

**REQUEST FOR OFFERS**

**FAX COVER SHEET**

**DATE: 23 OCTOBER 2017**

**TO: \_\_\_\_\_**

**FAX: + \_\_\_\_\_**

**FROM: KESH J.S.C (ALBANIA)**

**FAX: + 355 4 2241 982**

Number of pages including cover sheet: [12]

**SUBJECT: Purchasing of electrical energy for 01.11.2017 – 30.11.2017.**

Dear Sirs,

\*The Albanian Power Corporation intends to carry out a competitive procurement procedure for the purchasing of Electrical Energy for 01.11.2017 – 30.11.2017.

You are invited to submit your offer for the supply of electrical energy as follows:

**\*Serbian /Montenegrin/Greek – Albanian Border or/and Inside Albanian High Voltage Grid**

<b>Delivery Period</b>	<b>Delivery Profile</b>	<b>Power (MWh/h)</b>	<b>Quantity (MWh)</b>	<b>Unit Price (EUR/MWh)</b>	<b>CBC</b>
01.11.2017 - 30.11.2017 (For the whole period)	00:00-24:00 (CET, Albanian local time), 24 hrs	Up to 180	<b>Up to 129,600</b>		<b>Provided by The Seller</b>

- The delivery condition is **DAP Albanian Border**, according to Incoterms 2010 issued by International Chamber of Commerce, Paris.

- For the whole period, the electrical energy is asked under the following profile: Continuous delivery for the whole period, KESH j.s.c, requests to all interested companies that will participate in this procedure to submit only **one price** for the whole period.

- The Bid Evaluation Criteria is: The lowest unit/price up to the completion of the required quantities of electrical energy, up to **129,600 MWh**. The contract shall be awarded to the company/companies who will offer the lowest unit/price(s), which will yield the lowest combined price for the quantity requested by KESH for respective lot.

- The companies are encouraged to offer total required quantities for the whole period, but offers that submit lower quantities than the total required quantity, will also be accepted. Companies have to offer supply of electrical energy for the whole required period without interruptions and without changed power.

- KESH sh.a. has the absolute right to accept fully or partially the quantities of electrical energy submitted by the companies.

- In the unit/price is included the value of fiscal obligations, but is not included the value of VAT. Only for comparison and evaluation reasons, the classification of the offers will be based on the lowest unit/price that does not include the value of VAT.

- The contract with the foreign companies will be signed only based on the offer's unit/prices and value of their offer, in which the value of VAT and other fiscal obligations, will not be included. The contract with the local companies will be signed with the total value of the offer (which includes VAT value + the values of all fiscal obligations recognized by the Albanian Legislation).

- We kindly ask you to submit your offers for the required lots/covering the period of 01.11.2017 – 30.11.2017.

- **As a condition of contract signature, the seller should be registered (if not already registered) with KESH, submitting the legal-financial documentation stipulated in the article 10 of KESH j.s.c Purchase Procedures, approved by Albanian Regulatory Entity and published at official web-site: [www.ere.gov.al](http://www.ere.gov.al) (the bidders/companies that have submitted this documentation at KESH j.s.c do not need to resubmit such documentation).**

**NOTE: THE PARTICIPANT OFFERS HAVE TO BE ACCORDING KESH REQUEST FOR OFFERS, INCLUDING TERMS AND CONDITIONS OF THE ATTACHED CONTRACT. ANY DEVIATION OF AN OFFER FROM THE REQUEST FOR OFFER REQUIREMENTS AND CONDITIONS OF CONTRACT SET OUT BY KESH WILL CAUSE DISQUALIFICATION OF THE OFFER. FOR AVOIDANCE OF DOUBT, OFFERS THAT SUBMIT LOWER QUANTITIES THAN THE TOTAL REQUIRED QUANTITY WILL NOT BE REJECTED.**

-All Bidders should not change or withdraw their submitted bids after the defined deadline of RfO.

If the bidders change or withdraw their submitted bids after the evaluation process has ended and the bidders are declared as winners for the electricity supply, they will be excluded from participating in all future public procurement for electricity purchase organised by KESH sh.a., for a 2 (two) year period.

