

**Mixed Holding “Power Utility of the Republic of Srpska”
Parent Joint-stock Company Trebinje**

Number: 1.1/01-177-3/18

BIDDING DOCUMENTS
for
Electricity Surplus Sale
in the period from 1 February 2018 to 28 February 2018

Trebinje, 19 January 2018

Bidding Documents

1. Bidding Documents Contents

1.1. The requirements, the procedures and the conditions are described in the Bidding Documents. The Bidding Documents include:

Section I

- Invitation for Bids

Section II

- Instructions to Bidders

Section III

- Draft Contract

Section IV

- **Forms**
 1. *Bid Form*
 2. *Bid Security Form*
 3. *Payment Security Form*

1.2. The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents. Failure to provide all information required by the Bidding Documents or to submit a Bid not substantially responsive to the Bidding Documents in every respect will be at the Bidder's risk and may result in the rejection of its Bid.

Section I
Invitation for Bids

**MH “Power Utility of the Republic of Srpska”
Parent Joint-stock Company
T R E B I N J E**

Number: 1.1/01-177-2/18

Date: 19 January 2018

Invitation for Bids

Pursuant to the Decision of Management of Mixed Holding “Power Utility of the Republic of Srpska” no. 1.1/01-177-1/18 as of 18 January 2018, as well as on the basis of the Rulebook on the Sale and Procurement (Purchase) of Electric Energy at Weekly, Monthly and Annual Level, the Management of MH “Power Utility of the Republic of Srpska”, Parent Joint-stock Company Trebinje, issues:

**PUBLIC INVITATION
for collection of bids for electric energy to be sold
in the period from 1 February to 28 February 2018**

1. Mixed Holding “Power Utility of the Republic of Srpska”, Parent Joint-stock Company Trebinje (hereinafter: MH ERS) kindly informs you that it opens a procedure for electric energy sale, as it follows:

Lot no.	Delivery period	Power (MWh/h)	Energy (MWh)	Delivery Profile and Guarantee
1	01.02.2018-28.02.2018	up to 40	26,880	“baseload, 00-24h”non- guaranteed

Total quantity (MWh): 26,880

The Bid must be addressed to the whole Delivery Period, provided that it does not have to be addressed to the whole quantity, it may relate only to the part of quantity, but the power shall not be less than 10 MWh/h. The Seller has the right to cancel delivery of electricity in duration of up to 72 hours cumulative, sending notice 4 hours prior to delivery interruption. The maximum number of cancellations is 3 times.

In this case, the Bidder with the lowest passing price is obliged to accept also a part of the offered quantities which may be less than those to which it applied, given that the Bids’ ranking is done according to the criteria of higher prices up to the maximum amount of quantity. In case of identical bids according to the price, the priority is given to the bids offering the advance payment, and next priority is the time of the Bid’ submission.

2. This Invitation is referred to all interested Bidders. The sale will be realized through the international public announcement – Tender – and it is open, under the same conditions, to all domestic and foreign Bidders.

3. The electric energy will be supplied through the interconnections of 110 kV, 220 kV and 400 kV transmission lines, in accordance with the standard terms and conditions that commonly apply for European Interconnection (ENTSO-E).

4. The total quantity of electric energy to be sold is: **26,880 MWh**.

5. The delivery point is inside Bosnia and Herzegovina or on the DAP Bosnia and Herzegovina border in accordance with Incoterms 2010. MH ERS does not dispose of any cross-border transmission capacity.

6. The Bids must be submitted on 24 January 2018 (Wednesday) no later than 10.30 hours local time at the MH ERS protocol office, at the following address:

MJEŠOVITI HOLDING
“ELEKTROPRIVREDA REPUBLIKE SRPSKE”
Matično preduzeće, akcionarsko društvo Trebinje
Stepe Stepanovića bb
89101 Trebinje
BOSNA I HERCEGOVINA
za Komisiju za prodaju električne energije

7. Interested Bidders may download the Bidding Documents from the MH ERS' web-site (www.ers.ba). The written Bids shall be submitted only in accordance with the Bidding Documents.

8. The Bids must be delivered to the above-stated address on 24 January 2018 no later than 11.00 hours local time and must be accompanied by the Bank guarantee for Bid Security in the amount of 3% of the total value of the Bid, and the Letter of Intent of the Bank acceptable for ERS to issue the irrevocable, unconditional and payable on the first demand Performance Guarantee in the amount of total electric energy purchased in case the Buyer offers deferred payment (payment after delivery). The Buyer can also submit other security means prescribed by the law, acceptable by the Seller.

