

Our Ref: S2001/413
Your Ref:
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7 December 2001

Tender rules for supply of Gas to Loddon Murray region

On 1 November 2001, the Australian Competition and Consumer Commission approved the tender rules for the Loddon Murray Gas Supply Group's (LMGSG) tender process for the supply of gas to the Loddon Murray Region (refer to section 2 of the tender documentation). LMGSG subsequently approached the Commission to consider a variation to the tender rules. The variation takes into account the introduction on 1 September 2001 of section 27 the Gas Industry Act 2001. This section allows the Office of the Regulator General (the Office) to grant, to applicants meeting certain criteria, an exclusive retail and distribution franchise to a region for a period of time.

The Commission has decided to approve this version of the tender rules after taking relevant issues into consideration. These include:

- the lack of materiality of the changes to the transmission aspects of the tender for which the Commission is the relevant regulator under the Code;
- that the changes do not restrict or limit the number of bids and therefore the likely overall competitiveness of the tender;
- the Office has assessed this version of the tender rules and approved them with regard to gas distribution on 30 October 2001. The Office can be contacted on 03 96510222 for a copy of this decision; and
- that issues arising around the granting of an exclusive retail and distribution franchise for the region to the successful consortium will be dealt with in a process separate to the tender by the Office.

The Commission is of the view that the tender rules being issued to prospective tenders do not fundamentally change the nature of the tender approval request originally submitted to the Commission on 30 August 2001 and their ability to meet the requirements of section 3.28 of the Code.

The Commission also notes that the objective of this tender is to secure a bid that will provide the 'lowest average combined distribution and transmission tariff'. This aspect of the tender requires a degree of consensus in regulatory decision making as to the assessment of the tender rules from both the Commission as regulator for transmission pipelines and the Office, as regulator for distribution systems in Victoria.

Under section 3.33 of the Code LMGSG must submit final approval requests to the Office and the Commission on completion of the tender. The Commission and the Office will assess the final approval requests based on the tender rules included in the tender documentation pack. This version has also been placed on the Commission's website at www.accc.gov.au under the gas link.

Should you require any further information about this matter please contact Nicole Moffatt on 02 92309115 or via email on nicole.moffatt@acc.gov.au.

R. F. Shrogren
Commissioner
Australian Competition and Consumer Commission



**SWAN HILL RURAL CITY COUNCIL
ON BEHALF OF THE LODDON MURRAY GAS SUPPLY GROUP**

PROVISION OF NATURAL GAS TO THE LODDON MURRAY REGION

**TENDER TO BE CONDUCTED IN ACCORDANCE WITH THE
NATIONAL THIRD PARTY ACCESS CODE FOR NATURAL GAS
PIPELINE SYSTEMS**

SECTION 2 - TENDER RULES

PREPARED BY THE SWAN HILL RURAL CITY COUNCIL
45 SPLATT STREET
SWAN HILL 3585
VICTORIA
AUSTRALIA

ON BEHALF OF
LODDON MURRAY GAS SUPPLY GROUP

1. INTRODUCTION

1.1 Definitions

In these Tender Rules and the Tender Documentation, the following terms have the meanings indicated, unless inconsistent with the context:

"**ACCC**" means the Australian Competition and Consumer Commission;

"**Closing Time for Tenders**" has the meaning ascribed to it by clause 3.2;

"**Code**" means the National Third Party Access Code for Natural Gas Pipeline Systems

"**Conforming Tender**" means a tender which is not a Non-Conforming Tender;

"**Non-Conforming Tender**" means a tender which does not comply with any requirement specified in these Tender Rules, including those in clauses 3, 4, 5 and 7;

"**ORG**" means the Office of the Regulator General, Victoria or successor body such as the Essential Services Commission;

"**Schedule**" means a schedule to these Tender Rules;

"**Tender Documentation**" incorporates Section 1 – Background to the Tender, Section 3 – Information on the Loddon Murray Region, and these Tender Rules;

"**the Tender Box**" has the meaning ascribed to it by clause 3.1.

Except in clause and sub-clause headings, other capitalised terms in the Tender Documentation that are not defined above or whose meaning is not otherwise obvious have the meaning ascribed to them in the Code.

