



**GOVERNMENT OF THE DEMOCRATIC SOCIALIST  
REPUBLIC OF SRI LANKA**

**Ministry of Power and Renewable Energy**

**REQUEST FOR PROPOSALS**

**REQUEST FOR COUNTER PROPOSALS UNDER SWISS  
CHALLENGE PROCEDURE FOR THE ESTABLISHMENT  
OF AN OFFSHORE FLOATING STORAGE AND  
REGASIFICATION UNIT (FSRU) AND PIPELINE  
INFRASTRUCTURE AND SUPPLY OF LIQUEFIED  
NATURAL GAS (LNG) FOR CEYLON ELECTRICITY  
BOARD**

**TENDER NO: PE/TEN/LNG/SP/2017/55**

**International Competitive Bidding (ICB)**

**VOLUME IIB**

**KEY TERMS OF GAS SALES AGREEMENT**

## Key Terms of GSA

This is a summary of indicative key terms and conditions (the **Term Sheet**) of the draft gas supply agreement as set out in Volume 2 (Form of Gas Supply Agreement) of the bid package documents in connection with the development of an FSRU and Pipeline Infrastructure in Sri Lanka (the **Project**). The Term Sheet is for information purposes only and provides a general summary of the Form of Gas Supply Agreement. The Term Sheet does not set out all the rights and obligations of the Bidder and CEB and is not a substitute for the Gas Supply Agreement.

Items	Key Terms
1. Contract Parties	<ul style="list-style-type: none"> <li>a) The Buyer: Ceylon Electricity Board</li> <li>b) The Seller: [SK E&amp;S Selling Co.]</li> </ul>
2. Source of Supply	The primary sources of the Seller's LNG is [●]. However, the Seller may supply from its global LNG sourcing portfolio, provided that the gas from such LNG meet the specification set forth in the GSA.
3. Delivery Points	<p>Gas to be supplied to delivery points on the pipelines owned by the Regasification Companies (as defined in item 4 below) at:</p> <ul style="list-style-type: none"> <li>a) power plant(s) located at Kelanitissa; and</li> <li>b) power plant(s) to be located at Kerawalapitiya.</li> </ul>
4. Regasification Project	<p>The Seller will procure that its affiliates (the <b>Regasification Companies</b>) design, procure, construct, finance, operate and maintain:</p> <ul style="list-style-type: none"> <li>a) the floating storage and regasification unit (<b>FSRU</b>);</li> <li>b) offshore terminal including mooring and unloading facilities;</li> <li>c) high pressure pipelines, including subsea and onshore segments, and relevant tie-ins, to the Delivery Points (the <b>Pipelines</b>); and</li> <li>d) gas network control and management systems,</li> </ul> <p>(together, the <b>Regasification Project</b>).</p> <p>Following the later of the termination of the GSA and the date on which the Seller delivers the Gas resulting from nineteen point five (19.5) million tonnes of LNG, to the Buyer and subject to the termination provisions in items 13 and 14 below (including, in particular, payment of all Termination Sums), the Seller shall procure the transfer of any shares in FSRU Co held by any of its affiliates to the Buyer.</p> <p>The Seller will procure that its affiliates or third parties enter into joint venture agreements with the Buyer with respect to incorporating a company (<b>FSRU Co</b>) to own and operate the FSRU, with the Buyer holding 49% of the shares in FSRU Co. Further details (including voting rights) to be negotiated at a later stage.</p>