9. The Bids will be opened in the presence of the Bidders' representatives (upon previously submitted authorization) who choose to attend it, on 24 January 2018 no later than 11.00 hours local time at the MH ERS headquarters, Stepe Stepanovića bb, Trebinje, Republic of Srpska.

10. MH ERS reserves its right to accept or refuse any Bid, as well as to annul the Tender procedure and to refuse all Bids at any time before entering the Contract without any responsibility towards the Bidders and liability to clarify such a decision.

11. Until submission of the Bids, all additional information may be obtained from Ms Koraljka Kovačević-Markov via phone: +387 59 277 101 (e-mail: trgovina@ers.ba) until 23 January 2018 at 10.00 hrs.

COMMISSION FOR ELECTRICITY SALE

Section II
Instructions to Bidders

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A. Introduction

1. Introduction

1.1 Mixed Holding “Power Utility of the Republic of Srpska”, Parent Joint-stock Company Trebinje (hereinafter: MH ERS) kindly informs you that it opens a procedure for electric energy sale, as it follows:

Lot no.	Delivery period	Power (MWh/h)	Energy (MWh)	Delivery Profile and Guarantee
1	01.02-2018-28-02-2018	up to 40	26,880	“base-load, 00-24h” non-guaranteed

Total quantity (MWh): 26,880

The Bid must be addressed to the whole Delivery Period, provided that it does not have to be addressed to the whole quantity, it may relate only to the part of quantity, but the power shall not be less than 10 MWh/h.

In this case, the Bidder with the lowest passing price is obliged to accept also a part of the offered quantities which may be less than those to which it applied, given that the Bids’ ranking is done according to the criteria of higher prices up to the maximum amount of quantity.

1.3 This Invitation is referred to all interested Bidders. The sale will be realized through the international public announcement – Tender and it is open, under the same conditions, to all domestic and foreign Bidders.

2. Costs of Bidding

2.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and MH ERS will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the Bidding Procedure.

B. Technical Terms and Conditions

3. Technical Terms and Conditions

3.1 The electricity will be supplied over interconnections of 110 kV, 220 kV and 400 kV transmission lines in accordance with the standard terms and conditions that commonly apply for European Interconnection (ENTSO-E).

3.2 The Seller is obliged to start electricity supply on 1 February 2018 at 00⁰⁰ hours and complete such supply on 28 February 2018 at 24⁰⁰ hours. Electricity supply shall be done as a non-guaranteed delivery, i.e. the Seller has the right to cancel delivery of electricity in duration of up to 72 hours cumulative, sending notice 4 hours prior to delivery interruption. The maximum number of cancellations is 3 times.

The total quantity of electricity to be sold is: **26,880 MWh**.

3.3 The Delivery Point is inside Bosnia and Herzegovina or on the DAP Bosnia and Herzegovina border in accordance with Incoterms 2010.

MH ERS does not dispose of the cross-border transmission capacity.

The Bidder must specify the Delivery Point in the Bid Form, respectively whether electricity will be taken over inside BiH or on BiH border with neighbouring country.

- 3.4 Under event of Force Majeure is meant unexpected events which the Parties could not have foreseen, avoided or eliminated with the measures or means which can justifiably be asked for and expected by the affected Party at that time, and whose consequence is impossibility or considerably reduced possibility to deliver or accept electricity.
- 3.5 Electricity cancelled and undelivered under the effect of Force Majeure shall not be delivered later on.

C. Preparation of Bids

4. Language of Bid

- 4.1. The Bid prepared by the Bidder, as well as all correspondence and documents relating to the Bid will be submitted to MH ERS in one of the official languages in the Republic of Srpska. The foreign Bidders shall submit it in English language with mandatory translation into one of the official languages in the Republic of Srpska.
- 4.2. The Bidder may ask MH ERS for additional clarification of the Bidding Documents not later than 23 January 2018, till 10.00 hrs.