2. NATURE OF TENDER

2.1 Tenderer To Make Enquiries

Information provided in the Tender Documentation, and particularly information provided in Section 3 – Information on the Loddon Murray Region, is provided in good faith to tenderers. However, it does not purport to contain all of the information that a tenderer may need in order to submit a tender. Furthermore, no representation or warranty (express or implied) is made in relation to any forecasts that may be provided. Tenderers should make their own independent enquiries and investigations of matters including the operation of the Code, regulatory and technical requirements in the Victorian gas sector and energy usage in the Loddon Murray Region. None of the Rural City of Swan Hill, the Loddon Murray Gas Supply Group, the Shire of Gannawarra, the Shire of Loddon or their consultants

and advisors, to the extent permitted by law, will have any liability (whether arising from negligence or otherwise) for any representation of warranties (express or implied) or information contained or referred to in, or for any omissions or errors in the Tender Documentation or any other written, oral or other communications transmitted to tenderers.

2.2 **Contact Staff**

All enquires regarding the Tender Documentation and the tender process must be directed in the first instance to Mr Garry Tepper, Economic Development Manager, [Swan Hill Rural City Council](#), on 03 5032 3033.

3. **TENDERS**

3.1 **Place to Lodge Tenders**

Tenders are to be lodged **only** in the **tender box**, at the place stated in Schedule 1 ("the Tender Box").

3.2 **Time for Lodging Tenders**

Tenders will be received in the Tender Box **only** until the time and date stated in Schedule 1 ("Closing Time for Tenders").

3.3 **Number of Copies**

The number of copies of the tender stated in Schedule 1 must be lodged in the Tender Box.

3.4 **Late Tenders**

The Council will only consider tenders formally receipted by a recognised courier or postmarked prior to the closing time as late tenders. Otherwise the Council will not consider late tenders.

3.5 **Tenders from Council Staff**

Staff of the Swan Hill Rural City Council, the Shire of Gannawarra and the Shire of Loddon may NOT submit a tender.

4. **INFORMATION**

4.1 **Information on Tenderer**

Each tender must state the name, ACN (if applicable) and address of the tenderer submitting the tender (or, where the tenderer is a partnership/consortium, the name, ACN (if applicable) and address of each of the individual members of the partnership/consortium) and provide the name, telephone and facsimile details of a contact person to whom enquiries regarding the tender can be directed. Each tender must state the relationship between members of the consortium and the respective roles to be

undertaken (eg owners/operators/constructors of transmission/distribution Pipelines);

4.2 **Information to enable Evaluation of Tenders**

In order to be considered as a Conforming Tender and to enable the evaluation of tenders in accordance with the evaluation criteria, tenders must provide the following information:

Information required under clauses 4.2.13 to 4.2.19 must be provided in the format set out in Schedule 2.

- 4.2.1 the Reference Tariffs to apply to the transmission Pipeline for the period to 31 December 2011 and to the Revisions Commencement Date nominated under clause 4.2.24 (where this date is beyond 31 December 2011), and a statement of the Reference Services to which the Reference Tariffs apply. Reference Tariffs should be provided in real (~~July 2001~~January 2002) dollars;
- 4.2.2 the Reference Tariffs to apply to the distribution Pipeline for the period to 31 December 2011 and to the Revisions Commencement Date nominated under clause 4.2.24 (where this date is beyond 31 December 2011), and a statement of the Reference Services to which the Reference Tariffs apply. Reference Tariffs should be provided in real (~~July 2001~~January 2002) dollars;
- 4.2.3 to the extent that they describe the manner in which the Reference Tariffs will change over the period to 31 December 2011 and to the Revisions Commencement Date nominated under clause 4.2.24 (where this date is beyond 31 December 2011), the elements of the Reference Tariff Policy that directly determine the manner in which Reference Tariffs will change for the transmission Pipeline. For example, the Reference Tariff Policy might provide that Reference Tariffs move relative to the movement in the CPI;
- 4.2.4 to the extent that they describe the manner in which the Reference Tariffs will change over the period to 31 December 2011 and to the Revisions Commencement Date nominated under clause 4.2.24 (where this date is beyond 31 December 2011), the elements of the Reference Tariff Policy that directly determine the manner in which Reference Tariffs will change for the distribution Pipeline. For example, the Reference Tariff Policy might provide that Reference Tariffs move relative to the movement in the CPI;
- 4.2.5 a description of why the Reference Tariffs and Reference Tariff Policy elements for the transmission Pipeline achieve the objectives in section 8.1 of the Code;
- 4.2.6 a description of why the Reference Tariffs and Reference Tariff Policy elements for the distribution Pipeline achieve the objectives in section 8.1 of the Code;
- 4.2.7 an explanation of the manner in which the costs of the transmission Pipeline have been allocated between Services and Users, and why that allocation of costs is fair and reasonable;
- 4.2.8 an explanation of the manner in which the costs of the distribution Pipeline have been allocated between Services and Users, and why that allocation of costs is fair and reasonable;
- 4.2.9 an Additional Revenue Policy for the transmission Pipeline which details whether the additional revenue which would result if the

