

TERMS OF REFERENCE

Republic of North Macedonia

ASSISTANCE WITH THE PROJECT PREPARATION AND TENDER OF A NEW NATURAL GAS DISTRIBUTION SYSTEM – Legal Advisor

1. Introduction

The Government of the Republic of North Macedonia (the “Government”), via its Ministry of Economy (the “MoE”), is developing a public-private partnership (“PPP”) for natural gas distribution system in North Macedonia (the “Project”).

The objective of the Project is to develop and secure an efficient and safe functioning natural gas distribution system. The Project shall be designed, built, financed, operated and maintained by a private partner (the “Private Partner”) selected by the MoE pursuant to a three-phase competitive dialogue procedure announced on the 13th of February 2020 (http://www.economy.gov.mk/Upload/Documents/Oglas%20-%20TD_distribucija%20en.pdf).

The Private Investor shall carry out the Project in accordance with an agreement with the MoE (the Concession Agreement) for a fixed period of up to 35 years. The legal form of the Concession Agreement under applicable laws of North Macedonia is to be determined during the due diligence process for the Project.

In that context, the MoE has approached the European Bank for Reconstruction and Development (EBRD or the Bank) for assistance in preparing and implementing a PPP for the Project. EBRD agreed to support the Project with its Si3P PPP Advisory Unit. To this end, the EBRD and the MoE signed a Contribution Agreement on the 12th March 2020.

Thus, the EBRD wishes to select a consulting firm to provide **financial and technical advisory services and lead the project preparation (the “Lead Consultant”)**. The Lead Consultant will be supported by a legal consultant (**the “Legal Consultant”**) as well as an environmental and social consultant (**the “E&S Consultant”**) who will be recruited by the EBRD separately. These will have international as well as local experience and will be tasked with legal and E&S work streams of project preparation. The Lead Consultant, the Legal Consultant and the E&S Consultant are together referred to as **the Group of Consultants** or the Group. The Group shall assist and advise the MoE on the preparation, organization and implementation of a tender for the Project (the Assignment).

This document sets out the terms of reference for the Assignment.

2. The Project

Several major cities in North Macedonia suffer from poor air quality, especially during winters. In order to resolve the issue, the Government intensified their efforts to promote gasification across the country. Currently, with the exception of three small gas distribution networks in Strumica, Kumanovo and industrial zone (TIRZ) in Skopje, there are no other distribution networks in North Macedonia. Gas distribution infrastructure is a priority to serve various consumer categories (residential, commercial and industrial).

The Project implementation is envisaged to be organised in three phases. The Private Partner will be obliged to connect to the transmission network and expand the gas to a lower compression rate (in two stages) to make it usable at customer’s location in the urban and rural municipalities as follows:

- Phase I:

Urban municipalities of: Aerodrom, Butel, Gazi Baba, Gjorche Petrov, Karpos, Kisela Voda, Centar, Cair, Gradsko, Demir Kapija, Kavadarci, Kriva Palanka, Kumanovo, Negotino, Prilep, Sveti Nikole, Stip, Bitola, Gostivar, Tetovo, Kratovo.

Rural municipalities of: Saraj, Suto Orizari, Aracinovo, Zelenikovo, Ilinden, Petrovec, Sopiste, Studenicani, Cucer Sandevo, Bogovinje, Brvenica, Zelino, Mogila, Novaci, Jegunovce, Tearce, Lipkovo, Staro Nagoricane.

- Phase II, once the transmission network is completed:

Urban municipalities of: Gevgelija, Bogdanci, Valandovo, Veles, Dojran and Kicevo.

Rural municipalities of: Lozovo and Makedonski Brod.

- Phase III, once the distribution network is completed:

Urban municipalities: Debar, Krusevo, Ohrid, Resen, Struga, Vinica, Delcevo, Kocani, Pehcevo, Probistip, Radovis and Strumica.

Rural municipalities: Demir Hisar, Vevcani, Debarca, Dolneni, Krivogastani, Mavrovo and Rostuse, Makedonski Brod, Plasnica, Centar Zupa, Berovo, Bosilovo, Vasilevo, Zrnovce, Karbinci, Konce, Makedonska Kamenica, Novo Selo, Rankovce, Rosoman, Caska and Cesinovo Oblesevo.

On top of the operation of the network, the DSO (Distribution Service Operator) will also be responsible of the health and safety of its operations, but also the emergency response to natural disasters or technical failures that affect its operations including gas losses. The DSO will ensure open access and metering neutrality to support competition in the marketing of gas the final user.

3. Scope of Work

The Group of Consultants are expected to undertake the tasks listed below jointly and collaboratively. As indicated above the selection of the Private Partner will be carried through a three-phase competitive dialogue procedure; delivery of the Assignment shall be aligned.