5. Documents Comprising the Bid

- 5.1 The Bid prepared by the Bidder shall comprise the following documents, original or certified copy, not older than 3 months from the date of issue:
- a. The Bid Form (Form no. 1) separately for every Lot with unit quantity, price, validity of Bid, Delivery Point and method and terms of payment;
 - b. The Bidder's official registration in the court relating to electricity trading (or issued by other institution which is, pursuant to the Law of the Bidder's country, authorized for keeping register of business entities/companies);
 - c. The Certificate issued by the competent body that bankruptcy proceedings or liquidation are not conducted against the Bidder;
 - d. The license of the competent regulator body indicating the Bidder can perform electricity trading if it is a word about trader, or the decision on qualified buyer status if it is a word about final (eligible) buyer.
 - e. References of the Bidder for the electricity sale/purchase;
 - f. The Power of Attorney, duly notarized by public notary (or in some other legal way), indicating that the person/s signing the Bid has/have the authority to sign the Bid and thus that the Bid is binding upon the Bidder during the full period of its validity (if the

Bidder comprises more companies, it must be clearly stated in the Bid which one is the leader of the work with the note that they have joint and several liability what is confirmed in writing by them);

- g. The Financial Reports for last two years (the Balance Sheet and the Profit and Loss Statements), revised by the Independent Auditor;
- h. The Statement by which the Bidder accepts all provisions of the Bidding Documents, as well as the Draft Contract;
- i. The Bank Guarantee for Bid Security provided in accordance with ITB Clause 7 herein (Form no. 2);
- j. The Letter of Intent of the Bank (in a case of payment after delivery), acceptable for MH ERS, about issuing irrevocable, unconditional and payable on the first demand Bank guarantee to the Bidder, in the amount of the equivalent financial value of the total contractual electricity valid for 45 days from the moment of completion of the Contract. This Guarantee shall be activated in a case of non-payment according to the Contract and/or in a case of non-accepting electricity by its own fault. Apart from the stated, the Seller has the right on compensation of damage according to the Contract. (The Letter of Intent is not required if the Advance payment is offered).

5.2 Documentation defined under Clause 5.1 except of Clauses 5.1(a), 5.1 (i) and 5.1 (j) is eliminatory, and in case of incomplete submission, the Bid shall not be further evaluated. Non-submission of documentation stipulated under Clause 5.1 (g) – revised financial reports shall not represent an eliminatory term for such a Bid, only for those Bidders which objectively can not submit the requested documentation due to their late establishment and absence of those reports.

6. Bid Currency

6.1 The offered price shall be quoted in €/MWh, without VAT.

7. Bank Guarantee for Bid Security

7.1 Pursuant to ITB Clause 5.1 (i) and 6.1 herein, the Bidder shall submit, as a part of its Bid, the Bank Guarantee for Bid Security in the amount of 3% of value of the Bid for delivery outside BiH, i.e value of the Bid (price + VAT) for electricity delivery inside of BiH.

7.2 The Bank Guarantee for Bid Security is required to protect MH ERS from eventual Bidder's unfulfillment of obligations, and in case of which the guarantee is charged pursuant to Clause 7.7.

7.3 The Bank Guarantee for Bid Security shall be denominated in the currency of the Bid, in the form of bank guarantee in the text provided in the Bidding Documents and valid for ten (10) days beyond the validity of the Bid (till 13 February 2018). (Form no. 2).

7.4 Any Bid not provided with the Bid Security in accordance with Clause 7.1 shall be rejected pursuant to Clause 16.4.

7.5 Unsuccessful Bidders' Bank Guarantee for Bid Security will be returned not later than five (5) days after the expiration of the period of Bid validity pursuant to Clause 8.1.

7.6 The successful Bidder's Bank Guarantee for Bid Security will be returned upon its validity expiration pursuant to Clause 21.2 upon making the advance payment for the period of electricity supply pursuant to ITB Clause 22.1.

7.7 The Bank Guarantee for Bid Security may be charged:

- (a) if the Bidder withdraws its Bid during the period of Bid validity specified by the Bidder;
- or
- (b) in case the successful Bidder rejects to:
 - sign the Contract without justified reason in accordance with ITB Clause 21.1,
 - or
 - make the advance payment for period of electricity delivery pursuant to ITB Clause 22.1

7.8 The Buyer can also submit any other payment security instrument prescribed by law which is acceptable to the Seller.

8. Period of Validity of Bids

8.1 The Bids must be valid for the period of 10 days after the date of Bids' opening prescribed by MH ERS. MH ERS shall reject a Bid that is valid for a shorter period as being non-responsive.