volume of gas transported by the transmission Pipeline exceeds a certain volume will either be retained or returned in whole or part to Users in the form of lower charges or some other form;

- 4.2.10 an Additional Revenue Policy for the distribution Pipeline which details whether the additional revenue which would result if the volume of gas transported by the distribution Pipeline exceeds a certain volume will either be retained or returned in whole or part to Users in the form of lower charges or some other form;
- 4.2.11 a description of why the Additional Revenue Policy for the proposed transmission pipeline is appropriate for the transmission Pipeline on the basis of the proposed tariffs;
- 4.2.12 a description of why the Additional Revenue Policy for the proposed distribution pipeline is appropriate for the distribution Pipeline on the basis of the proposed tariffs;
- 4.2.13 the forecast volume of gas to be transported through the transmission Pipeline (excluding unaccounted for gas) for each calendar year to the calendar year ending 31 December 2011, and to the Revisions Commencement Date nominated under clause 4.2.24 (where this date is beyond 31 December 2011), allocated as follows:
 - i. volume of gas for each Reference Service to be provided; and
 - ii. total volume of gas for non-Reference Services.
- 4.2.14 the forecast volume of gas to be transported through the distribution Pipeline (excluding unaccounted for gas) for each calendar year to the calendar year ending 31 December 2011, and to the Revisions Commencement Date nominated under clause 4.2.24 (where this date is beyond 31 December 2011), allocated as follows:
 - i. volume of gas for each Reference Service to be provided; and
 - ii. total volume of gas for non-Reference Services.
- 4.2.15 details of the forecast revenue to be generated by the transmission Pipeline for each calendar year to the calendar year ending 31 December 2011, and to the Revisions Commencement Date nominated under clause 4.2.24 (where this date is beyond 31 December 2011), allocated as follows:
 - i. revenue from each Reference Service to be provided;
 - ii. revenue to be earned from non-Reference Services as a result of the haulage of gas through the transmission Pipeline; and
 - iii. revenue to be earned from other non-Reference Services.

- 4.2.16 details of the forecast revenue to be generated by the distribution Pipeline for each calendar year to the calendar year ending 31 December 2011, and to the Revisions Commencement Date nominated under clause 4.2.24 (where this date is beyond 31 December 2011), allocated as follows:
- i. revenue from each Reference Service to be provided;
 - ii. revenue to be earned from non-Reference Services as a result of the haulage of gas through the distribution Pipeline; and
 - iii. revenue to be earned from other non-Reference Services.
- 4.2.17 details of the capital costs of the transmission Pipeline (on a calendar year basis to the year ending 31 December 2011, and to the Revisions Commencement Date nominated under clause 4.2.24 (where this date is beyond 31 December 2011)) and the annual Non-Capital Costs and Depreciation of the transmission Pipeline on a calendar year basis to the calendar year ending 31 December 2011 and to the Revisions Commencement Date nominated under clause 4.2.24 (where this date is beyond 31 December 2011);
- 4.2.18 details of the capital costs of the distribution Pipeline (on a calendar year basis to the year ending 31 December 2011, and to the Revisions Commencement Date nominated under clause 4.2.24 (where this date is beyond 31 December 2011)) and the annual Non-Capital Costs and Depreciation of the distribution Pipeline on a calendar year basis to the calendar year ending 31 December 2011, and to the Revisions Commencement Date nominated under clause 4.2.24 (where this date is beyond 31 December 2011);
- 4.2.19 details of the number of End Users anticipated to be able to connect to the distribution Pipeline at July 1 in each calendar year to the year ending 31 December 2011, and to the Revisions Commencement Date nominated under clause 4.2.24 (where this date is beyond 31 December 2011), and the number of End Users anticipated to be receiving a Service via the distribution Pipeline at July 1 in each calendar year

