been excluded by any major Multilateral Development Bank or International Financial Institution (including World Bank Group, African Development Bank Group, Asian Development Bank, EBRD, European Investment Bank or Inter-American Development Bank) from participation in a procurement procedure or entering into a contract with any of such institutions on the grounds of engaging in a Prohibited Practice;
- (iv) we, our directors, subsidiaries and affiliates, as well as any subcontractors, or suppliers or affiliates of the subcontracts or supplier are not subject to any sanction imposed by resolution of the United Nations Security Council; and
- (v) we further undertake to immediately inform the Client and the Bank if this situation were to occur at a later stage.

If applicable, provide full disclosure of any convictions, dismissal, resignations, exclusions or other information relevant to Articles (i), (ii), (iii) or (iv) in the box below.

Name of Entity Required to be Disclosed	Reason Disclosure is Required ²

For the purpose of this Covenant, the terms set forth below define Prohibited Practices as:

- (i) a **Coercive Practice** which means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of any party to influence improperly the actions of a party;
- (ii) a **Collusive Practice** which means an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iii) a **Corrupt Practice** which means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (iv) a **Fraudulent Practice** which means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (v) a **Misuse of Bank's Resources or Bank Assets** which means improper use of the Bank's Resources or Bank Assets, committed either knowingly or recklessly;
- (vi) an **Obstructive Practice** which means any of (1) destroying, falsifying, altering or concealing of evidence material to a Bank investigation, which impedes the Bank's investigation; (2) making false statements to investigators in order to materially impede a Bank investigation into allegations of a Prohibited Practice; (3) failing to comply with requests to provide information, documents or records in connection with a Bank investigation; (4) threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to a Bank investigation or from pursuing the investigation; or (5) materially impeding the exercise of the Bank's contractual rights of audit or inspection or access to information; and
- (vii) a **Theft** which means the misappropriation of property belonging to another party.

Following the submission of our application, we grant the Bank and/or persons appointed by them, the right of inspection of our, and any proposed subcontractors, or suppliers accounts and records and permission to have any such accounts and records audited by auditors appointed by the Bank, if required by the Bank. We accept to preserve these records generally in accordance with applicable law but in any case for at least six years from the date of substantial completion of the Contract.

Name:	
In the capacity of:	
Signed:	
Duly authorised to sign for and on behalf of:	
Date:	

Signed _____

Name _____

² For each matter disclosed, provide details of the measures that were taken, or shall be taken, to ensure that neither the disclosed entity nor any of its directors, employees or agents commits any Prohibited Conduct in connection with the procurement process for the Contract.

FORM 3 - GAS TRADING AND SUPPLY EXPERIENCE

Participant's Legal Name: _____

JVCA Partner's Legal Name: _____ *[please delete if not applicable]*

Date: _____

Prequalification No.: _____

Page _____ of _____ pages

Each Participant or member of a JVCA must complete this form.

General Experience			
	2020	2021	2022
Total revenue from trading operations (EUR)			
Total volume of Gas traded for physical delivery (kWh)			
Largest physical supply contract concluded (any term) (kWh)			
Largest physical supply contract concluded for month ahead delivery (kWh)			
Largest monthly volume of physical gas supplied (kWh)			
Volume of traded gas in storage (net change kWh)			
List of countries where physical gas has been delivered			
List of countries of operation			
Number of market participants with whom physical gas supply			

agreements have been concluded.			
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Confirmation/settlement statements, or concluded agreements should be provided to support the figures presented.

Miscellaneous			
	2020	2021	2022
Member of EFET (Y/N)			
Registered on Romanian trading platforms? (Y/N)			
Registered on Ukrainian trading platforms (Y/N)			
Concluded trades in Romania ? (Y/N)			
Concluded trades in Ukraine? (Y/.N)			
Have trading/supply licenses in Romania? (Y/N)			
Have trading/supply licenses in Ukraine? (Y/N)			
Procured storage services for gas in Romania (Y/N)			
Procured storage services in Ukraine (Y/N)			

Note: If answers “N” (No) this does not preclude the company from being pre-qualified.

Signed _____

Name _____

FORM 4 – HISTORICAL CONTRACT NON-PERFORMANCE & PENDING LITIGATIONS

[The following table shall be filled in for the Participant and for each partner of a JVCA]

Participant's Legal Name: _____

JVCA Partner's Legal Name: _____ [please delete if not applicable]

Date: _____

Prequalification No.: _____

Page _____ of _____ pages

Non-Performing Contracts					
Participants, including each partner of a JVCA, shall detail below any current and past litigation and/or arbitration (with an indication of the matters in dispute, the parties involved, the amounts in dispute and the outcome, where available) resulting from contracts completed or under execution by the Participant, including each partner of a JVCA, during the number of years specified in in Section III, Evaluation Methodology, and Section IV, Eligibility and Qualification Criteria					
Year	Contract	Parties involved	Cause of litigation or matter in dispute	Disputed amount [EUR equivalent]	Outcome of the dispute/litigation

The following abbreviations shall be used: F - dispute/litigation was resolved in favour of the Participant (or partner of a JVCA), A – the decision on dispute/litigation was against the Participant, or P – dispute/litigation is still in progress.

Pending Litigation			
<input type="checkbox"/>	No pending litigation		
<input type="checkbox"/>	Pending litigation		
Year	Outcome as percentage of Total Assets	Contract Identification	Total Contract Amount (current value, [state currency] equivalent)
		Contract Identification: Name of Client: Address of Client: Matter in dispute:	

Signed _____

Name _____