<p>5. Quantities</p>	<ul style="list-style-type: none"> <li>a) The Annual Contract Quantity (<b>ACQ</b>) is Gas equivalent to zero point six (0.6) million tonnes of LNG in MMBtu being 31,200,00 MMBtu.</li> <li>b) The Seller shall have the exclusive right, but not an obligation, to supply Gas to the Buyer up to the equivalent to one (1.0) million tonnes of LNG in MMBtu per year. The Buyer may request additional gas on 12 months' notice, with deliveries not commencing prior to the third Contract Year. Supply of additional Gas will not be under the GSA and will be on separate terms and price to be agreed by the parties (but with the intention that the terms are substantially similar to the GSA).</li> <li>c) As far as practicable, Gas will be provided and taken on a rateable basis (with allowances for maintenance and adverse weather conditions).</li> <li>d) The Buyer may request an increase of up to 10% of ACQ in a Contract Year (<b>Upward Quantity Tolerance or UQT</b>) provided that the request is made in the previous Contract Year, with sufficient time to be incorporated in the annual delivery programme of the Seller's LNG SPA(s). UQT is subject to the Seller's consent.</li> <li>e) The Buyer may exercise a decrease of up to 10% of the ACQ in a Contract Year (<b>Downward Quantity Tolerance or DQT</b>) provided that: <ul style="list-style-type: none"> <li>a. the request is made in the previous Contract Year, with sufficient time to be incorporated in the annual delivery programme of the Seller's LNG SPA(s); and</li> <li>b. the aggregate cumulative DQT during the contract term shall not exceed 50% of ACQ. The cumulative DQT is reduced where UQT is taken.</li> </ul> </li> <li>f) UQT and DQT to be considered as part of the annual delivery programme determination process.</li> <li>g) ACQ plus UQT minus DQT is the Adjusted Annual Contract Quantity (<b>AACQ</b>) for the Contract Year.</li> <li>h) The Daily Quantity (<b>DQ</b>) is the Monthly Quantity (see item 8) divided by days in month and the Seller shall accept nominations up to DQ.</li> <li>i) Maximum Daily Quantity (<b>MDQ</b>) = 1.1 x DQ. The Seller shall take reasonable endeavors to supply up to MDQ.</li> <li>j) A minimum daily nomination will be set.</li> <li>k) The Buyer may request gas above the MDQ on a day (<b>Excess Gas</b>). The Seller may supply Excess Gas in its absolute discretion. Excess Gas will be paid for at the Gas Price multiplied by 1.2.</li> <li>l) Further detail regarding quantities to be prescribed in the GSA.</li> </ul>
<p>6. Conditions Precedent / Start Date /</p>	<ul style="list-style-type: none"> <li>a) Conditions precedent to the effectiveness of the GSA: <ul style="list-style-type: none"> <li>i. related agreements being executed and unconditional (Implementation Agreement, Terminal Usage Agreement with</li> </ul> </li> </ul>

<p>Contract Term</p>	<p>FSRU owner and Transportation Agreement with Pipelines owner and any other agreement in relation to the Regasification Project);</p> <ul style="list-style-type: none"> <li>ii. an agreement in relation to Board of Investment of Sri Lanka (BOI) being executed and unconditional;</li> <li>iii. agreement of manuals for nominations and operations (including the supply of alternate fuel by the Seller) and measurement; and</li> <li>iv. all necessary approvals obtained on terms acceptable to the Seller.</li> </ul> <p>b) Start Date:</p> <ul style="list-style-type: none"> <li>i. To occur between 27 and 32 months from the date of execution of the GSA.</li> <li>ii. Windowing mechanism for the Seller to notify the Start Date based on commissioning of the Regasification Project.</li> <li>iii. Start Date can be extended for Force Majeure.</li> </ul> <p>c) If due to action or inaction of the Buyer:</p> <ul style="list-style-type: none"> <li>i. the conditions precedent in relation to Seller approvals, BOI Agreement or the manuals cannot be fulfilled; or</li> <li>ii. the construction or commissioning of the Regasification Project or the start of LNG supply is delayed,</li> </ul> <p>then Seller may give notice that the Start Date is deemed to have occurred. If such notice is given, the Start Date is deemed to have occurred but the Seller's obligation to deliver is deemed to be suspended for Buyer default until the Conditions Precedent are fulfilled, LNG Supply is able to commence and the Regasification Project are commissioned.</p> <p>d) Contract Term:</p> <ul style="list-style-type: none"> <li>i. 20 years from the Start Date.</li> <li>ii. The parties may extend the GSA by mutual agreement.</li> <li>iii. Term may be extended for Force Majeure by mutual agreement.</li> </ul>
<p>7. Gas Price</p>	<p>Gas Price<sup>1</sup> for a month (US\$/MMBtu) = (A x B) + C  where:  A is [●]%  B is the arithmetic average expressed in US Dollars per barrel, and rounded to four (4) decimal places, of BRENT for Month n-1, Month n-2, and Month n-3 where:  Brent for a specified Month (Month 'n') means the arithmetic</p>

<sup>1</sup> Please note that SK E&S may reduce the Gas Price further if the Buyer is able to contract for a greater amount of Gas.

