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To: <Gasgovernance.Enquiries@uktransco.com>
cc:

Subject: UNC Modification Proposal 0229 - Transporter letter to the Joint Office

UNC Modification Proposal 0229

Bob,

Following the UNC Distribution Workstream held on 14th May, Transporters believe it would be helpful to set out our views and concerns relating to the proposed contractual arrangements associated with AUGE procurement identified within the Proposal. We hope this will facilitate further beneficial discussion and help identify a solution which meets all party's needs/requirements at the next Workstream meeting on 28th May 2009.

Transporters have significant concerns regarding liability which may arise as a consequence of being obliged by UNC to enter into a contract for services with a third party (the AUGE), without having full control of the arrangements (in this respect we are referring to the fact that the UNCC may intervene in the whole process). Whilst in principle this appears to be simple in concept, we believe it is essential that the Transporter is free from any liability which might arise from entering into such arrangements.

Our concerns have their roots in having an obligation (with dictated timescales) but without the full control of activities to meet such and ensuring we are protected, as the contracting party, from being sued by a third party for acts and omissions arising from the actions of the AUGE, or even being sued by the AUGE itself or other unsuccessful parties to the tender process. While this could be considered unlikely we believe it essential that the risk is mitigated. One solution is that liability could be borne by Shippers by relevant terms being incorporated within the UNC. An alternative approach is that each Shipper could enter into a contract with the relevant Transporter indemnifying it accordingly and accepting all liability.

We believe that the complexities and risks arising are sufficiently significant that Shippers may wish to reconsider whether it is reasonably practicable to require Transporters to undertake the tendering obligation. Transporters have previously discussed Shippers tendering / contracting for/with the AUGE but this was discounted fairly early on and it may be worth revisiting this due to the concerns we now have?

On a related point, we believe that clarity is required on how Transporters would identify in advance and subsequently recover their costs associated with AUGE tendering and appointment and how these would be apportioned to Shippers.

We are aware that Modification Proposal 0229 has been amended and note the changes to Section 5 'Generic Terms of Reference for Appointed AUGE'. From a commercial perspective we do not believe the AUGE would be willing to limit the extent of its ability to recover monies properly due to it pursuant to its contract with the Transporters. If Transporters attempt to impose this provision during the tender process, we may (unnecessarily) concern the prospective AUGES in respect of the level of risk involved with a consequential reduction in the number of parties willing to respond to the tender.

We require that, either through commercial agreement or incorporated into the UNC, Users will indemnify the Transporters in relation to the AUGS (including payment of the AUGE's fees and the findings of the report) and that they will accept the outcome of the AUGE's determination.

To further facilitate discussion, National Grid Gas (NGG) has undertaken an investigation into the

procurement regulations (Distribution Workstream action ERP 0038). NGG's policy in accordance with the regulations is as follows:

Utility Companies are subject to Procurement Guidelines wherever its aggregate annual procurement level is above circa £220k regardless of the individual contract value. The service proposed would be classed as a consultancy service. For example, NGG utilises a vendor database provided by a company called Achilles – suppliers and users pay an annual subscription.

NGG would need to utilise the Utility Vendor Database (UVDB) to identify and suitable companies. Further filtering can be applied to narrow the field if required (e.g. individual questions).

There is currently one for Gas Network Consultancy & Services (3.76.34), covering the following:

- Gas Network Project Services > 7 Bar
- Gas Network Validation
- Engineering Services – Gas
- Gas Network Design Services > 7 Bar

If there are no suitable companies (or a belief that there will be no suitable companies) NGG must issue notice in the Official Journal of the European Union (OJEU) inviting suitable companies to express interest. This advert must be in force for a period of one month. (NB one OJEU notice could be issued on behalf of all DNOs).

Once the tender invitation is issued to the parties identified, the minimum period for responses is three weeks (a longer period can be allowed).

The tender invitation would provide the terms which the successful party will be asked to enter into. The invitation would seek any qualifications which respondents would wish to make in respect of these but this may be part of the Contractable Criteria (see below) and may detract from the tendees score.

The tender invitation will also specify the Contractable Criteria i.e. the high level factors which will be used to assess the tender. These are usually broken down into technical and commercial aspects. Below this would be the (unpublished) detailed scoring matrix.

After close out, NGG may invite parties in to provide presentations, ask questions etc. The UNC Committee would then evaluate each parties score according to the scoring matrix.

Upon conclusion, 'Standstill' letters would be issued to:

- The 'winner'.
- To all other tendees confirming their individual score and the identity of the winner and its score. These parties are allowed a period of ten days to request feedback or challenge their score.

The contract would then be awarded. NGG usually contracts with the successful party in accordance with standard consultancy terms and additional internal governance steps would need to be followed to trade any non-standard terms.

The procurement process would need to be carried out in accordance with the Utilities Contracts Regulations 2006 (as amended).

We are happy for this note to be placed on the Joint Office web site. You may wish to draw attention to its presence.

Regards,

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Commercial

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