Phase 1:

3.1 Inception

The Group of Consultants shall:

- Review of existing information (Public Notice, Energy and PPP Laws, all the legal framework that applies to the Project, Gas Distribution Tariff Bylaw and other bylaws, information on existing networks), please note that it is EBRD's and MoE's intention that the Group will use the existing documentation as much as possible, but subject to a review and agreement;
- Analyse and build on the documents used for the approval as per the PPP Law:
 - a) Report on the nature of the contract
 - b) 2014 Feasibility Study (2014 FS)
 - c) 2020 Feasibility Study Update (2020 FSU)
 - d) Other studies;
- Visit relevant sites and kick-off of the engagement, if possible;
- Meet all relevant stakeholders, including the existing DSOs, the TSO and the Energy Regulatory Commission;

- Review pipeline alignments, available cartography and land plots maps to identify the need to undertake a detail alignment of Phase I or if the level of information is enough for bidders to price the Project;
- Propose an updated timeline and a list of main risks for the project preparation;
- Prepare an Assignment Implementation Plan with a clear breakdown of the tasks and responsibilities of each member of the Group Consultants during the Assignment. Special attention should be given to the drafting of the tender and project documentation and the review and evaluation of bids;
- With the support of the E&S Consultant, Categorise the Project in accordance with EBRD ESP and report on the results of the review of available data and site visits in Section 5.2.8 and Appendix 1;
- Identify the main terms of the Announcement and Approvals that needs to be updated or amended in order to make the tender feasible;
- Opine on the need to request a new approval and amendment of the public notice.
- Create a project profile on Source (<https://public.sif-source.org/>) and maintain it throughout the Assignment.

Deliverable: Inception Report

3.2 Due-Diligence and Project Preparation

3.2.1 Legal Due-Diligence, including Legal and Regulatory Framework for Gas Distribution and its tariff mechanism

The Legal Consultant shall conduct a thorough due diligence on the initial review of the law and secondary legislation and the previous procurement documents in order to:

- Verify and confirm, or point out to shortcomings and address all legal findings from the feasibility study;
- Identify the deficiencies of the current legal framework that may constrain the Project to be implemented; Review substantive national environmental, social, land and health and safety legislation and identify any conflicts, inconsistencies or gaps between national E&S standards and EBRD ESP or legal obstacles to the Private Partner implementing the ESP 2019 during the Project;
- Need for a law regulating the realisation of a strategic investment project under the Law on Strategic Investment
- Review at a high level the land ownership status in the Project area with reference to EBRD's requirements on land acquisition (PR 5 of the ESP, 2019) and the roles and responsibilities for land acquisition or access (for construction and operational phases of the Project) between the Government and the Private Partner. This information should be included in the Resettlement Framework required in Section 5.2.8;
- Assess whether additional legal measures are needed to make the Project viable (such as amendments to a law(s), introduction of secondary legislation, government decisions, etc.), as well as an assessment of the feasibility and timing of such measures;
- Specify procedures/timing required under the proposed legal approach to prepare and implement the transaction;
- Assessment of permits and licenses required for the Project;
- Land permits for temporary occupation and site assessment;
- Evaluate on the best legal solution for the transfer of the operation of the existing networks to the new DSO;

- In light of new climate policies in Europe and, potentially, in the country, review incremental environmental requirements on natural gas (namely methane emissions in the distribution network and scope 3 emissions) that might affect the legal and regulatory features of the Project.

Deliverable: Legal Due-Diligence Report

3.2.2 Market Sounding

The Lead Consultant shall prepare marketing material of the Project for market sounding. This will include preparation of all marketing materials and a Project Information Memorandum (PIM). Test the Project and its envisaged Risk Matrix and PPP structure with the market to solicit feedback from interested private sector players and lenders. Market sounding could take a form of an event or can be conducted via one-on-one meetings and/or calls.

The Group is expected to prepare a report summarising all feedback received from interested market players. Legal and E&S Consultants will review and provide inputs.

Deliverable: Market Sounding Report

3.2.3 Risk Matrix

In line with the local legal requirements and international best practice (EU regulations), the Lead Consultant and the Legal Consultant will prepare a detailed Risk Matrix showing the allocation of risks between the public sector and the DSO, to be used for the PPP structure developed below. The Risk Matrix will follow standards in the EU and other countries with proven experience in gasification where such projects reached financial close.

Additionally, the Lead and the Legal Consultants should assess the impact of climate change related risks for the proposed infrastructure, i.e. the risk that that the asset may become stranded due to climate risks and/or lead to carbon lock-in. The Legal Consultant should explicitly consider:

- The potential for using the infrastructure for green gases in the future – e.g. biogas;
- The potential for utilising hydrogen in the infrastructure covered by the concession.

In making this assessment, the Lead and Legal Consultant should advise on the scope for any contractual or technological changes to the concession, and the associated implications for the commercial feasibility of the concession.