This exclusion will be published for recognition on the official website of KESH sh.a. and will be notified to all other public authorities with which the exempted operator can establish legal relationships for the sale and purchase of electricity.

- All offers **must have a validity period until 30 October 2017, hour 16.30**. Offers without validity period or with validity period shorter than **30 October 2017, hour 16.30**, will be automatically disqualified.

- Your prices in the required format should be addressed to:

ALBANIAN POWER CORPORATION (KESH j.s.c.)  
"Eshref Frasher" Street, Complex "Vizion Plus", No. 8  
FAX: +355 42 241 982

#### - **Inspections and Audits**

Any company participating in this procedure shall keep, and shall make all reasonable efforts to cause its subcontractors, to keep, accurate and systematic accounts and records in respect of the Supply of Electrical Energy. The company shall permit and shall cause its subcontractors to permit, the World Bank (hereinafter called "the Bank") and/or persons appointed by the Bank to inspect all accounts and records relating to the performance of the Contract and the submission of the offer to supply power energy, and to have such accounts and records audited by auditors appointed by the Bank if requested by the Bank. The attention of the company is drawn to the Corrupt and Fraudulent Practices Clause below, which provides, inter alia, that acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under this Clause constitute a prohibited practice subject to a determination of ineligibility under the Bank's prevailing sanctions procedures.

#### - **Corrupt and Fraudulent Practices**

It is the Bank's policy to require that Borrowers (including beneficiaries of Bank loans), bidders, contractors, and their agents (whether declared or not), sub-contractors, sub-consultants, service providers, or suppliers, and any personnel thereof, observe the highest standard of ethics during the procurement and execution of Bank-financed contracts.<sup>1</sup> In pursuance of this policy, the Bank:

(a) defines, for the purposes of this provision, the terms set forth below as follows:

- "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party<sup>2</sup>;

<sup>1</sup> In this context, any action to influence the procurement process or contract execution for undue advantage is improper.

<sup>2</sup> For the purpose of this sub-paragraph, "another party" refers to a public official acting in relation to the procurement process or contract execution. In this context "public official" includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

- "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation<sup>3</sup>;
  - "collusive practices" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party<sup>4</sup>;
  - "coercive practices" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party<sup>5</sup>;
  - "obstructive practice" is
    - (aa) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
    - (bb) acts intended to materially impede the exercise of the Bank's inspection and audit rights;
- (b) will reject a proposal for award if it determines that the bidder recommended for award or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers, and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- (c) will declare misprocurement and cancel the portion of the Loan allocated to a contract if it determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of the Loan were engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the procurement or the implementation of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner they knew of the practices;
- (d) will sanction a firm or an individual at any time, in accordance with prevailing Bank's sanctions procedures<sup>6</sup>, including by publicly declaring such firm or an ineligible, either indefinitely or for a stated period of time: (i) to be awarded a Bank-financed contract, and (ii) to be a nominated sub-contractor, consultant, supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract.

- **Restrictions for Government-owned Enterprises**

Government-owned enterprises or institutions in the Republic of Albania may be awarded a contract only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) that they are not dependent agencies of KESH, or any entity controlled by KESH, or who controls KESH. To establish eligibility, the government-owned enterprise or institution should provide all relevant documents (including its charter) sufficient to demonstrate that it is a legal entity separate from the government; it does not currently receive any substantial subsidies or budget support; it is not obligated to pass on its surplus to the government; it can acquire rights and liabilities, borrow funds, and can be liable for repayment of debts and be declared bankrupt; and it is not competing for a contract to be awarded by the government department or agency which, under the applicable laws or regulations, is its reporting or supervisory authority or has the ability to exercise influence or control over it.

- The deadline for reception of your offer is **26.10.2017, up to 9.00 hrs CET**, at fax number +355 42 241 982 and/or by post mail. The envelope must be sent to the Protocol Office of KESH sh.a, not later than

<sup>3</sup> For the purpose of this sub-paragraph, "party" refers to a public official; the terms "benefit" and "obligation" relate to the procurement process or contract execution; and the "act or omission" is intended to influence the procurement process or contract execution.