	<p>average, expressed in US Dollars per barrel rounded to four (4) decimal places, of all settlement prices of the front month ICE Brent Crude Futures contract as published by the Intercontinental Exchange for each quoted day of Month ‘n’, except that for the quoted day which coincides with the expiration date of such futures contract the settlement price of the futures contract with the immediately following maturity shall be used.</p> <p>C is [●]</p> <ul style="list-style-type: none"> <li>a) Costs of any change in law / taxes (including affecting LNG supply and the Regasification Project) will be passed through to the Buyer.</li> <li>b) GSA will contain provision for periodic price review of ‘A’ every 5 Contract Years (with discussions to begin 12 months prior).</li> <li>c) All payments under GSA in US\$ to be paid into a bank account outside of Sri Lanka nominated by the Seller.</li> <li>d) Unpaid amounts will incur interest.</li> </ul>
<p>8. Take or Pay (TOP)</p>	<ul style="list-style-type: none"> <li>a) TOP of 100% of TOP Quantity.</li> <li>b) The ‘<b>Monthly Quantity</b>’ for each month of a Contract Year will be determined in an Annual Delivery Program, which will divide the AACQ between the months of a Contract Year and will be prepared by the Seller during the previous Contract Year in consultation with the Buyer.</li> <li>c) TOP Quantity is the Monthly Quantity for that month minus Gas not delivered due to: <ul style="list-style-type: none"> <li>i. failure to deliver by the Seller (<b>Shortfall Gas</b>) which is not excused due to buyer default, suspension, Force Majeure or planned maintenance;</li> <li>ii. rejection of Off-Specification Gas;</li> <li>iii. Force Majeure other than a Political Force Majeure Event.</li> </ul> </li> <li>d) The Buyer may request that the Seller divert a cargo of LNG and the Seller shall calculate the reduction in Gas availability this will cause (as against the amount of gas available had the cargo been delivered to supply Gas under the GSA) and which months the reduction will occur. If the Seller agrees to the diversion (in its absolute discretion), then: <ul style="list-style-type: none"> <li>i. the TOP amount payable by the Buyer for the relevant months is reduced by an amount agreed between the Buyer and Seller; and</li> <li>ii. the Seller will not be liable for the failure to deliver the quantity of the reduction.</li> </ul> </li> </ul>
<p>9. Make-Up Gas</p>	<p>Make-Up Gas will be made available subject to:</p>

	<ul style="list-style-type: none"> <li>a) the Buyer having already taken 100% of AACQ in the Contract Year and Monthly Quantity in a Month;</li> <li>b) the Seller having available Gas and capacity given storage constraints and inventory management needs in the Seller's Facilities (the Seller is not required to reserve capacity); and</li> <li>c) the Buyer paying the difference in Price between the month accrued and the month taken.</li> </ul> <p>Make-Up Gas is forfeited if not taken during contract term.</p>
<p>10. Failure to Deliver or Take</p>	<ul style="list-style-type: none"> <li>a) Failure to Deliver (Shortfall Gas): <ul style="list-style-type: none"> <li>i. Delivery tolerance of 5%.</li> <li>ii. Sole remedy for Shortfall Gas (other than TOP adjustment) if due to failure to procure LNG, is: <ul style="list-style-type: none"> <li>a. Seller must use reasonable endeavours to procure delivery of an alternative cargo of LNG or accelerate the delivery schedule;</li> <li>b. If Seller has not procured the delivery of an alternative cargo within 14 days and the Seller has not presented a viable plan to source LNG within a reasonable time, then Buyer may procure a cargo of spot LNG (with the cargo quantity of LNG being reasonable, having regard to the amount of Shortfall Gas) at a reasonable market price and if such cargo meets technical, operational and scheduling requirements of the Seller's Facilities, the Seller must purchase the cargo of LNG (either directly from the LNG supplier or, if the Seller determines that is not practical, from the Buyer at the same price per MMBtu as paid by the Buyer to the LNG Supplier);</li> <li>c. Buyer may use 'Seller Provided Fuel' as agreed in the Nomination and Operations Manual to produce and equivalent amount of electrical power and, where this occurs, the quantity of Shortfall Gas equivalent to the amount of electrical power produced is deemed to have been delivered provided that, among other things, the Buyer provides access to infrastructure required to deliver the Seller Provided Fuel.</li> </ul> </li> <li>iii. Sole remedy for (other than TOP adjustment) Shortfall Gas if due to reason other than the failure by the Seller to procure LNG supply: <ul style="list-style-type: none"> <li>a. the Seller must assist and cooperate with the Buyer procuring alternative fuel or energy supplies;</li> <li>b. the Buyer must notify Seller of the need to procure alternative fuel or energy supplies and provide the Seller with details of the process of sourcing alternative fuel or</li> </ul> </li> </ul> </li> </ul>