- 4.2.20 the proposed residual value of the transmission Pipeline at 31 December 2011 and at the Revisions Commencement Date nominated under clause 4.2.24. This residual value must be based on depreciation of the transmission Pipeline over the transmission Pipeline's economic life and tenders must state that this is the case;
- 4.2.21 the proposed residual value of the distribution Pipeline at 31 December 2011 and at the Revisions Commencement Date nominated under clause 4.2.24. This residual value must be based on depreciation of the distribution Pipeline over the distribution Pipeline's economic life and tenders must state that this is the case;
- 4.2.22 provide a statement of the tenderer's technical and prudential capabilities, including:
- i. details of the tenderer's (or where the tenderer is a consortium, the individual members of the consortium or where relevant, the parent or relevant related companies to the members of the consortium) experience in the gas industry;
 - ii. a summary of the skills and experience of the tenderer (or where the tenderer is a consortium, the individual members of the consortium or where relevant, the parent or relevant related companies to the members of the consortium) directors and senior managers, especially those relating to the gas industry;
 - iii. confirmation that the tenderer is familiar with the operation of the Victorian gas industry, and agrees to comply with the various Codes, Rules, Procedures and Guidelines relevant to its tender;
 - iv. a statement of the Australian states and territories, and overseas countries, where the tenderer (or where the tenderer is a consortium, the individual members of the consortium or where relevant, the parent or relevant related companies to the members of the consortium) is a licensed or otherwise recognised gas transmission or distribution pipeline owner or operator;
- 4.2.23 a broad description of the tenderer's proposed capital works program and a description of the areas including the towns to be reticulated with natural gas and the timeframe that it is anticipated gas will first be available in that area or town. In order to be a Complying Tender, tenders must provide for the reticulation of natural gas to the townships of Swan Hill and Kerang; and
- 4.2.24 nominate a proposed Revisions Commencement Date.

4.3 Exclusive Franchise Arrangements

A tenderer that wishes to obtain an exclusive retail or distribution franchise in accordance with the Gas Industry Act 2001 Exclusive Retail and Distribution Franchise Order must state, in a covering letter:

- whether a retail or a distribution franchise, or both, will be sought;
- whether their tender is conditional upon the franchise(s) being granted;
- the length of the franchise(s) sought;
- if a retail franchise is sought, the name of the party that is proposed to hold the retail franchise; and
- if a retail franchise is sought, proposed arrangements for the oversight of retail tariffs for small customers.

4.34.4 Other Code Requirements

Any tender which limits or purports to limit the Services to which access might be sought under the Code or otherwise includes elements inconsistent with the Code, except as contemplated by section 3.34 of the Code, will be considered to be a Non-Conforming Tender.

5. EVALUATION OF TENDERS

5.1 Evaluation Criteria

The Loddon Murray Gas Supply Group will evaluate tenders in accordance with the evaluation criteria set out in Schedule 3.

5.2 Post-Tender Submissions

The Council may require a tenderer to submit additional information concerning its tender, clarify information provided in its tender, or to personally discuss its tender.

Should a tenderer fail to -

5.2.1 submit the additional information or provide clarification so required by; or

5.2.2 attend personally to discuss its tender at -

the date and time stipulated by the Loddon Murray Gas Supply Group, its tender may not be further considered.

6. **SUCCESSFUL TENDER/FINAL APPROVAL REQUEST**

6.1 **Successful Tenderer**

The successful tenderer will be notified in writing.

Following notification, the LMGSG will assist the successful tenderer to submit an application for an exclusive franchise(s) to the ORG, if sought by the successful tenderer, and subject to the proposed exclusive franchise(s) being consistent with the Gas Industry Act 2001 Exclusive Retail and Distribution Franchise Order .