Deliverable: Risk Matrix

3.2.4 Financial Model

Using the findings from the Feasibility Study and adopting new assumptions as required, the Lead Consultant will prepare a detailed multi-year editable financial model in Excel that demonstrate the DSO is financially sustainable without funding gaps. It will include:

- assumptions on the timing of investment in each city and ramp up of the operations;
- financial estimates for the capital expenditure;
- funding for operational costs;
- assumptions regarding financing of the project by the DSO, including debt-equity structure, sources of possible financing, tenor of debt, and expected cost of financing;
- forecast financial statements for the DSO including sources and uses tables per year;
- estimates of the minimum amount of concession fee to be used in the tender criteria;

- RAB model for calculation of tariffs according to the Energy Regulatory Commission methodology;
- calculate the value of the contract.

Deliverable: Editable Financial Model in Excel + User Manual

3.2.5 Project Structure

The Group of Consultants shall:

- Advise on the regulatory framework needed for the Project to govern the existing local networks and the new resulting for the Project;
- Advise on if and how existing networks could be incorporated as part of this concession or being left outside of the scope. This should consider a high-level assessment of the implications for:
 - a) the valuation of existing assets (TIRZ DIREKCIJA, JP KUMANOVO GAS) and their treatment in determining the initial regulatory asset base;
 - b) obligations towards existing staff;
 - c) treatment of existing contracts (gas purchase and/or supply);
- Advise on the institutional arrangements, including the roles of the regulatory body; municipalities; role of government, any external bodies (e.g. Energy Community Secretariat, Energy Regulatory Commission);
- Advise on the overall model of the concession and its key features:
 - a) Tariff mechanism
 - b) Timelines (for the process itself and for the length of the concession);
 - c) Regulating DSO
 - d) Exclusivity of the service provisions
 - e) Form of regulation: incentive or cost-plus
 - f) Length of regulatory period (including length for individual elements)
 - g) Scope of services – i.e. boundary between transmission, distribution and retail supply
 - h) Advise on the elements that are needed – for example, licenses, network codes, etc.
 - i) Advise on the possibility the DSO in addition to distribution, may also act as a natural gas supplier, a supplier with a public service obligation and a supplier of last resort until 100,000 connections.
 - j) Advise on the structure of the regulatory framework, if needed – specifically, how key elements should be covered by the regulatory framework (for example, valuation of the regulatory asset, approach to capital expenditure, approach operating expenditure, approach to cost of capital, and approach to service quality elements).

Deliverable: PPP Structure Term-Sheet: The Group of Consultants will draft a short version of the PPP Contract with the main commercial terms, risks allocation, list of compensation and relieve events, termination regime etc.

3.2.6 Technical Requirements and Project Definition

The Lead Consultant will specify:

- Definition of the area and scope of the services. This will include the location of MMRS and the design and alignment of the medium pressure pipelines and pressure reduction stations for those cities and rural areas under Phase 1. This information should be made available to bidders;

- the quality of the service including gas losses;
- investment requirements linked to time and construction of the main transmission network,
- requirements for the DSO to invest in the connection to the Natural Gas Distribution System and the Metering and Regulating Station (MRS) through which the distribution system is connected to the natural gas transmission system
- obligations to ensure open access and metering neutrality and to increase capacity and upgrades such that the DSO can accommodate demand,
- technical parameters required to connect and access the transmission network,
- metering requirements and quality parameters for delivery to user by type,
- minimum requirements and manner of organisational layout and technical equipment for ensuring communication between the distribution system operator and consumers, the distribution system operator and the transmission system operator and the DSO and suppliers for the purpose of ensuring the prescribed quality of services,
- technical requirements relating to monitoring, reporting and disclosure of methane emissions,
- health and safety requirements during the construction phase as well as operation of network and service delivery,
- information management and reporting to the Grantor.

The Legal Consultant and the E&S Consultant will review and provide input as needed.

Deliverable: Technical Requirements outline: The Lead Consultant will draft a section of the PPP Contract outlining all technical requirements.

3.2.7 Insurance requirements

The Lead Consultant shall specify the minimum insurance requirements so there is adequate insurance to cover any damage to the Project and ensure continuity of service. The Lead Consultant will recommend Force Majeure risks which can be managed by insurance in the North Macedonian market (e.g. natural disasters such as fire or flood) and can be left with the DSO. The Legal Consultant will also make a recommendation on if the Public Authority may give some protection against specified risks becoming uninsurable, and against third-party claims.

The Lead Consultant will recommend:

- type and level of insurance required during construction and operation phase of the Project;
- non-project specific insurances required by law, such as employer's liability, vehicle insurances as well as seismic coverage insurance and damages during construction and operation;
- minimum credit standard for the insurers is also desirable and maximum deductibles.

The Legal Consultant and the E&S Consultant will review and provide input as needed.