9. Format and Signing of Bid

9.1 The Bidder shall prepare an original copy and two counterparts of the Bid, clearly marking each "ORIGINAL COPY" and "COUNTERPART", as appropriate. In the event of any discrepancy between them, the original copy shall prevail.

9.2 The original and the counterparts of the Bid shall be typed or written in indelible ink and shall be signed by the Bidder or a person or persons duly authorized to bind the Bidder to the future Contract. All pages of the Bid, except for printed literature, shall be initialed by the person or persons signing the Bid.

The Bid Security should not be initialed by the Bidder.

9.3 Any corrections of the Bid shall be valid only if they are initialed by the person or persons signing the Bid, in accordance with the ITB Clause 13.

D. Submission of Bids

10. Sealing and Marking of Bids

10.1 In each envelope the Bid is sorted into two parts in special smaller envelopes. One of them has the mark "DOCUMENTS" and another has the mark "FINANCIAL OFFER", provided that for each LOT of the financial offer a form is filled separately given in the Attachment no.1. In the envelope marked as "DOCUMENTS" the Bidder puts all elements from the Clause 5.1, except from Clauses 5.1(a), 5.1 (i) and 5.1 (j). In the envelope marked as "FINANCIAL OFFER", the Bidder puts the elements from Clause 5.1(a), 5.1 (i) and 5.1 (j). The envelopes

shall then be sealed in an outer envelope. Sealed in the above mentioned method one original and two copies shall be submitted.

10.2 The inner and outer envelopes shall be:

- (a) addressed to MH ERS at the following address: *Mješoviti Holding Elektroprivreda Republike Srpske Trebinje, Matično preduzeće, akcionarsko društvo Trebinje, Ul. Stepe Stepanovića bb, Republika Srpska, Bosna i Hercegovina, za Komisiju za prodaju električne energije za period 01.02.2018- 28.02.2018;*
- (b) marked with the number of the Bidding Documents and with the mark “*PRODAJA VIŠKOVA ELEKTRIČNE ENERGIJE U PERIODU OD 01.02.2018 – 28.02.2018 GODINE*” (meaning: electricity surplus sale in the period from 1 February to 28 February 2018), and the note: “*NE OTVARAJ*” (meaning: do not open).

10.3. The inner envelopes shall also indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared “late”.

10.4 If the outer envelope is not sealed and marked as required by ITB Clause 10.2. MH ERS will assume no responsibility for the Bid’s misplacement, or its delay at the opening.

11. Deadline for Submission of Bids

11.1 The Bids must be submitted to the MH ERS' Administrative Office at the address specified under ITB Clause 10.2 not later than 24 January 2018 till 10.30 hrs local time.

11.2 MH ERS may, at its discretion, extend this deadline for the Bids' submission by amending the Bidding Documents in which case all rights and obligations of MH ERS and the Bidders previously subjected to the original deadline will thereafter also be subjected to the new extended deadline.

12. Late Bids

12.1 Any Bid submitted to the MH ERS' Administrative Office after the deadline for Bids' submission prescribed by MH ERS pursuant to ITB Clause 11. shall be rejected and returned unopened to the Bidder.

13. Modification and Withdrawal of Bids

13.1 The Bidder may modify or withdraw its Bid after the Bids' submission, provided that written notice of the modification, including substitution or withdrawal of the Bids, is received by MH ERS prior to the deadline prescribed for Bids' submission.

13.2 The Bidder’s modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of ITB Clause 10. A withdrawal notice may also be sent by e-mail, but followed by a signed confirmation copy, postmarked not later than the deadline for Bids' submission.

13.3 No Bid may be modified after the deadline for Bids' submission.

- 13.4 No Bid may be withdrawn in the interval between the deadline expiration for Bids' submission and expiration of the period of Bid validity specified by the Bidder. Withdrawal of a Bid during this interval may result in the Bidder's forfeiture of its Bid Security pursuant to ITB Clause 7.7.