<sup>4</sup> For the purpose of this sub-paragraph, "parties" refers to participants in the procurement process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement process to simulate competition or to establish bid prices at artificial, non-competitive levels, or are privy to each other's bid prices or other conditions.

<sup>5</sup> For the purpose of this sub-paragraph, "party" refers to a participant in the procurement process or contract execution.

<sup>6</sup> A firm or an individual may be declared ineligible to be awarded a Bank-financed contract upon (i) completion of the Bank's sanctions proceedings as per its sanctions procedures, including inter alia: cross-debarment as agreed with other International Financial Institutions, including Multilateral Development Banks, and through the application of the World Bank Group corporate administrative procurement sanctions procedures for fraud and corruption; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanctions proceedings.

**26.10.2017** at **9.00**. hrs. Envelopes arriving later than this date and hour will not be accepted and evaluated.

The envelope containing your offer should be marked:

"Purchasing of electrical energy for 01.11.2017 – 30.11.2017. "Do not open, except in presence of the purchasing commission, not before 26.10.2017, at 9.00 hrs."

- Based on the Supreme State Audit recommendations to KESH and the previously adopted practices and procedures each of the interested economic operators/bidders to be represented and bid as: one independent entity with its unique legal name, headquarters address, legal representative and all other criteria as required for an independent commercial company until a new decision is taken by the Competition Authority.
- The Buyer / KESH should not: issue bank guarantee; make pre-payments or accept any other financial conditions. These will not be considered and will lead to disqualification.
- The parties shall not be entitled to assign/to delegate/transfer any rights under this Contract
- The invitation "Selling-Purchasing electrical energy for the period **01.11.2017 – 30.11.2017**", will be published in the official website of KESH jsc: [www.kesh.al](http://www.kesh.al).

Yours Sincerely,

**HEAD OF PURCHASE AUTHORITY**  
**Agron HETOJA**



\_\_\_\_\_ Ref. No. KESH-GEN/-----

**CONTRACT FOR THE SALE AND PURCHASE OF ELECTRICITY**

**Between**

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**(Hereinafter referred to as the "Seller")**

**And**

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**(Hereinafter referred to as the "Buyer")**

**(Buyer and Seller referred to jointly as the "Parties" and individually as a "Party")**

## 1. Object of the Contract

1.1 The Seller shall deliver and the Buyer shall accept electricity according to the terms of this contract (the "**Contract**") as follows:

### Lot 1

Seller:	-----
Buyer:	KESH sh.a.
Delivery period:	01 – 30.11.2017;
Profile of delivery:	00:00-24:00 (24 hrs), (CET, Albanian local time) for the whole period;
Capacity:	180 MW;
Quantity:	129,600 MWh;
Price:	_____ EUR/MWh;
Total amount:	_____ Euro;
Delivery Point:	_____;
Cross Border Capacities:	_____.

\* The delivery condition is **DAP Albanian Border**, according to Incoterms 2010 issued by International Chamber of Commerce, Paris,

## 2. Power Supply

2.1 The Seller shall, in accordance with the provisions of this Contract, deliver electricity to the Buyer to the Delivery Point as specified in this Contract.

2.2 The electricity covered by this Contract is supplied by the Seller in conformity with the voltage and frequency tolerances and other technical standards as prescribed by the applicable provisions of UCTE, the responsible transmission system operators and local authorities (especially provisions relating to schedule announcements, invoices and data exchange).

## 3. Power Purchase

3.1 The Buyer shall, in accordance with the provisions of this Contract, take delivery of and pay for the electricity supplied at the Delivery Point as specified in this Contract.

3.2 In case that a balancing circle system is introduced where the Delivery Point is located, the Parties shall exchange schedules with each other or with the relevant balancing circles responsible, as stipulated in the Contract.