	<p>energy and any arrangements entered into; and</p> <ul style="list-style-type: none"> <li>c. the Seller must pay the Buyer reasonable additional cost (in excess of the amount that would have been payable for the Shortfall Gas at the Price at the time the Shortfall Gas accrues) of Gas or alternative fuel supplies to produce an equivalent amount of electrical power plus transportation costs paid by the Buyer which the Buyer would not have incurred had the Seller made that Shortfall Gas available for delivery.</li> <li>d. the Seller's liability is limited to an amount equal to zero point two (0.2) multiplied by the Price (at the time the Shortfall Gas accrues) multiplied by the Shortfall Gas.</li> </ul> <p>iv. Sole remedy for Shortfall Gas (other than TOP adjustment) if not due to failure to procure LNG, is an amount equal to the reasonable additional cost of alternate fuel (in excess of the sum of the amount that would have been payable for the Shortfall Gas at the Price (at the time Shortfall Gas accrues)) plus transportation costs capped at amount of equal to 0.2 multiplied by the Price (at the time Shortfall Gas accrues) multiplied by the quantity of Shortfall Gas.</p> <p>b) Subject to items 12, 13 and 14, failure to Deliver is excused for:</p> <ul style="list-style-type: none"> <li>i. Force Majeure; and</li> <li>ii. planned maintenance (including the Regasification Project).</li> </ul> <p>c) Failure to Take:</p> <p>Where the Buyer does not take the Net Monthly Quantity, in addition to the TOP payment under item 8 hereof, the Buyer must reimburse the Seller for any losses or claims arising under the Seller's LNG SPA(s) supplying the GSA or agreements with LNG vessels from that failure to take, including any demurrage or damages paid as a result of delay or cancelation of an LNG cargo other than the take or pay amount under the LNG SPA(s). This liability is capped at 0.2 multiplied by the Price (at the time the failure to take occurred) multiplied by the TOP Quantity for the month in which the failure to take occurred.</p>
<p>11. Gas Specification</p>	<ul style="list-style-type: none"> <li>a) Gas to meet Specification in GSA.</li> <li>b) The Buyer must use reasonable endeavours to accept Off-Specification Gas. If accepted, the Seller is deemed to have made available Gas which meets the Specification and the Buyer shall pay the Price for that Gas</li> <li>c) If rejected and not delivered, the Off-Specification Gas is Shortfall Gas.</li> <li>d) If rejected Off-Specification Gas is delivered: <ul style="list-style-type: none"> <li>i. the Seller is deemed to have made available Gas which meets the Specification and the Buyer shall pay the Price for that Gas;</li> </ul> </li> </ul>