If either

- the franchise(s) sought by the successful tenderer is approved by the ORG; or
- no franchise(s) is sought by the successful tenderer; or
- the franchise(s) sought is not approved by the ORG but the successful tenderer's tender is not conditional upon the franchises being approved -

the successful tenderer will be required to assist the Loddon Murray Gas Supply Group to make a Final Approval Request to the ACCC and ORG.

7. **PROBITY OF TENDER PROCESS**

7.1 **Receipt of Addenda**

An ~~acknowledgement~~acknowledgement in the form of Schedule 4 must be made by a person authorised to make such a declaration on behalf of the tenderer and submitted with its tender.

7.2 **Statutory Declaration**

A statutory declaration in the form of Schedule 5 must be made by a person authorised to make such a declaration on behalf of the tenderer and submitted with its tender.

7.3 **Canvassing**

In this clause the term 'Council' means each of the Swan Hill Rural City Council, the Loddon Shire Council and the Gannawarra Shire Council.

Tenderers must not approach, or request any other person to approach -

- 7.3.1 any member of the Council's staff; or
- 7.3.2 councillor of the Council; or
- 7.3.3 Commissioner -

individually:

7.3.4 to solicit support for their tenders; or

7.3.5 otherwise seek to influence the outcome of the tender process.

The tender of any tenderer which engages in conduct prohibited under this clause will be considered to be a Non-Conforming Tender.

8. **ITEMS TO BE DETERMINED BY THE TENDER**

8.1 **Items to be determined**

In accordance with the Code, the following items are to be determined by the tender:

8.1.1 Reference Tariffs for the period to the Revisions Commencement Date;

8.1.2 elements of the Reference Tariff Policy, to the extent that those elements directly determine the manner in which the Reference Tariffs will change over the period to the Revisions Commencement Date;

8.1.3 the Additional Revenue Policy; and

8.1.4 the Revisions Commencement Date.

8.2 **Other Items**

Other items required to be included in an Access Arrangement will be determined through the submission of Access Arrangements (or amendments to existing arrangements) by the successful tenderer to the ORG and the ACCC within 90 days of the ORG and ACCC approving Final Approval Requests. The costs of the successful tenderer in preparing this documentation and having the Access Arrangement or amendments approved will be borne by the successful tenderer.

9. **OBLIGATIONS ON SUCCESSFUL TENDERER**

9.1 **Reimbursement of Tender Costs**

The successful tenderer will be required to reimburse the costs incurred by the Loddon Murray Gas Supply Group in conducting the tender. These costs are yet to be determined but will not exceed \$50,000.

Reimbursement must be made within 28 days of the successful tenderer's Final Approval Request being approved by both the ORG and the ACCC.
~~tenderer being advised that it is the successful tenderer by the Loddon Murray Gas Supply Group in accordance with clause 6.1.~~

9.2 **Construction timetable**

The successful tender must use its best endeavours to ensure that the Pipelines are constructed and natural gas is made available to customers in accordance with the timetable provided under clause 4.2.23. Where, in the opinion of the Loddon Murray Gas Supply Group, the successful tenderer does not meet the timetable for reasons that are not out of the control of the successful tenderer, the Loddon Murray Gas Supply Group and the three Councils reserve their right to withdraw their full support and assistance to the successful tenderer and to encourage other natural gas suppliers to the region, subject to any exclusive franchise arrangements being in place.

SCHEDULE 1

The location of the Tender Box is (clause 3.1):

~~At the~~ Swan Hill Rural City Council Offices 45 Splatt Street, Swan Hill, Victoria 3585

The time and date by which tenders must be lodged are (clause 3.2):

~~[date to be inserted — to be 8 weeks from first advertisement of tender]~~ 5pm, Friday 1 February
2002.