3.2.8 Environmental and Social Studies

The applicable environmental and social (E&S) standards and requirements for the Project are EBRD's 2019 Performance Requirements (PRs), which form part of EBRD's 2019 Environmental and Social Policy (ESP, available on EBRD's website¹), and North Macedonian legislation, regulations and standards. The more stringent requirements apply. The PRs are similar to standards applied by other international lenders (e.g. those that apply the Performance Standards). The E&S Consultant will:

¹ <https://www.ebrd.com/news/publications/policies/environmental-and-social-policy-esp.html>

- Categorise the Project in terms of EBRD's ESP (Category A or B). Categorisation will be agreed with the EBRD. For information, the threshold for categorising pipelines as "A" should be referred to (ESP Appendix 2 Clause 7) as well as site sensitivity and impacts. Category A projects require comprehensive and participatory ESIA's, which is presently not part of the scope of work of this ToR;
- Identify key environmental and social issues, if any, with the Project locations based on the information available and visit to the site. In addition, the E&S Consultant will complete a media search about the Project, MoE, sector, country, etc. to determine the extent to which there has been relevant news coverage, stakeholder opposition, complaints and, if so, whether any of the issues present a material E&S risk and require additional verification E&S studies;
- Ensure that the technical studies consider E&S matters, standards and requirements;
- Undertake a strategic Environmental and Social (E&S) scoping study for the Project based on the Project description as defined in Section 4.2.5 Technical Requirements and identify key E&S impacts and mitigations in accordance with EBRD ESP (2019). See the Appendix 1 for guidance on content;
- Identify scopes of work to conduct appropriate ESIA or ESA for the Project depending on categorisation and issues identified. The local permitting requirements should also be considered. This would include the need to develop detailed ESIA's, non-technical summaries, specialist studies, baseline gathering, management plans, etc. This may be presented as part of the scoping reports. Note that this scope of works will be presented to and discussed with the EBRD. Depending on the findings of the scoping studies and the required scopes of work, the development of further studies and assessments (i.e. ESIA's) may be commissioned as part of Phase 1 of this Engagement and will be discussed with the E&S Consultant. This will be subject to a separate terms of reference. Alternatively, these scopes of work will be captured in tender documentation for implementation by the winning private sector bidder of the Project (Section 0);
- Develop a Stakeholder Engagement Framework (SEF) in line with EBRD PR 10. See the Appendix 1 for guidance on content;
- Prepare a Resettlement Framework (RF) in line with EBRD PR5. See the Appendix 1 for guidance on content;
- Develop E&S provisions for the relevant agreements, to ensure the design, construction and operation of the Project is aligned with EBRD PRs and GIP and the results of the E&S Studies;
- Develop a high-level cost estimate for measures required to close gaps between national legislation and EBRD PRs for consideration in the Project financial analysis.

Deliverable: E&S Scoping Report (this will include the scope of work for further E&S studies, etc.), SEF, RF

Phase 2:

3.3 Procurement

The Group of Consultants shall:

- Review and improve Procurement Documents: Request for Qualification, Request for Final Proposals and included E&S considerations within the qualification and evaluation criteria.
- Based upon the outcomes of the "E&S Studies (Section -) and in agreement with the EBRD, define, and include in tender documents, the E&S scopes of work required to develop appropriate E&S assessments for the Project.

- Draft the following agreements: Concession Agreement, Lenders Direct Agreement, Head of Terms, Interphase Agreement with MER and Land Agreement, i.e. consistent with and include the requirements of the Resettlement Framework prepared as part of the E&S studies. The Group is required to provide relevant inputs on all aspects of the Project, including technical, legal, environmental and social (including gender) and commercial, in the Project related agreements. These inputs shall be based on the findings and recommendations from other tasks in the ToR;
- Participate actively in the evaluation of proposals including drafting evaluation guidelines for the Tender Commission;
- Propose a Regulatory Framework in line with the Energy Regulatory Commission
- Create and manage a Data Room
- Propose a neutral and non-discriminatory procedure for the organization of the physical due diligence of the Project
- Provide support to MoE during the RfQ, Competitive Dialogue and RfP processes and any appeal that can result. This will also include:
 - a) Participate in bidders conferences and meetings
 - b) Evaluate proposals and provide evaluation memo
 - c) Update the Concession Agreement to incorporate the results of the competitive dialogue
 - d) Management of the Data Room
 - e) Support on complains and challenges of the procurement by any of the bidders but not including legal challenges
- Support in the communication and promotion of the Project

Milestone: Project award approval by the Council of Ministers

3.4 Negotiations

The Lead and the Legal Consultants shall:

- Support the MoE during the negotiations with the successful bidder and its lenders, including potential amendments to Concession Agreement and other Project Agreements of which public stakeholders are party;
- Support the MoE during Financial Close and fulfilment of all Conditions Precedent.

Milestone: Contract execution and enforcement

4. Deliverables and Milestones

The estimated timeline below is subject to the standard approvals of documents and phases of the procurement process.