	<p>and</p> <ul style="list-style-type: none"> <li>ii. the Seller shall reimburse the Buyer for any direct losses incurred by the Buyer as a consequence of the rejected Off-Specification Gas capped at an amount equal to the quantity of rejected Off-Specification Gas delivered multiplied by 0.7 multiplied by the Price.</li> </ul> <p>e) The remedies set out above are the sole remedies in relation to Off-Specification Gas.</p>
<p>12. Force Majeure</p>	<p>a) Obligations are excused for Force Majeure. <b>Force Majeure</b> is any Adverse Weather Conditions affecting the FSRU or any event which is not within reasonable control, directly or indirectly, and is not due to the fault or negligence of the affected Party. This includes (subject to the foregoing):</p> <ul style="list-style-type: none"> <li>i. any Act of God, strikes, war, riots, epidemics and other similar events;</li> <li>ii. any effect of the natural elements which necessitates extraordinary measures and expense to construct facilities and/or maintain operations including adverse weather;</li> <li>iii. civil disturbances, acts of terrorism or sabotage;</li> <li>iv. failure of the Seller's contractors (individually or collectively) to supply transport and/or deliver LNG, natural gas or Gas (as the case may be) due to force majeure;</li> <li>v. any failure or delay in construction of the Regasification Project as a result of a Force Majeure event; and</li> <li>vi. any change in any legal requirements, compliance with any court order, law, status, ordinance or regulations promulgated by any governmental authority having jurisdiction.</li> </ul> <p>b) The following shall not constitute Force Majeure:</p> <ul style="list-style-type: none"> <li>i. the ability of the Buyer to obtain better economic terms for natural gas or other fuel from an alternative supplier;</li> <li>ii. in the case of the Buyer, any change in law or Government default, action or inaction, sanctions, political strikes, war or civil disturbances (<b>Political Force Majeure Event</b>);</li> <li>iii. any event which delays or prevents the construction or dispatch of a power station;</li> <li>iv. any change in the market or demand for or supply of LNG, natural gas or electricity;</li> <li>v. unavailability of funds to pay amounts when due; or</li> <li>vi. loss of customers or market share.</li> </ul>

13. Suspension /  
Termination by the  
Seller

- a) The Seller may suspend deliveries of Gas following:
- i. remediable default by the Buyer or the Government (including payment default and insolvency events);
  - ii. Force Majeure; or
  - iii. Political Force Majeure Events.
- b) The Seller may terminate the GSA following:
- i. unremedied default by the Buyer or the Government (including payment and insolvency events and Buyer failure to obtain and maintain credit support or any security required under the GSA);
  - ii. breach of anti-bribery obligations and other fundamental events of default by the Buyer;
  - iii. Buyer failure take at least 50% of AACQ for 2 consecutive years;
  - iv. Political Force Majeure Events;
  - v. failure to achieve satisfaction or waiver of CPs/achieve Start Date by the longstop date due to Buyer actions/inactions;
  - vi. Prolonged Force Majeure affecting the Seller (more than 12 months) which is not due to Political Force Majeure Events; or
  - vii. failure to satisfy CPs/achieve Start Date by the longstop date due to Seller actions/inactions.

Following termination of the GSA in accordance with this paragraph (b), the Buyer shall be liable to pay a termination amount (the **Termination Sum**) in accordance with paragraphs (c) and (d) below, in US\$ and to an offshore bank account designated by the Seller, within 30 days.

- c) If the Seller terminates the GSA pursuant to paragraphs (b)(i) to (b)(v) above, the Buyer will pay the Seller:
- i. not later than [●] days after the date on which the GSA is terminated, a Termination Sum corresponding to the Contract Year in which termination occurs as set out in Table B of Schedule 1. Such Termination Sum shall be equal to the accrued and outstanding principal debt, financing costs (including accrued and outstanding hedging and break costs) and equity spent plus equity return of the Regasification Companies; and
  - ii. not later than [●] days after the date of the Seller's invoice, reimbursement for any losses or claims arising under the Seller's LNG SPA(s) supplying the GSA arising from the inability to supply Gas from under the GSA, including any demurrage or damages paid as a result of delay or cancelation of an LNG cargo and including any take or pay amount under any LNG