The number of copies of the tender to be lodged in the Tender Box is (clause 3.3):

One Master Document and four copies of all documentation separately bound and collated

SCHEDULE 2

INFORMATION TO BE PROVIDED IN ACCORDANCE WITH CLAUSES 4.2.13 to 4.2.19

| Tender Rules Ref. | | Calendar Year | | | | | | | | | |
|-------------------|--|---------------|------|------|------|------|------|------|------|------|------|
| | | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
| | Volume of gas to be transported through the transmission Pipeline and: | | | | | | | | | | |
| 4.2.13(i) | - Sold as part of Reference Service 1 (GJ) | | | | | | | | | | |
| 4.2.13(i) | - Sold as part of Reference Service 2 (GJ) | | | | | | | | | | |
| 4.2.13(i) | - Sold as part of Reference Service 3 (GJ) | | | | | | | | | | |
| 4.2.13(i) | - etc | | | | | | | | | | |
| 4.2.13(ii) | - Sold as part of a Non-Reference Service (GJ) | | | | | | | | | | |
| | Volume of gas to be transported through the distribution Pipeline and: | | | | | | | | | | |
| 4.2.14(i) | - Sold as part of Reference Service 1 (GJ) | | | | | | | | | | |
| 4.2.14(i) | - Sold as part of Reference Service 2 (GJ) | | | | | | | | | | |
| 4.2.14(i) | - Sold as part of Reference Service 3 (GJ) | | | | | | | | | | |
| 4.2.14(i) | - etc | | | | | | | | | | |
| 4.2.14(ii) | - Sold as part of a Non-Reference Service (GJ) | | | | | | | | | | |
| | Forecast Revenue to be generated by the transmission Pipeline | | | | | | | | | | |
| 4.2.15(i) | - From Reference Service 1 (\$'000) | | | | | | | | | | |
| 4.2.15(i) | - From Reference Service 2 (\$'000) | | | | | | | | | | |
| 4.2.15(i) | - From Reference Service 3 (\$'000) | | | | | | | | | | |
| 4.2.15(i) | - etc | | | | | | | | | | |
| 4.2.15(ii) | - From haulage-based Non-Reference Services (\$'000) | | | | | | | | | | |
| 4.2.15(iii) | - From other Non-Reference Services (\$'000) | | | | | | | | | | |
| | Forecast Revenue to be generated by the distribution Pipeline | | | | | | | | | | |
| 4.2.16(i) | - From Reference Service 1 (\$'000) | | | | | | | | | | |
| 4.2.16(i) | - From Reference Service 2 (\$'000) | | | | | | | | | | |
| 4.2.16(i) | - From Reference Service 3 (\$'000) | | | | | | | | | | |
| 4.2.16(i) | - etc | | | | | | | | | | |
| 4.2.16(ii) | - From haulage-based Non-Reference Services (\$'000) | | | | | | | | | | |
| 4.2.16(iii) | - From other Non-Reference Services (\$'000) | | | | | | | | | | |
| 4.2.17 | Capital Cost of the transmission Pipeline (\$'000) | | | | | | | | | | |
| 4.2.17 | Non-Capital Costs of the transmission Pipeline (\$'000) | | | | | | | | | | |
| 4.2.17 | Depreciation of the transmission Pipeline (\$'000) | | | | | | | | | | |
| 4.2.18 | Capital Cost of the distribution Pipeline (\$'000) | | | | | | | | | | |
| 4.2.18 | Non-Capital Costs of the distribution Pipeline (\$'000) | | | | | | | | | | |
| 4.2.18 | Depreciation of the distribution Pipeline (\$'000) | | | | | | | | | | |
| 4.2.19 | Number of End Users able to connect to the distribution Pipeline at July 1 | | | | | | | | | | |
| 4.2.19 | Number of End Users receiving a Reference Service or haulage-based Non-Reference Service via the distribution Pipeline at July 1 | | | | | | | | | | |
| | All dollar values are to be expressed in real (January 2002) terms | | | | | | | | | | |

Where the Revisions Commencement Date nominated under clause 4.2.24 is beyond 31 December 2011 this information should be provided for each calendar year beyond 2011 to the Revisions Commencement Date.

SCHEDULE 3

SELECTION CRITERIA ~~AND~~ SELECTION PROCESS and FRANCHISE ARRANGEMENTS

Selection Process and Criteria

A selection process involving the following selection criteria will apply:

Stage 1

All tenders received will be subject to initial review for compliance with these Tender Rules. Tenders which do not comply ~~with these Tender Rules~~ will be considered to be Non-Conforming Tenders and will not be considered further.