## 4. Transmission and Delivery Charges

4.1 The transmission and delivery charges arising from the fulfillment of this Contract shall be paid by the Seller up to the Delivery Point and by the Buyer at and from the Delivery Point. Transmission and delivery charges embrace all payments and costs which are enforced by the network system operator for the use of the network areas of the transmission and distribution networks, the necessary interposed transforming operations, the system services and all other measures in connection with transmission.

4.2 For the Lot 1 the Cross Border Capacity will be provided by the Seller.

## 5. Transfer of Risk and Title

5.1 The delivery of electricity shall be effected by making available the Quantity at the Capacity level at the Delivery Point according to this Contract. The delivery and receipt of the Quantity, and the transfer from the Seller to the Buyer of all rights to title free and clear of any adverse claims thereto, shall take place at the Delivery Point.

## 6. Taxes

6.1 All agreed prices and fees exclude duties, taxes, charges and all other levies of any nature whatsoever (the "**Taxes**"). The Seller shall up to the Delivery Point and the Buyer shall at and from the Delivery Point onward pay the Taxes that apply to the electricity sold/purchased under this Contract.

6.2 Any increase of existing Taxes and/or any new Taxes that may be imposed in the future to sale and purchase of electricity under this Contract (e.g. eco-tax, CO<sub>2</sub> tax, electricity tax, levies/fees for the promotion of renewable energies), will be charged to the Buyer in the invoices to be issued according to Article 7 hereunder. This will take the form of a surcharge on the electricity price.

6.3 If any Taxes are abolished/decreased during the term of this Contract, the obligation to pay them ceases/is reduced accordingly.

6.4 Each Party undertakes to immediately provide the other with all the information and evidence necessary to meet its tax liabilities and to secure both exemption from taxes and tax refund claim.

## **7. Invoicing and Payment Conditions**

7.1 The Seller shall transmit to the Buyer in the course of the calendar month following a delivery of electricity according to this Contract an invoice setting forth the total quantity of electricity that was sold by it under this Contract in the previous month.

7.2 The Buyer shall pay by wire transfer in freely available funds the amount set forth on such invoice to the payment address or bank account provided by the Seller in Article 14 hereinafter. The Buyer is obliged to pay not later than the 20<sup>th</sup> day following the month of deliveries. Such payment shall be made, unless otherwise agreed, in EURO, and subject to Article 6 (Taxes) without deduction or withholding and the Buyer shall pay its own bank charges. In the event the payment due date does not fall on a Business day, payment shall be made the preceding Business day. "**Business Days**" are weekdays (Monday to Friday), except for the bank holidays that are valid at the domicile of the Seller and of the Buyer.

7.3 Overdue payments shall accrue interest from, and including, the Due Date to, but excluding, the date of payment at the rate equal to the one month EURIBOR set at the due date, plus three percent (3%) per annum of the value of the unpaid amount of the invoice of energy issued for every day of delay.

## **8. Representations and Warranties**

8.1 Each Party warrants for the duration of this Contract that it is authorized to conduct the transactions governed by this Contract, that it has obtained the necessary approvals and licenses and that it has undertaken to meet all required regulatory conditions and has filed all required registrations. Each Party shall take all action necessary to procure that any necessary authorizations, approvals or licenses for the performance of its obligations under this Contract are in full force and effect during the duration of this Contract.

8.2 Upon a reasonable request by one Party, the other Party shall provide copies of directives, provisions of primary and secondary legislation relevant to the effective operation of this Contract, in the official language of such documents and, as far as available, in English. Both Parties shall in a corresponding manner disclose to the other Party upon request any resolutions by its governing bodies and authorities relevant to the effectiveness of this Contract.

## **9. Suspension of Delivery**

9.1 In addition to any other rights or remedies available to the Seller, should the Buyer default on any material contractual obligation under this Contract, in particular on any payment obligation under this Contract or on the obligation to provide a Guarantee, if applicable, the Seller shall be entitled, no earlier than three (3) Business Days after sending a written notice to the Buyer, to immediately suspend further deliveries of electricity under this Contract until such time as the material default has been corrected, respectively the Seller has received the Guarantee or full payment (including all applicable default interest and expenses) of all outstanding amounts owed to the Seller.