E. Opening and Evaluation of Bids

14. Opening of Bids by MH ERS

- 14.1 MH ERS will open all Bids which are marked as "*PRODAJA VIŠKOVA ELEKTRIČNE ENERGIJE U PERIODU -01.02.2018. – 28.02.2018. GODINE*" (meaning: electricity surplus sale in the period from 1 February 2018 till 28 February 2018) in the presence of Bidders' authorized representatives who choose to attend, at the time, on the date, and at the place as follows: 24 January 2018 u 11.00 local time, at the premises of Mixed Holding Power Utility of the Republic of Srpska, Parent Joint-stock Company Trebinje, Stepe Stepanovica bb, Republic of Srpska. The Bidders' representatives who attend the opening (according to previously submitted authorisation to the Committee) shall sign a register evidencing their attendance. Opening and evaluation of the Bids are carried out by the Committee for Electric Energy Sale (the Committee).

- 14.2 The Bidders' names, Bids' modifications or withdrawals, offered prices and the presence or absence of the Bid Security and such other details as MH ERS, at its discretion, may consider appropriate, will be announced at the Bids' Opening. Late Bids shall be returned unopened to the Bidders pursuant to ITB Clause 12.1.

- 14.3 Before starting the Opening of Bids pursuant to Clause 14.1, the Committee examines all received envelopes, checks whether they are closed and takes the minutes about it, as well as about the total number of the received Bids. The Committee puts the ordinal number on each closed envelope following the time of its arrival and then it starts with the Opening of Bids according to the order of the ordinal numbers.

After the outer envelopes are opened "*PRODAJA VIŠKOVA ELEKTRIČNE ENERGIJE U PERIODU 01.02.2018. – 28.02.2018. GODINE*" (meaning: electricity surplus sale in the period from 1 February 2018 till 28 February 2018), the Committee starts with the Opening of Bids which are marked as "DOCUMENTS" and reading of the enclosed documents, and confirms whether the contents meets the elements from the Clauses 5.1 (b), 5.1 (c), 5.1 (d), 5.1. (e), 5.1 (f), 5.1 (g) and 5.1. (h) and sorts the Bids into two categories: the Bids which meet formal conditions and the Bids which do not meet the same. Afterwards, the envelopes marked as "FINANCIAL OFFER" are opened and publicly read, but only Bids which previously met formal conditions. The Committee takes the minutes about the Opening of Bids.

Evaluation of Bids is carried out at the non-public meeting of the Committee.

15. Clarification of Bids

- 15.1 During evaluation of the Bids, MH ERS may, at its discretion, ask the Bidder for a clarification of its Bid. The request for clarification and the answer shall be in writing. The Bidder must give the answer to asked question within 24 hours.

16. Preliminary Examination

- 16.1 MH ERS will examine the Bids to determine whether they are complete, whether required securities have been submitted, whether the documents have been properly signed, and whether the Bids are generally acceptable.
- 16.2 MH ERS may waive any minor informality, nonconformity, or irregularity in a Bid which does not constitute a material (substantial) deviation, provided such waiver does not prejudice or affect the relative ranking of any Bidder.
- 16.3 Prior to the detailed evaluation, pursuant to ITB Clause 17, MH ERS shall determine the substantial responsiveness of each Bid to the Bidding Documents. For the purpose of this Clause, a substantially responsive Bid is the one that conforms to terms and conditions of the Bidding Documents without material (substantial) deviations. Deviations from, or objections or reservations to critical provisions, such as those concerning the Bid Security, the Bank's Letter of Intent, quantity of electricity, or technical terms and conditions for electricity supply from the Bidding Documents or the Contract, shall be deemed to be a material (substantial) deviation.
- 16.4 If a Bid is not substantially responsive to the Bidding Documents, it shall be rejected by MH ERS and may not subsequently be made responsive to the Bidding Documents by the Bidder by correction of the nonconformity.

17. Evaluation and Comparison of Bids

- 17.1 MH ERS shall evaluate and compare the Bids which have been determined to be substantially responsive to the Bidding Documents.
- 17.2 During evaluation of Bids, MH ERS shall take into account the following factors:
- (a) offered price, with the aim to achieve maximum profit for MH ERS;
 - (b) method of payment (may be deferred or advance payment, but, if there are two or more Bidders offering the same price, advance payment has priority over the payment after delivery);
 - (c) in the event that Bids have the same price and method of payment, priority shall be given to the Bid with higher quantity offered,
 - (d) if all previous items are identical, priority shall be given to the Bid which was firstly submitted at the MH ERS protocol office.