#	Deliverable/ Milestone	Expected to be delivered by:	Timeline
1.	• Inception Report	the Group of Consultants	T + 1 month
2.	• Legal Due-Diligence Report	the Legal Consultant	T + 2 months
3.	• PIM and Market Sounding Report	the Lead Consultant; Legal and E&S Consultants will review and provide inputs	T + 2 months

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4.	<ul style="list-style-type: none"> Risk Matrix 	the Lead Consultant and the Legal Consultant	T + 3 months
5.	<ul style="list-style-type: none"> Editable Financial Model in Excel + User Manual 	the Lead Consultant	T + 3 months
6.	<ul style="list-style-type: none"> PPP Structure Term-Sheet 	the Group of Consultants	
7.	<ul style="list-style-type: none"> Technical Requirements Outline 	the Lead Consultant; Legal and E&S Consultants will review and provide inputs	T + 5 months
8.	<ul style="list-style-type: none"> Insurance Requirements Outline 	the Lead Consultant; Legal and E&S Consultants will review and provide inputs	T + 5 months
9.	<ul style="list-style-type: none"> All Environmental and Social Studies (E&S Scoping Report, SEF, RF, E&S Provisions) 	the E&S Consultant	T + 6 months
10.	<ul style="list-style-type: none"> Phase 1 approval by MoE 	the Group of Consultants	P
11.	<ul style="list-style-type: none"> Request For Proposals (Draft) 	the Lead Consultant and the Legal Consultant	P + 4 weeks
12.	<ul style="list-style-type: none"> Project Agreement and Schedules (Draft) 	the Lead Consultant and the Legal Consultant	P + 8 weeks
13.	<ul style="list-style-type: none"> Final Request For Proposal Final Project Agreements 	the Lead Consultant and the Legal Consultant	P + 12 weeks
14.	<ul style="list-style-type: none"> Responses to Clarification Requests from Bidders Bid Evaluation Report Amended Project Agreement(s) Responses to Clarification Requests from Lenders 	the Group of Consultants	Linked to procurement timeline of no more than 12 months
15.	<ul style="list-style-type: none"> Project award approval by the Council of Ministers 	the Group of Consultants	P + 12 months
16.	<ul style="list-style-type: none"> Support until Final Close and fulfilment of Conditions Precedent 	the Lead Consultant and the Legal Consultant	P + 18 months

Deliverables specific to all tasks are listed in the table above. However, the Group of Consultant may be required to provide a limited number of short notes on specific issues in the course of the Assignment.

All reports will be firstly submitted to the EBRD and MoE's focal point as "draft report". Draft reports will be reviewed and commented on by PIU and EBRD within 15 working days. In absence of comments within this period, draft reports shall be considered as "final" and considered validated/accepted by the Bank.

Any comments provided by the Bank and the PIU shall be incorporated in the revised version of each report/deliverable. Unless otherwise agreed, the Group shall provide the revised version within 10 working days from receipt of comments from the Bank and/or the PIU. These documents will be validated on a non-objection basis within further 10 working days by the Bank and the PIU and considered as the “final report/deliverable”.

To be considered as validated, each deliverable shall be validated by both the EBRD and the MoE.

Unless otherwise agreed, all reports/deliverables shall be submitted to EBRD and MoE in both, English and Macedonian.

Additionally, the Lead Consultant shall propose (and price separately) a 3-day study tour for up to 15 participants from MoE and other relevant public sector stakeholders in North Macedonia. The study tour shall take place during the Phase 1 of the Assignment; in an EU country that successfully implemented a concession for gas distribution network with the last 10 years. The Lead Consultant shall be responsible for full organisation of the study tour; this includes the knowledge content of the tour (meetings, presentations, site visits) as well as the logistical and administrative part (invitations, flights and taxis, hotel booking etc.).

5. Legal Consultant’s Expertise

5.1 International Transaction Lawyer with experience in gas distribution

Qualifications and Professional Experience:

- University degree in Law,
- Preferably 10+ years of experience in advising on PPP transactions,
- At least 1 successful gas distribution PPP transaction advising the public sector that has reached financial close preferably in the last 5 years,
- Lead Transaction Lawyer in at least 3 successful PPP transactions,
- Experience in North Macedonia or countries in the Balkans would be an important advantage.
- Fluent in English

5.2 Local Transaction Lawyer(s)

The Local Transaction Lawyer(s) working in the assignment shall have the following qualifications and professional experience

Qualifications and Professional Experience:

- University degree in Law in North Macedonia,
- Excellent command of English and Macedonian,
- Track record experience working in capital project in North Macedonia,
- Experience working with the following laws:
 - a) Law on Concessions and Public Private Partnership (PPP law) “Official Gazette of the Republic of Macedonia (No. 6/12, 144/14, 33/15 и 104/15 and 215/15),
 - b) Law on Public Procurement “Official Gazette of the Republic of Macedonia No. 27/2015 - consolidate text and amendments of the Law No. 78/15, 192/15 and 27/16); Energy Law, No. 08-3424/1, May 2018,
 - c) Energy Law (“Official Gazette of the Republic of Macedonia” No. 96/18 and “Official Gazette of the Republic of North Macedonia” No. 96/19),
 - d) Laws related to land tenure, property rights, land acquisition (including expropriation) in the Republic of North Macedonia.