## **10. Non Performance**

10.1 If all or part of the quantity agreed upon according to the Contract is not supplied by the Seller, the Seller shall, provided that it has not been released from this obligation by Force Majeure as defined in Article 12 of this Contract or by the other Party's non-performance, pay to the Buyer an amount for such undelivered electricity equal to the price difference between the agreed price and the higher price at which the Buyer is or would be able to purchase or otherwise acquire the undelivered amount of electricity in the market acting in a commercially reasonable manner, increased by any incremental transmission costs and other reasonable documented costs and expenses. Damages for loss of profit, indirect or consequential damages shall be expressly excluded.

10.2 If all or part of the quantity agreed upon according to the Contract is not accepted by the Buyer, the Buyer shall, provided that it has not been released from this obligation by Force Majeure as defined in Article 12 of this Contract or by the other Party's non-performance, pay to the Seller an amount for the non-accepted delivery equal to the price difference between the agreed price and the lower price at which the Seller is or would be able to sell the non-accepted delivery in the market acting in a commercially reasonable manner increased by any incremental transmission cost and other reasonable documented costs and expenses. Damages for loss of profit, indirect or consequential damages shall be expressly excluded.

## 11. Liability

11.1 A Party is not liable to the other Party for any loss, cost, expense or damages ("**Damages**"), (including, without limitation, any liability due to the irregularities in the supply of electricity) incurred by the other Party under or in connection with this Contract, except where such Damages are due to gross negligence, intentional default or fraud of a Party.

11.2 The liability of a Party under or in connection with this Contract does not include liability for any indirect and/or consequential Damages, including, without limitation, loss of profit, goodwill, business opportunity or anticipated saving.

11.3 For the avoidance of doubt, each Party agrees that it has a duty to mitigate its damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur under or in connection with the Contract.

## 12. Force Majeure

12.1 If a Party is prevented in whole or in part by Force Majeure from meeting its delivery or acceptance obligations under this Contract, no breach or default on the part of the Party claiming and being affected by Force Majeure shall be deemed to have occurred and it shall be released (and not merely suspended) from those obligations for the period of time and to the extent that such Force Majeure prevents its performance, provided that:

- a) the Party claiming and being affected by Force Majeure, notifies the other Party in writing and discloses all relevant details without delay of the circumstances that constitute Force Majeure; and
- b) the Party claiming and being affected by Force Majeure, makes every reasonable effort to mitigate the effects of Force Majeure.

12.2 For the purposes of this Contract Force Majeure means an occurrence beyond the reasonable control of the Party claiming and being affected by Force Majeure, which it could not reasonably have avoided or overcome and which makes it impossible for the Party claiming and being affected by Force Majeure, to perform its delivery or acceptance obligations, including, but without limitation, due to one or more of the following:

- a) the failure of communications or computer systems of the relevant network operator(s) which prevents the Party claiming and being affected by Force Majeure from performing its obligations of delivery or acceptance; or
- b) the relevant network operator's suspension of delivery or acceptance or its disregard of the obligations of the Party claiming and being affected by Force Majeure with regard to scheduling under this Contract; or
- c) the complete or partial impossibility of access or transit through the relevant power grids (including, without limitation, interconnector lines) due to (i) unforeseeable technical or operational reasons that directly prevent the fulfilment of contractual obligations, or (ii) loss of interconnector capacity due to limitations declared by a competent Albanian network operator and/or Network operators (TSOs) of the neighbouring countries, if such events are confirmed



also in writing by a competent TSO or (iii) major flooding that causes situation of emergency in the hydroelectric power lakes of the buyer and causes total or partial impossibility of buyer to accept energy from the seller and such events must be confirmed also in writing to the seller.

12.3 In the event, and to the extent, that a Seller's delivery obligation is released by Force Majeure, the Buyer's corresponding acceptance and payment obligation shall also be released. In the event and to the extent, that a Buyer's acceptance obligation is released by Force Majeure, Seller's corresponding delivery obligation shall also be released.

12.4 Obligations and liabilities, which have become due prior to the incidence of Force Majeure as well as those becoming due after the Force Majeure occurrence has ceased shall remain unaffected.