18. Contacting MH ERS

- 18.1 No Bidder shall contact MH ERS on any matter relating to its Bid, from the time of the Bids' Opening to the time the Contract is awarded, except in case pursuant to Clause 15.1.
- 18.2 Any Bidder's effort to influence MH ERS and the Committee in its decisions on Bids' evaluation, Bids' comparison, or Contract award may result in the rejection of the Bidder's Bid.

F. Award of Contract

19. Award Criteria

- 19.1 MH ERS Management will award the Contract to successful Bidders whose Bids have been determined as substantially responsive to the Bidding Documents and for which have been determined as the highest price evaluated Bids, provided further that the Bidders are determined to be qualified to perform the Contract satisfactorily.
- 19.2 After the Bids' evaluation, the Committee will make the report with the proposal of the selected successful Bidder and submit it to MH ERS Management for their consideration and adoption.

20. MH ERS' Right to Accept any Bid and to Reject any or all Bids

- 20.1 MH ERS reserves the right to accept or reject any Bid, as well as to annul the Bidding Procedure and to reject all Bids at any time prior to contract conclusion, without thereby incurring any liability to the affected Bidders or any obligation to inform the affected Bidders of the grounds for MH ERS' action.

21. Signing of Contracts

- 21.1 MH ERS Management and the selected Bidder(s) shall sign Contracts for electricity delivery, not later than 26 January 2018.
- 21.2 Upon Bank Guarantee for Bid Security validity expiration, MH ERS shall return to successful Bidders their Bank Guarantee for Bid Security pursuant to ITB Clause 7.6 herein.
- 21.3 For delivery of electricity within Bosnia and Herzegovina territory, the Contract price shall be expressed in convertible marks (KM) with the average rate of (1 € = 1.95583 KM), while the electricity delivery outside of BiH the Contract price shall be expressed in Euros (€).

22. Bank Guarantee for Payment Security / Advance Payment

- 22.1 The successful Bidder shall submit the irrevocable, unconditional and payable on the first demand the Bank Guarantee for Payment Security in the amount of the equivalent financial value of the total contractual electricity valid for 45 days from the moment of completion of the delivery in the form determined in the Bidding Documents (Form no. 3) or make the advance payment for the agreed electricity delivery.

The bank guarantees / the advance payments must be submitted / made not later than 30 January 2018 for the total contracted quantity at the address of MH ERS Trebinje, with the validity period of 45 days from the moment of completion of electricity delivery.

Otherwise the Seller shall proceed according to ITB Clause 7.7 (b) herein. Apart from the stated, the Seller shall execute the Contract termination and request by judicial means the Buyer to pay 5% of the contracted value, as well as the difference which is equal to the difference between the non-received electricity value according to the price determined in the terminated Contract and value of electricity the Seller sold to the third party (the Seller proves this with relevant sale documentation) from the moment of Contract termination till

the planned date of Contract completion. The Buyer shall pay to the Seller the difference of the electricity value not later than 30 (thirty) days from the date of the invoice submission.

The Buyer can also submit other security means, acceptable by the Seller.

22.2 The failure of the successful Bidder to comply with the requirement of ITB Clause 21.1 or ITB Clause 22.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bank Guarantee for Bid Security, and in such a case MH ERS Management may make the award to the next most favorable Bidder.

22.3 The Bank Guarantee for Payment Security shall be issued by the Bank which is acceptable for the Seller and in the amount which is obtained by multiplying the total contracted quantity of the electricity for the Lot with the total offered price for that Lot. The advance payment shall be equal to the amount that is the result of multiplying the contractual total quantity of electricity for the Lot with the offered total price for that Lot.

Total price mentioned above for calculation of the Bid Security amount shall be:

- for delivery of electricity outside BiH, total price = offered price
- for delivery of electricity inside BiH, total price = offered price + VAT.

Section III
Draft Contract

**DRAFT
ELECTRICITY SALE CONTRACT**

No: _____

concluded between

**Mixed Holding
Power Utility of the Republic of Srpska
Parent Joint-stock Company
Trebinje
Stepe Stepanovica bb
Republic of Srpska**

and

XXXXXXXXXXXXXXXXXX

Street
City
Country

Trebinje, _____, 2018

ELECTRICITY SALE CONTRACT

concluded on _____, 2018

between:

Mixed Holding Power Utility of the Republic of Srpska – Parent Joint-stock Company (MH ERS), Trebinje, Stepe Stepanovića bb, Republic of Srpska (hereinafter called “the Seller”) represented by PhD Željko Kovačević, Acting General Manager and MSc Maksim Skoko, Executive Manager of Technical Affairs,

and

XXXXXXX, Street, City, Country (hereinafter called “the Buyer”), represented by Mr(s)._____, Manager.