- Experience in infrastructure in North Macedonia is a must.

6. Implementation Arrangements

The Assignment will be carried out by the Group of Consultants, selected by the Bank in accordance with the Bank's Corporate Procurement Policy.

The Assignment will be managed and overseen by the Bank's staff, whereas the MoE will appoint a focal point who will be the counterparty of the Bank's staff.

MoE's focal point will be responsible to oversee the process of collecting feedback/comments for the Group of Consultant's deliverables and be the contact person and interface of the Bank's communication with MoE on the subject. The Group will provide its reports to both the Bank and the Government's focal point.

Importantly, each member of the Group will owe duty of care to the Government by signing a Warranty Deed, as per draft included in the Request for Proposals.

In addition, two key structures will be formed to steer the consultancy assignment:

1. A working group with technical staff from the Government of North Macedonia and the Bank who will meet on a frequent basis with the Group of Consultants to discuss deliverables and important issues of the assignment.
2. A steering committee with high-level, senior staff of the Government and the Bank who will meet on a less frequent basis to discuss and approve deliverables, as well as take decisions on other important issues of the assignment.

The frequency of the working group meetings and steering committee meetings will be decided once the Assignment starts.

It is estimated that roughly 20 meetings in Skopje will take place over the course of the Assignment.

With an aim to accelerate the preparation of the Project, the MoE has already officially started the procurement process. It is organised in three phases, with the first one (submission of Expression of Interest, EoI) now ongoing. The Assignment and its deliverables shall be scheduled in line with the three-phase procurement process.

The Lead Consultant is expected to act as Transaction Advisor and lead the Project preparation in front of the North Macedonian authorities and EBRD. This will require to coordinate work closely with the Legal Consultant and the E&S Consultant at all times. This shall include but is not limited to regular Group update calls, co-scheduling business trips, aligning deliverables, sharing reports, data, and combine the inputs into joint reports for the public stakeholders to ensure consistency in the approach and recommendations. The Group of Consultants will work collaboratively providing joint reports and advice.

For the purpose of proposal submission, the Lead Consultant shall assume that the Legal Advisor and E&S Advisor will undertake all tasks in the Scope of Work and provide feedback on all tasks within their field of expertise. In the Assignment Implementation Plan they will together provide a breakdown of task and responsibilities and highlight any work that has been not considered in their proposals or that has been considered to be undertaken by two or more member of the Group of Consultants.

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To the extent possible, it is expected that the engagement will be carried out remotely until the Group of Consultant can travel to North Macedonia and is in touch with public officials. Proposals are expected to clearly (i.e. one-by-one) outline which tasks of the below scope of work can be carried out remotely and which require physical presence in North Macedonia.

At the beginning of the services, the MoE and EBRD will provide the Group with all the available information related to the Project. Information and documents will be provided in Macedonian and English, and, as required, the Group will be expected to provide unofficial translations in some instances to EBRD. Each member of the Group will be responsible for requesting and gathering all relevant documents, and therefore local support will be beneficial to make the coordination and data collection process more efficient.

Note that the assignment shall be delivered in an accelerated manner to meet the MoE's requirements. Therefore, each member of the Group must be capable of mobilizing key staff members immediately upon award, and commit to the level of effort over the assignment period, which means working on several items of the scope of work in parallel.

Due to the national and/or international control measures for infection prevention against COVID-19, there could be inevitable interruptions to travel and communication after contract signing. In addition to its own policies and Consultant national recommendations, the Consultant will follow North Macedonian regulations and guidelines on travel restrictions and social distancing. It will coordinate regularly with the EBRD in order to be compliant with such regulations and guidelines and at the same time to perform the required tasks to the extent possible. In case of services recess occur, the extension of the assignment may be negotiated.

The EBRD will endeavour to arrange the support from the EBRD Resident Offices whenever it is considered necessary and requested by the Consultant; and to ensure the Consultant's compliance with the EBRD's instructions and guidance with regard to COVID 19

List of Acronyms

DSO	Distribution Service Operator
E&S	Environmental and Social
EBRD	European Bank for Reconstruction and Development
Eoi	Expression of Interest
ESA	Environmental and Social Assessment
ESIA	Environmental and Social Impact Assessment
ESP	Environmental and Social Policy
ESP	EBRD Environmental and Social Policy 2019
GIP	Good International Practice
MoE	Ministry of Economy
MRS	Metering and Regulating Station
PPP	Public Private Partnership
PR	Performance Requirements (as per the 2019 ESP)
RF	Resettlement Framework
RfP	Request for Proposals
RfQ	Request for Qualifications
SEF	Stakeholder Engagement Framework
ToR	Terms of Reference
TSO	Transmission Service Operator
2014 FS	2014 Feasibility Study
2020 FSU	2020 Feasibility Study Update