### 13. Duration of the Contract

13.1 The Contract shall become effective as of the time of its signing and remain in force until all obligations arising from this contract will be fulfilled.

13.2 In so far as this Contract has been executed but not yet completed, the Contract cannot be terminated for other than a material reason or through mutual agreement in writing of the Parties. Such material reasons include the following:

- a) an amount under this Contract has not been paid within five Business Days of the receipt of a registered letter containing a warning that an event of default might lead to termination;
- b) a Party becomes aware with reasonable certainty that a representation or warranty, as provided by Article 8, was incorrect in a significant respect when made by the other Party or an obligation under the Contract has not been fulfilled by the other Party;
- c) an application is made for the commencement of insolvency or bankruptcy proceedings with respect to the respective other Party;
- d) Force Majeure lasting for more than 30 consecutive days or more than 60 days in aggregate during one calendar year.

13.3 In case of a material reason, the Contract may be terminated immediately upon written notice by the non-defaulting Party, after giving effect to any applicable grace period. The Contract shall be deemed to be terminated without notice immediately upon the commencement of insolvency or bankruptcy proceedings against a Party.

13.4 In the event of the termination of this Contract, the Parties shall not remain under any obligation to effect deliveries or payments that would have fallen due after the effective date of termination. Such obligations shall be replaced by the obligation to pay damages, if any, as calculated in Article 10 above.

### 14. Notices / Settlement

14.1 All notices that are sent under or in connection with this Contract are to be sent in writing to the following address by registered letter or fax:

#### 14.2 For Seller

-----  
Attn: -----  
Tel: +-----  
Fax: + -----  
Email: -----

#### 14.3 For Buyer

- Attn: Rakela Llanaj  
Director of Department of Electricity Transactions/KESH sh.a.  
Tel.: + 355 42 241 982  
Mob:+ 355 6940 33 490  
Fax: + 355 42 241 982  
Email: [llanajr@kesh.al](mailto:llanajr@kesh.al)
- Back office & finance  
Attn. Enkelejda Myftari  
Director of Economic Department/KESH sh.a.

Tel.: + 355 42 26 2148  
Fax: + 355 42 241 981  
Email: [myftarie@kesh.al](mailto:myftarie@kesh.al)

Attn. Arben Tasi  
Department of Electricity Transactions/KESH sh.a.  
Tel.: + 355 42 241 982  
Mob + 355 6940 33 335  
Fax: + 355 42 241 982  
Email: [tasia@kesh.al](mailto:tasia@kesh.al)

Attn. Kreshnik Marku  
Department of Electricity Transactions/KESH sh.a.  
Tel.: + 355 42 241 982  
Mob + 355 6940 30 821  
Fax: + 355 42 241 982  
Email: [markuk@kesh.al](mailto:markuk@kesh.al)

14.4 All payments under this contract are to be remitted to the bank account and bank code that will be specified in the invoice.

## **15. Partial Invalidity**

15.1 If any provision of this Contract is or should become ineffective, the effectiveness of the remaining contractual provisions shall remain unaffected.

15.2 The Parties undertake to replace the ineffective provision by an effective provision such that it comes as close as possible to the commercial effect of the ineffective provision, observing the original commercial objectives of this Contract.

15.3 Should issues arise that this Contract does not regulate, a suitable provision shall apply that comes as close as is legally possible to what the Parties wished or, given the sense and purpose of the Contract, would have wished if they had considered the point.

## **16. Amendments to the Contract**

16.1 Amendments and additions to this Contract shall be effected in written form by the application of the legally valid signatures of both Parties.

## **17. Confidentiality**

17.1 The Parties shall treat the content of this Contract as well as any information obtained from the other Party in the context of this Contract as confidential, unless any Party is committed to provide information under applicable laws and regulations.