The Seller and the Buyer are sometimes referred to herein individually as the “Party” and collectively as the “Parties”.

I SUBJECT OF THE CONTRACT

Article 1

- 1.1 The subject of the Contract is the sale and purchase of electricity in the total quantity of _____ MWh that the Seller shall put at the disposal of the Buyer and the Buyer shall take delivery of and receive, in the period from 1 February 2018 till 28 February 2018.
- 1.2 The electricity supply shall be made over interconnections of 110 kV, 220 kV and 400 kV transmission lines, [*Delivery Point*] in accordance with the standard terms and conditions that commonly apply for European Interconnection (ENTSO-E).

II CONDITIONS OF THE POWER SUPPLY

Article 2

- 2.1 The Seller undertakes the obligation to supply to the Buyer the electricity referred to in the Article 1, Clause 1.1. of this Contract, according to the following schedule:

Delivery period	Profile	Power	Energy
01.02.2018-28.02.2018	_____	_____ MWh/h,	_____ MWh

- 2.2 The Seller is obliged to start electricity supply on 1 February 2018 at 00⁰⁰ hours and complete such supply on 28 February 2018 at 24⁰⁰ hours. All references to times of day in this Contract shall refer to the local time (Bosnia and Herzegovina).

- 2.3 The electricity supply shall be made during the above stated period as „baseload“ -non-guaranteed electricity, every day from 00⁰⁰ to 24⁰⁰ hrs with indicated power and according to the schedule defined in Article 2, Clause 2.1 of this Contract.
- 2.4 The Seller shall deliver electricity referred to in the previous Article to the Buyer [*Delivery Point*]. Cross-border transmission capacity is provided by the Buyer.
- 2.5 The Seller and the Buyer will determine the quantity of electricity actually supplied and received on the first working day of the next month for the previous one, which shall be recorded in the Report on the Electricity Supply (Attachment No. 1), in Serbian language. The Report will be based on the official daily reports of MH ERS on realized quantities of electricity supplied and received. The authorized representatives of the Seller and the Buyer will sign the Report. The Act on Nomination of Authorized Representatives for signing the Report is attached to this Agreement (Attachment No. 2).
- 2.6 The Buyer is obliged to return the signed Report on delivery of electricity countersigned by its Representative, no later than one day from date of receipt by the Seller. If the Buyer does not return a countersigned Report in relevant period, it shall be deemed to agree to the figures set out therein.

Article 3

- 3.1 Possible interruptions or reductions of agreed delivery, and/or electricity receiving, may occur due to events of Force Majeure, provided for in Article 6 of this Contract. The Seller has the right to cancel delivery of electricity in duration of up to 72 hours cumulative, sending notice 4 hours prior to delivery interruption. The maximum number of cancellations is 3 times.
- 3.2 In case that the Buyer refuses or fails to take the contracted daily quantity, which was offered by the Seller, the Buyer is obliged to pay to the Seller penalty in the amount of 30% of the value of the contracted prices for the unaccepted quantity, pursuant to Article 4, except in case of Force Majeure, as defined in Article 6.
In such case, unaccepted quantities shall be calculated and valued while making out the invoice.
In the case the Buyer does not accept the electricity from the first paragraf, for longer than 24 cumulative hours in the course of one month, the Seller acquires the right to terminate the Contract and compensate the damage in the value of the contracted, but non-accepted electricity.

III PRICE AND METHOD OF PAYMENT FOR ELECTRICITY SUPPLY

Article 4

4.1.a. Delivery Point – BiH border

The Contracted Parties set out the unit price for electricity delivered and received at the Delivery Point, in the amount of _____ EUR/MWh (in words: _____), without VAT.

4.1.b. *Delivery point – inside BiH*

The Contracted Parties set out the unit price for electricity delivered and received at the Delivery Point, in the amount of _____ EUR/MWh (in words: _____), without VAT.

Article 5.a (Payment in Advance)

5.1 Upon signing the Contract, the Buyer shall make the advance payment for delivery of electricity in a way described below.