Stage 2

The following aspects of each Conforming Tender will be assessed:

- the Additional Revenue Policies; and
- the technical and prudential attributes of the tenderer;

Tenders which do not, in the opinion of the Loddon Murray Gas Supply Group meet the following minimum criteria will not be considered further:

- incorporate Additional Revenue Policies that are appropriate for the transmission and distribution Pipeline on the basis of the proposed tariffs (including but not limited to Reference Tariffs); or
- demonstrate to the satisfaction of the Loddon Murray Gas Supply Group that the tenderer has sufficient technical and prudential capacity to own and operate a gas transmission Pipeline and a gas distribution Pipeline.

~~will not be considered further.~~

In considering whether the tenderer has sufficient technical and prudential capacity to own and operate a gas transmission Pipeline and a gas distribution Pipeline, the Loddon Murray Gas Supply Group will have regard to the level of technical capacity required in order to obtain a distribution and/or transmission licence in the Australian gas industry. In general, unless the Loddon Murray Gas Supply Group becomes aware of reasons to the contrary, tenderers that can demonstrate that they (or where the tenderer is a consortium, the key individual members of the consortium or where relevant, the parent or relevant related companies to the members of the consortium) hold an active distribution or transmission

licence (or recognised equivalent) in Australia will automatically be considered to meet this criteria.

The criteria in this Stage 2 are minimum criteria. This means that, for example, no additional ‘credit’ will be given to tenderer A that can demonstrate a slightly higher level of technical expertise than tenderer B, provided that both can meet the minimum criteria.

Stage 3

All remaining tenders that meet the Stage 2 minimum criteria will be reviewed on an equal basis in this Stage 3. The successful tenderer will be the tenderer that can deliver the lowest sustainable tariffs (including but not limited to Reference Tariffs) to Users generally over the economic life of the proposed Pipelines, subject to the Reference Tariffs, in the Loddon Murray Gas Supply Group’s opinion:

- achieving the objectives of a Reference Tariff and Reference Tariff Policy set out in section 8.1 of the Code; and
- containing or reflecting an allocation of costs between Services and an allocation of costs between Users which is fair and reasonable.

In assessing which tenderer is offering the ‘lowest sustainable tariffs’ the Loddon Murray Gas Supply Group will primarily take into account:

- the average combined transmission and distribution Reference Tariff per GJ of gas proposed to be delivered over the initial Access Arrangement Period;
- the average combined transmission and distribution non-Reference Tariff per GJ of gas proposed to be delivered over the initial Access Arrangement Period; and
- the residual values of the proposed pipelines at the Revisions Commencement Date.

The Loddon Murray Gas Supply Group will also take into account the areas to which gas is to be made available, the number of customers which will have access to natural gas and the proposed construction schedule. If two tenderers propose the same or similar level of tariffs, but tenderer A proposes to make gas available earlier, or to provide gas to a greater number of customers than tenderer B, then tenderer A will be selected.

Franchise Arrangements

If any tenderer wishes to obtain an exclusive franchise, the cover letter accompanying their tender should provide the information set out in clause 4.3 above. All tenders will then be assessed in accordance with the selection criteria set out above. This will not include consideration of whether an exclusive franchise is sought.

Should the successful tenderer be seeking an exclusive franchise consistent with the terms of the Order in Council, the LMGSG will work with the successful tenderer to seek the ORG’s approval of the franchise and arrangements for the oversight of small customer tariffs. Should the ORG accept the franchise application, or should the franchise application be

rejected but the successful tenderer's bid not be conditional upon the franchise being granted, a Final Approval Request will then be submitted to the ORG and ACCC.

If the ORG does not approve the franchise application, and if the successful tenderer's bid is conditional upon a franchise being granted, the LMGSG will advise the ACCC and the ORG that the successful tenderer's tender has been withdrawn and a Final Approval Request will not be submitted. In such circumstances the tender that was originally ranked second will become the 'successful tenderer' and the process will be repeated with the new successful tenderer.