Appendix 1 – Environmental and Social Studies

A. Applicable requirements

The Environmental and Social (“E&S”) scoping studies are to be carried out in accordance with (thereafter referred as “E&S Standards”):

1. Applicable local, national and regional requirements, including those related with environmental and social impact assessments;
2. The EBRD Environmental and Social² Policy (ESP) (2019) (and the incorporated Performance Requirements (PRs)), and relevant European Union (EU) requirements (including, but not limited to, the EU EIA Directive and IE Directive); and
3. Relevant international conventions and protocols relating to environmental and social issues, as transposed into national legislation

B. Objective

The objective of E&S scoping studies is to identify the potentially significant existing and future adverse environmental and social impacts (including gender related aspects) associated with the proposed Project, assess compliance with applicable laws and the EBRD ESP and PRs, preliminarily determine the measures needed to prevent or minimise and mitigate the adverse impacts, and identify potential environmental and social opportunities, including those that would improve the environmental and social sustainability of the Project.

The scoping studies will be commensurate with, and proportional to, the potential impacts and issues of the Project. The studies will cover, in an integrated manner (i.e. both environmental and social), all relevant direct and indirect, as well as cumulative, environmental and social impacts and issues of the Project across the relevant stages of the project cycle (e.g. pre-construction, construction, operation, and decommissioning or closure or transfer).

The scoping studies will also determine which further studies and assessments are required, focusing on specific risks and impacts, such as biodiversity, climate change, land acquisition, physical / economic displacement, gender related aspects and vulnerable groups. This would include baseline studies and impact assessments.

C. Scope of Work

I. Review of available data and site visits

1. Desktop review: Using available databases (e.g., think hazard, IBAT, Birdlife, protected area databases, etc.) to identify potential sensitivities and risks of the broader area where the Project is located. Review other available documents on the project locations, proposed Project components, regional reports, strategic assessments, etc., to gather relevant information for the Project sites.

² The ESP (2019) defines social as “issues which pertain to project-affected people and their communities and workers and related to socioeconomic status, vulnerability, gender, gender identity, human rights, sexual orientation, cultural heritage, labour and working conditions, health and safety and participation in decision making.”

2. Key informant interviews: Interview stakeholders (expected to be institutional stakeholders) that could provide information on the Project and the sites, their characteristics and how they were identified. These interviews should consider cultural and gender related aspects.
3. Sites visits: Conduct a walkover of the Project area to confirm desktop review results and obtain supplemental information needed to complete the E&S elements of the ToR.
4. The information compiled should be assessed for their quality and representativeness
5. Based upon the project locations and the nature of the Project components, categorise the Project in terms of EBRD'S E&S Policy (2019). Projects are either categorised A or B. Categorisation will be discussed with EBRD.
6. A Preliminary Emissions Estimation of CO_{2e} from the Project (from both energy consumed to transport the gas; fugitive emissions; and from end user consumption) on both a net and gross basis to determine if the Project is likely to meet the thresholds identified in EBRD Carbon Pricing Methodology (2019)³ and thus require an economic assessment by the EBRD.
7. Following the completion of data review, key informant interviews and site visits and categorisation **the Consultant will deliver a summary of key findings within Draft and Final Inception Reports.**

II. E&S Scoping

1. Based on information compiled from desktop review, key informant interviews and site visits under the previous step; the Consultant is required to identify potentially significant E&S risks and impacts associated with the Project (direct / indirect /cumulative and pertinent to each phase of the Project), including any unplanned/emergency events. Under this task the Consultant will:
 - a. Describe the Project and the Associated Facilities and other activities/facilities.
 - b. Describe the applicable local, regional and national environmental and social laws and regulatory requirements, including permitting, of the jurisdictions in which the Project operates, including those laws implementing host country obligations under international law.
 - c. Undertake a gap analysis of the E&S legislative framework, including local/national assessment and permitting requirements, against the EBRD PRs and compare them in tabular format, presented to the structure of the EBRD PRs.
 - d. Confirm the applicable E&S Standards for the Project (i.e. the most stringent standard of the E&S standards)
 - e. Confirm Project categorisation
 - f. Describe the E&S baseline using available data and drawing on the site visit. This will include the potential for biodiversity triggering PR6 Priority Biodiversity Features and Critical Habitat.
 - g. Identify any red flags or fatal flaws from an E&S perspective.

³ <https://www.ebrd.com/documents/comms-and-bis/methodology-for-the-economic-assessment-of-ebrd-projects-with-high-greenhouse-gasemissions.pdf>

11. Review and recommend the material permits, licenses, authorisations and approvals required for the Project and prepare a summary table with a tentative timeline for securing them.
12. Develop an E&S action plan which would define high level actions for the Project to implement to ensure compliance with EBRD's Performance Requirements of 2019 and address key E&S risks (see later)
13. Develop a Scope of Work in the scoping reports and for further E&S studies as needed and as required by national legislation and EBRD's PRs for the Project, including, but not limited to
 - a. Further baseline studies and specialist assessment to allow for a robust assessment of E&S risks and impacts.
 - b. Compilation of detailed E&S assessments/ESIAs, management plans, NTS management procedures, etc.
 - c. Stakeholder Engagement Plan
 - d. In case of PR5 applicability, prepare the ToR for a Resettlement Plan in accordance with the RF.