	<p style="text-align: center;">SPA(s) provided that:</p> <ul style="list-style-type: none"> <li>A. the Seller provides evidence of such amounts being incurred; and</li> <li>B. the Seller takes reasonable steps to mitigate the losses or claims arising under the Seller's LNG SPA(s).</li> </ul> <p>d) If the Seller terminates the GSA pursuant to paragraph (b)(vi) above, the Buyer will pay the Seller not later than [●] days after the date on which the GSA is terminated, a Termination Sum corresponding to the Contract Year in which termination occurs as set out in Table A of Schedule 1. Such Termination Sum shall be equal to the accrued and outstanding principal debt, financing costs (including accrued and outstanding hedging and break costs) and equity spent of the Regasification Companies.</p> <p>e) There will be no Termination Sum payable by the Buyer in the event the Seller terminates the GSA pursuant to paragraph (b)(vii).</p> <p>f) The Seller will procure that its relevant affiliate acts in accordance with the arrangement referenced in paragraph 4 in relation to the transfer of shares in FSRU Co held by any of its affiliates to the Buyer.</p>
<p>14. Termination by the Buyer</p>	<p>a) The Buyer may terminate the GSA following:</p> <ul style="list-style-type: none"> <li>i. unremedied default by the Seller;</li> <li>ii. failure to achieve satisfaction or waiver of CPs/achieve Start Date by the longstop date due to Seller actions/inactions;</li> <li>iii. Seller failure to deliver at least 50% of AACQ for 2 consecutive years; and</li> <li>iv. Prolonged Force Majeure affecting the Buyer (more than 12 months) which is not due to Political Force Majeure Events.</li> </ul> <p>b) If the Buyer terminates the GSA pursuant to paragraphs (a)(i) to (a)(iii) above, the Buyer will pay the Seller, not later than [●] days after the date on which the GSA is terminated, in US\$ and to an offshore bank account designated by the Seller, a Termination Sum corresponding to the Contract Year in which termination occurs as set out in Table A of Schedule 2. Such Termination Sum shall be equal to the accrued and outstanding principal debt and financing costs (including accrued and outstanding hedging and break costs) of the Regasification Companies.</p> <p>c) If the Buyer terminates the GSA pursuant to paragraph (a)(iv) above, the Buyer will pay the Seller not later than [●] days after the date on which the GSA is terminated, a Termination Sum corresponding to the Contract Year in which termination occurs as set out in Table B of Schedule 2. Such Termination Sum shall be equal to the accrued and outstanding principal debt, financing costs (including accrued and</p>

	<p>outstanding hedging and break costs) and equity spent of the Regasification Companies.</p> <p>d) The Seller will procure that its relevant affiliate acts in accordance with the arrangement referenced in paragraph 4 in relation to the transfer of shares in FSRU Co held by any of its affiliates to the Buyer.</p>
15. Governing Law / Dispute Resolution	<p>a) Governing law is England &amp; Wales</p> <p>b) Technical disputes to be resolved by Expert determination (ICC Rules, English language).</p> <p>c) All other disputes to be resolved by ICC Arbitration (3 arbitrators, Singapore seat, English language).</p> <p>d) Any sovereign immunity is waived.</p>
16. Credit / Security for the Buyer's Payments	<p>Seller may, at any time, require the Buyer to provide security in the form of an irrevocable standby letter of credit from an institution acceptable to the Seller in an amount equal to the value of 2 months of deliveries at DQ.</p> <p>Further provisions regarding security to be included in the Implementation Agreement.</p>
17. Allocation	<p>The Seller may supply gas to other buyers.</p> <p>The Seller must supply the Buyer in priority to other firm gas buyers in Sri Lanka.</p>
18. Other Provisions	<p>The GSA will include other standard provisions such as warranties, invoicing, measurement and testing, construction and operation of the Buyers Facilities and the Sellers Facilities, approvals, confidentiality, notices, exclusion of consequential / indirect loss, assignment and anti-bribery provisions.</p> <p>This term sheet is drafted on a 'no tax basis'. The GSA will address tax based on discussions after the tender process.</p>

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**SCHEDULE 1**

**TERMINATION SUM FOLLOWING TERMINATION BY THE SELLER**

**Table A**

*[Note: the Termination Sums in this table are intended to capture the amount of outstanding and accrued principal debt, financing costs (hedging and break costs) and equity spent of the Regasification Companies]*

Contract Year	Termination Sum

**Table B**

*[Note: the Termination Sums in this table are intended to capture the amount of outstanding and accrued principal debt, financing costs (hedging and break costs) and equity spent plus equity return of the Regasification Companies]*

Contract Year	Termination Sum

*Information Copy - Not for Bidding*

**SCHEDULE 2**

**TERMINATION SUM FOLLOWING TERMINATION BY THE BUYER**

**Table A**

*[Note: the Termination Sums in this table are intended to capture the amount of outstanding and accrued principal debt and financing costs (hedging and break costs) of the Regasification Companies]*

<b>Contract Year</b>	<b>Termination Sum</b>

**Table B**

*[Note: the Termination Sums in this table are intended to capture the amount of outstanding and accrued principal debt, financing costs (hedging and break costs) and equity spent of the Regasification Companies]*

<b>Contract Year</b>	<b>Termination Sum</b>