

## **CREG establishes the procedures to be followed for the Development of Natural Gas Supply Plan Projects through bidding processes**

Given the difficulties experienced by the natural gas sector in Colombia due to factors such as: (i) the El Niño phenomenon; (ii) the decrease in hydrocarbons exploration activities; (iii) the high prices of electricity and natural gas; and (iv) the shortage of natural gas in the short and medium term, the government has enacted Resolution 400052 of the Ministry of Mines and Energy ("MME") which sets out the legal framework for the creation of an Indicative Gas Supply Plan that will set out the policy actions required to ensure gas supply in the medium and long term..

The Plan intends to promote reliability of supply through the development of priority reliability projects and the promotion of the timely expansion of the national gas transportation system through expansion of existing capacity or development of additional capacity.

For this purpose, the plan identifies certain key projects, including new supply sources such as a new regasification plant on the Colombian Pacific Coast (in addition to the existing regasification plant that will supply LNG to thermal generators located on the Caribbean coast, which is being built in Cartagena) and the expansion of certain sections of the national gas transportation system, such as: (i) Jobo - Cartagena Gas Pipeline; (ii) Ballena - Cartagena pipeline; (iii) El Porvenir - Vasconia pipeline; (vi) Cusiana - Apiay pipeline; (v) Mariquita - Gualanday pipeline; and (vi) Buenaventura - Cali and Cali - Vasconia pipelines;

It also seeks to improve the following gas transportation segments: (i) Ballena - Barrancabermeja; (li) Cusiana - Bogota, (iii) CQR (eje cafetero); and (iv) Suroriental, as well as create the conditions for natural gas transportation demand to be satisfied by agents other than gas transportation companies in an efficient way by ordering the Energy and Gas Regulation Commission ("CREG") to create the regulatory framework to this end.

In this context, on March 15, 2016, CREG issued resolution CREG No. 038, which made public a draft resolution, "which sets out the procedures to be followed for the development of natural gas supply plan projects through bidding processes" (the "Resolution").

The Resolution establishes the parameters for bidding processes to be carried out for the award and development of projects identified in the Natural Gas Supply Plan, which will be applied to: (i) all natural gas transportation agents, (ii) those interested in participating in the bidding processes, and (iii) any other agents and beneficiaries of the natural gas service ("Processes" or "Process").

The Processes will apply to those investment projects of the plan that are not developed by incumbent transporters, and therefore may be awarded to third parties. In these Processes all existing transporters and other interested third parties may participate provided they meet the following conditions:

- a) The interested bidder must evidence experience in the construction of at least 200 km-inch of gas transportation pipeline at least under ANSI 2150 specifications.
- b) For other projects, applicant must demonstrate experience in the construction of similar infrastructure projects.
- c) Not having affiliation with any of the other bidders participating in the same Process.
- d) Not having had a contract declared in breach under the Resolution within the 24 months before the deadline for submission of proposals.

The successful bidder will be selected taking into consideration the criteria established under the Resolution, including the following: (i) enclose a technical and economic offer. The economic offer will be equal to the expected annual income ("IAE"), for a 25 year period as of the date of entry into operation. It will also be used to calculate the value of the offer, and (ii) all proposals must include a bid bond.

It should be noted that, upon presenting the offer the bidder assumes the responsibility and risk inherent to the implementation and operation of the project having the IAE as its sole remuneration.

Once the Process is completed, UPME shall award the project through an administrative act and the contractor must deliver the required documentation, including a copy of the approval of the compliance guaranty.

All projects must have an auditing firm, which must be selected from a list prepared by the National Council for the Operation of Natural Gas ("CNOG"). Failure to comply with the obligations assigned to the auditor under this Resolution will lead to the termination of the contract and the exclusion of the auditing firm from the list prepared by the CNOG.

The awarded bidder who has been awarded with a project through one of the Processes, may not assign the rights and responsibilities acquired in the award, during the execution of the project or during the payment period, unless there is prior written authorization by the UPME.

By separate resolution CREG will determine the projects that must be developed by incumbent transporters and which, if not developed by them will be tendered out to other agents.

*We will be pleased to clarify and discuss the above information. Please contact Álvaro José Rodríguez in Bogota at the e-mail [alvaro.rodriguez@phrlegal.com](mailto:alvaro.rodriguez@phrlegal.com), or at the phone number +571 3257300.*