SCHEDULE 4

RECEIPT OF ADDENDA

The tenderer is to list below addenda that it received prior to the Closing Time for Tenders from the Council. The tenderer acknowledges that its tender has been prepared having regard to these addenda.

| Addenda No. | Brief Description (with page no., clause no. or schedule no.) | Date Received |
|--------------------|--|----------------------|
| | | |

NAME OF TENDERER: _____

SIGNATURE OF TENDERER: _____ **DATE:** _____
(or authorised representative)

SCHEDULE 5

STATUTORY DECLARATION

I, _____ do solemnly and sincerely declare that:

Definitions

1. In this Statutory Declaration:

"**Bidders**" means any tenderers and includes the Tenderer;

"**Industry Association**" means any organisation of which Bidders are members;

"**the Tenderer**" means [insert name of company, other body corporate, firm, or individual]

*Introduction

2. I am the Tenderer and make this declaration on my own behalf.

*Introduction

2. 2.1 I hold the position of _____ [insert **Managing Director or other** title] of the Tenderer and am duly authorised by the Tenderer to make this declaration on its behalf.

2.2 I make this declaration on behalf of the Tenderer and on behalf of myself.

[*Delete alternative which is not applicable]

No knowledge of tenders

3. Prior to the Tenderer submitting its tender, neither the Tenderer, nor any of its employees or agents, had knowledge of the details of the tenders of any other Bidder who submitted a tender, or of any person, company, other body corporate or firm that proposed to submit a tender.

Disclosure of tender

4. Prior to the close of tenders, neither the Tenderer, nor any of its employees or agents, disclosed details of the Tenderer's tender to:

4.1 any other Bidder who submitted a tender;

4.2 any person, company, other body corporate or firm proposing to submit a tender; or

- 4.3 any person or organisation connected or associated with a Bidder, person, company, other body corporate or firm of a kind referred to in clauses 4.1 or 4.2.

Provision of Information

5. Neither the Tenderer, nor any of its employees or agents, has provided information to:
 - 5.1 any other Bidder who has submitted a tender;
 - 5.2 any person, company, other body corporate or firm proposing to submit a tender; or
 - 5.3 any other person, company, other body corporate or firm for the purpose of assisting in the preparation of a tender.

Genuine Competition

6. The Tenderer is genuinely competing in respect of the tender.

Industry Association Agreements

7. Neither the Tenderer, nor any of its employees or agents, has entered into any contract, agreement, arrangement or understanding, that the successful Bidder will pay any money to, or provide any other benefit or other financial advantage to, an Industry Association in respect of the tender.

Unsuccessful Tenderers' Fees

8. Neither the Tenderer, nor any of its employees or agents, has entered into any contract, agreement, arrangement or understanding that the successful Bidder will pay any money to, or provide any other benefit or other financial advantage to, any other Bidder who or which has unsuccessfully submitted a tender for the Contract.

Qualifications to Tenders

9. Neither the Tenderer, nor any of its employees or agents, has entered into any contract, agreement, arrangement or understanding that Bidders would include an identical or similar condition or qualification in their tenders.

I acknowledge that this declaration is true and correct and I make it in the belief that a person making a false declaration is liable to the penalties of perjury.

DECLARED at _____ in the State of _____)
[name State or Territory] on _____ 2001)

Before Me:

Signature: _____

Full Name: _____

Address: _____

Qualifications: _____

[insert details of basis on which entitled to witness a Statutory Declaration under section 107A(1) of the *Evidence Act 1958*.]

SCHEDULE 6

CHECKLIST FOR TENDERERS

Tenderers should ensure that the following information is provided in their tenders:

- Information on the tenderer requested in clause 4.1
- Information on Reference Tariffs, cost allocation, the Reference Tariff Policy elements and Additional Revenue Policy requested in clauses 4.2.1 to 4.2.12
- Information requested in clauses 4.2.13 to 4.2.19 in the format set out in Schedule 2
- Information on the residual value of the transmission and distribution Pipelines as requested in clauses 4.2.20 and 4.2.21
- A statement of the tenderer's technical and prudential capabilities as requested in clause 4.2.22
- A broad description of the tenderer's works program and towns to be serviced, including confirmation that the townships of Kerang and Swan Hill are to be supplied with natural Gas as requested in clause 4.2.23
- A Revisions Commencement Date as requested in [clause 4.2.24](#)
- [Information regarding any exclusive franchises sought in accordance with clause 4.3](#)

- A completed Schedule 4
- A completed Schedule 5

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