All Scope of Works shall be in line with E&S Standards.

14. If the Project does meet the thresholds identified in EBRD Carbon Pricing Methodology, the Consultant will carry out a Detailed Emissions Estimate of CO₂e to determine the annual emissions for the life of the Project and compared against an agreed baseline. If deemed to be significant and as agreed with the EBRD, annual emissions of NO_x will also be prepared compared against an agreed baseline (and should be assumed to be included for the purposes of the proposal). The scope and assumptions of the estimate will be agreed with EBRD prior to commencement. All estimations shall be prepared in excel and all assumptions made documented and data sources referenced.

D. Deliverables

- E&S Scoping reports. This will include the scope of work for further E&S studies, etc.
- Stakeholder engagement framework and Resettlement Framework
- E&S action plan
- Scopes of work for future E&S work required after tendering
- Emissions estimates

E. Guidance Note

In carrying out the work, the Consultant will:

- Consider the views and concerns of key stakeholders, including relevant authorities, local NGOs, and representatives of affected communities. Before interacting with any stakeholder, the Consultant will coordinate with the EBRD and the MoE and seek consent especially in relation to what information to disclose.

- Clearly state all methods, assumptions, and used data sources and present collected data and results of analyses in maps reporting the locations of salient Project features.
- Leverage local knowledge by partnering with a local E&S experts familiar with E&S aspects of the region/area, local context, and applicable national/local legislation. The E&S team will retain the ownership and quality control of any output prepared by the local expert.
- Coordinate closely with the experts from other but pertinent fields i.e. technical and legal.
- Refer to:
 - Project's relevant E&S laws, regulations and policies of North Macedonia
 - EBRD ESP 2019 and relevant Performance Requirements
 - Relevant international treaties to which the Project country is a signatory
 - GIP⁴

F. Stakeholder Engagement Framework

A Stakeholder Engagement Framework will need to:

- Briefly identify the Project location and areas subject to impact (e.g., list of communities)
- Define what the Project is legally required to do regarding disclosure and consultation
- Identify stakeholders
- Identify any specific groups who might be considered vulnerable or need more support in a consultation process.
- Take into consideration any potential gender related aspects relevant to the Project
- Report on any previous consultation and disclosure activities
- Propose methods for engagement and information disclosure
- Propose documents which should be disclosed
- Propose where documents will be available
- Propose how people will be notified of the document availability
- Present a high level grievance mechanism
- Define the monitoring and reporting activities for the stakeholder engagement process
- Define the responsibilities for delivering the stakeholder engagement process

The SEF should be concise and not exceed 10 pages in length, excluding annexes.

G. Resettlement Framework

The RF shall be based on EBRD guidance⁵ and will need to:

- Briefly identify the Project location and areas subject to impact
- Outline the nature and scope of likely resettlement and economic loss impacts for Project Affected people
- Describe the policy principles governing expropriation, resettlement, economic displacement and related social impacts

⁴ GIP may be considered to be defined as “the exercise of professional skill, diligence, prudence, and foresight that would reasonably be expected from skilled and experienced professionals engaged in the same type of undertaking under the same or similar circumstances globally or regionally.”

⁵ <https://www.ebrd.com/publications/resettlement-guidance-good-practice.pdf>

- Propose measures to avoid and minimise resettlement including those to be implemented at the design phase of the Project by the private partner
- Include the Gap analysis between local law and regulations and EBRD PR's and measures to address gaps identified (table format)
- Define Entitlement measures Eligibility criteria and develop an Entitlements Matrix
- Required **PUBLIC CONSULTATION AND GRIEVANCE**, recommendations and plans for grievance redress procedures (**consistent with the SEF**)
- Define roles and responsibilities between the Government and the Private Partner and other relevant institutions
- Propose monitoring activities and indicators
- Timetable and Budget for Resettlement Plan

H. E&S Action Plan

Sample ESAP

No.	Action	Environmental & Social Risks (Liability/Benefits)	Requirement (Legislative, EBRD PR, Best Practice)	Resources, Investment Needs, Responsibility	Timetable	Target and Evaluation Criteria for Successful Implementation	Status
PR1	Assessment and Management of Environmental and Social Impacts and Issues						
1.1	Develop and implement an EMS	Optimisation of environmental management through a formalised system. Provide resources for training and monitoring of emissions	EBRD PR1 Voluntary and best practice	Own resources, external consultants Cost Assign responsibilities	20xx	Develop and implement an EMS Attain ISO 14001 or equivalent certification Annual EHS Report to the Bank	
PR2	Labour and Working Conditions						
2.1							