17.2 **Inspections and Audits:** The Seller shall keep, and shall make all reasonable efforts to cause its subcontractors, to keep, accurate and systematic accounts and records in respect of the supply of electrical energy. The Seller shall permit and shall cause its subcontractors to permit, the World Bank (hereinafter called "the Bank") and/or persons appointed by the Bank to inspect all accounts and records relating to the performance of the Contract and the submission of the tender to provide the supply of electrical energy, and to have such accounts and records audited by auditors appointed by the Bank if requested by the Bank. The attention of the Seller is drawn to the Corrupt and Fraudulent Practices Clause below, which provides, inter alia, that acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under this Clause constitute a prohibited practice subject to a determination of ineligibility under the Bank's prevailing sanctions procedures.

17.3 **Corrupt and Fraudulent Practices:** It is the Bank's policy to require that Borrowers (including beneficiaries of Bank loans), bidders, contractors, and their agents (whether declared or not), sub-contractors, sub-consultants, service providers, or suppliers, and any personnel thereof, observe the highest

standard of ethics during the procurement and execution of Bank-financed contracts.<sup>7</sup> In pursuance of this policy, the Bank:

(a) defines, for the purposes of this provision, the terms set forth below as follows:

- "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party<sup>8</sup>;
- "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation<sup>9</sup>;
- "collusive practices" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party<sup>10</sup>;
- "coercive practices" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party<sup>11</sup>;
- "obstructive practice" is
  - (aa) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
  - (bb) acts intended to materially impede the exercise of the Bank's inspection and audit rights;

(b) will reject a proposal for award if it determines that the bidder recommended for award or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers, and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;

(c) will declare misprocurement and cancel the portion of the Loan allocated to a contract if it determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of the Loan were engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the procurement or the implementation of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner they knew of the practices;

(d) will sanction a firm or an individual at any time, in accordance with prevailing Bank's sanctions procedures<sup>12</sup>, including by publicly declaring such firm or an ineligible, either indefinitely or for a stated period of time: (i) to be awarded a Bank-financed contract, and (ii) to be a nominated sub-contractor, consultant, supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract.

## **18. Applicable Law**

18.1 This contract is subject to substantive Albanian Law.

## **19 Arbitration**

19.1 The contractual parties shall try to solve any misunderstandings and disputes that might arise in amicable way through reconciliation and negotiations.

<sup>7</sup> In this context, any action to influence the procurement process or contract execution for undue advantage is improper.

<sup>8</sup> For the purpose of this sub-paragraph, "another party" refers to a public official acting in relation to the procurement process or contract execution. In this context "public official" includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

<sup>9</sup> For the purpose of this sub-paragraph, "party" refers to a public official; the terms "benefit" and "obligation" relate to the procurement process or contract execution; and the "act or omission" is intended to influence the procurement process or contract execution.

<sup>10</sup> For the purpose of this sub-paragraph, "parties" refers to participants in the procurement process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement process to simulate competition or to establish bid prices at artificial, non-competitive levels, or are privy to each other's bid prices or other conditions.

<sup>11</sup> For the purpose of this sub-paragraph, "party" refers to a participant in the procurement process or contract execution.

<sup>12</sup> A firm or an individual may be declared ineligible to be awarded a Bank-financed contract upon (i) completion of the Bank's sanctions proceedings as per its sanctions procedures, including inter alia: cross-debarment as agreed with other International Financial Institutions, including Multilateral Development Banks, and through the application of the World Bank Group corporate administrative procurement sanctions procedures for fraud and corruption; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanctions proceedings.

19.2 Any dispute, controversy or claim arising out of or in relation to this Contract, including the validity, invalidity, breach or termination thereof, shall be settled by arbitration in accordance with the International Arbitration Room - Paris or the UNO Commission for Arbitration and International Trades, Geneva, in force on the date when the Notice of Arbitration is submitted in accordance with these Rules. The number of arbitrators shall be three. In case of contract signed with a local Seller, such disputes will be settled according to the Albanian Legislation at the District Court of Tirana.

**20. Assignment**

20.1 The Parties shall not be entitled to assign any rights under this contract without the prior written consent of the other party.

**21. Copies**

21.1 This Contract has been produced in two original copies, one for each Party.

Place, Date: -----

Place, Date: Tirana, -----

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**KESH SH.A.**

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