



COLOMBIA: PACIFIC COAST REGASIFICATION FACILITY AND GAS PIPELINE

Background

- In 2018, the Colombian government adopted a National Development Plan for 2018-2022 under which the Colombian Ministry of Mines and Energy was instructed to adopt the necessary measures to ensure the supply of natural gas in Colombia, including the construction of a regasification facility on its Pacific coast.
- In May 2018, the Colombian Mining and Energy Planning Unit (UPME) published the preliminary bid documents for the design, procurement, financing, construction, commissioning, operation and maintenance of (i) a regasification facility in the form of either an FSRU or an onshore facility (the "**Regasification Facility**") and (ii) a gas pipeline connecting the municipalities of Buenaventura and Yumbo (the "**Pipeline**" and together with the Regasification Facility, the "**Project**"). In October 2020, UPME published the bid documents for comments and scheduled the bid for the second quarter of 2021.

The Project

- *Framework:*
 - Pursuant to the bid documents, the winning bidder (the "**Selected Investor**") will assume most Project risks, including all construction and operation risks.
 - The development of the Project will not be governed by an agreement between any government authority and the Selected Investor. Instead, UPME will issue a resolution awarding the Project to the Selected Investor, and the development of the Project will be governed by natural gas regulations issued from time to time by UPME and the Energy and Gas Regulation Commission (CREG).
- *Scheduled Commercial Operation Date:* The Project is required to achieve commercial operation on the date that is 58 months after the Project has been awarded (the "**Scheduled Commercial Operation Date**") and, in any case, no later than December 2024. The Scheduled Commercial Operation Date may be extended by the Ministry of Mines and Energy solely upon delays due to

force majeure events, events related to public order (e.g. terrorism or social unrest) or delays in the issuance of the environmental license.

Project Revenues

- The Selected Investor will be entitled to receive the Annual Expected Income requested in its bid. The Annual Expected Income will be paid in equal monthly installments over a 20-year period counted from the date commercial operation is achieved. However, if commercial operation is achieved earlier than the Scheduled Commercial Operation Date, the Selected Investor will only be entitled to receive the monthly installments of the Annual Expected Income from such earlier date following CREG's prior approval.
- Bidders may request up to 42% of the total Annual Expected Income to be denominated in US Dollars (indexed on a yearly basis based on the USA Producer Price Index). However, such amounts will be payable in Colombian pesos based on the representative market exchange rate (*tasa representativa del mercado*) as of the last day of the relevant month.
- Upon the expiration of the 20-year period over which the Annual Expected Income is payable, the Selected Investor will remain the owner and operator of the Project, and Project revenues thereafter will be determined pursuant to a formula set forth in the regulation applicable to natural gas assets in Colombia.
- The Annual Expected Income is payable by transport companies (*transportadores*), which are entitled to payments from traders (*comercializadoras*), which in turn are entitled to collect payments from final customers. Each such transport company will be required to provide the Selected Investor with a guarantee for the payment of its obligations in respect of the Annual Expected Income. In turn, traders will be required to provide transport companies with guarantees of their payment obligations.
- The Annual Expected Income will be subject to deductions, which are determined pursuant to a formula set forth in the applicable regulation which considers the number of days in which the Project failed to comply with the availability requirements. Deductions are applied to the Annual Expected Income installment corresponding to the month in which the deduction is determined, and are not subject to any caps.

Certain Material Risks

Some of the material risks to be borne by the Selected Investor are:

- Real estate rights acquisition – there is no time or money relief for any delays or cost overruns arising from the acquisition of real estate rights required to develop the Project. Considering the extent of land required and that such land will be located mainly in rural areas, the acquisition process may incur in delays. This risk is partly mitigated by existing regulation that provides for mandatory easements for gas-related projects.
- Environmental liability – environmental liability is uncapped, which is particularly material since the Selected Investor is required to carry out all works necessary to make the Project environmentally viable. The Selected Investor will be responsible for obtaining all environmental permits required for the construction and operation of the Project and for managing the social

impact of the Project. Moreover, the Selected Investor will be required to fund all costs related to the environmental works and permits required for the Project.

- Minimum operation standards – the Selected Investor will be required to indemnify any market participant (e.g. gas transport companies) that suffers damages due to a failure by the Selected Investor to maintain the minimum operation requirements of the Project. This indemnity obligation is uncapped.
- Offtaker creditworthiness – the companies that will transport the Project's output are to be defined and their creditworthiness must be considered. This risk is partially mitigated by the requirement that the transportation companies to deliver guarantees to the Selected Investor. The required terms and conditions of the guarantees are being prepared by CREG.

Events of Default

The bid documents include certain events that entitle UPME to draw on the performance bond delivered by the Selected Investor, including:

- failure to update the performance bond as a result of approved delays in the Scheduled Commercial Operation Date;
- delays of 50% or more of the scheduled timeline for the execution of the Project;
- abandonment of the Project; and
- failure to satisfy the technical requirements of the Project.

The Bid Process

- Bids are scheduled to be submitted by **July 27, 2021**, and the award of the Project is expected to occur on **August 24, 2021**.¹
- Bidders are required to submit their bids in two envelopes containing (i) a comprehensive plan for the design, procurement, construction, commissioning, operation and maintenance of the Project and (ii) the requested Annual Expected Income expressed as a fixed amount for each of the initial 20 years of operation of the Project.
- UPME will first select the bids that satisfy all technical and financial requirements. Subsequently, UPME will award the Project to the bidder with the lowest requested Annual Expected Income.
- The winning bidder will be required to deliver a performance bond in an amount equal to 7% of the requested Annual Expected Income. Such bond must remain in effect until the date that is 30 days after the Scheduled Commercial Operation Date (as such date may be updated from time to time).

¹ The bid schedule was modified by amendment No. 2 to the bid documents.

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