The Seller sends to the Buyer the pro-forma invoice via fax and by mail. The Seller shall submit the pro-forma invoice upon signing of the Contract, so the Buyer would be able to, upon receiving the pro-forma invoice, fulfill its obligation to make payment in favour of the Seller at the account specified on the pro-forma invoice, i.e. before starting electricity delivery.

5.2 The Buyer is obliged, right after the payment, to submit to the Seller, by fax, the receipt of the payment issued by the Buyer's Bank (swift copy).

5.3 If the Buyer does not make a payment in relation to the date referred to in such pro-forma invoice, the Seller is entitled to terminate the Contract and to compensate the damage specified in the Clause 9 of the Contract.

5.4 Upon the payment is made the Seller shall issue the invoice for advance payment to the Buyer.

5.5 The Seller shall issue the invoice on a monthly basis for the electricity being delivered pursuant to this Contract after the end of the month. The regular invoice shall be sent to the Buyer by registered mail and by fax, while payment of the difference compared to the advance payment shall be made not later than 15th day of the next month after the month in which the delivery was carried out.

Article 5.b (Payment After Delivery)

5.1 After signing the Report by the Parties, the Seller shall immediately submit to the Buyer the invoice by fax and by mail. The Buyer undertakes the obligation to make payment, not later than 15th day of the next month for the month in which the delivery is effected, in favour of the Seller at the bank account number specified at the same.

5.2 The Buyer is obliged, right after the payment, to submit to the Seller, by fax, the receipt of the payment issued by the Buyer's Bank (swift copy).

5.3 Upon signing of this Contract, but before the start of electricity delivery, the Buyer is obliged to submit to the Seller the original irrevocable Bank's Payment Security, in the form specified and issued by a bank acceptable to the Seller, which will guarantee the payment to the Seller on its first demand without any right of objection and without any conditioning, in the amount of _____ € (in words _____ EUR), equal to the financial amount of the total quantity of the contractual electricity.

Validity of the Payment Security shall be until 15 April 2018, i.e. 45 days after Contract expiration. The form of the Payment Security is attached herein and shall be an integral part of this Contract.

If the Buyer does not submit the Payment Security until the deadline specified in the paragraph above, the Seller has the right to terminate this Contract and to compensate the damage defined in the Clause 9 of the Contract.

5.4 If the Buyer does not pay the electricity till 15th day of the month following the month in which the electricity was delivered, the Seller will activate the Bank guarantee for Payment Security by which it will charge the demand for delivered electricity and for the compensation of damage calculated according to this Contract having the right of one-sided termination of this Contract.

IV FORCE MAJEURE

Article 6

6.1. Under event of Force Majeure is meant any event or occurrence which did not exist during the time of signing of this Contract, which occurred without knowing or influence of Parties, whose occurring could not be predicted and the consequence could not be avoided nor eliminated by concrete measures and means which could be justifiably asked for and expected from the Affected Party in such a situation. According to this Contract, events of Force Majeure are considered, but not limited to, the following events:

- War and war activities, fires, explosion, natural and traffic accidents, serious natural disasters, strikes of the workers of the Seller which are limited to the area of BiH;
- Acts of authorized bodies and representatives of the International Community in BiH who can influence carrying out the Parties' obligations undertaken within this Contract.

6.2. The unavailability of 110 kV, 220 kV and 400 kV transmission lines in Bosnia and Herzegovina which as its consequence has impossibility of electricity supply/receipt, shall be considered as an event of Force Majeure.

Temporary interruptions or reduced amounts of power could be consequences of technical difficulties in electricity sector of Bosnia and Herzegovina, which should be confirmed in writing by ISO BiH (Independent System Operator in Bosnia and Herzegovina).

6.3. The Seller has the right to cancel delivery of electricity in duration of up to 72 hours cumulative, sending notice 4 hours prior to delivery interruption. The maximum number of cancellations is 3 times.

6.4. Electricity which was cancelled and non-delivered under the event of Force Majeure shall not be delivered later on.

6.5. If Force Majeure event, in whole or partially, prevents permanent or temporary realization of obligations under this Contract, the Party relying upon Force Majeure is obliged to notify the other Party, without delay but not later than 24 hours from the moment of its occurrence in a way which is possible at that moment (telegram, fax, e-mail, etc.).

- 6.6. If, during the interruption period, due to Force Majeure, the Seller makes conditions to restart delivery before the time for restarting delivery that was already agreed in the Supply Schedule, which both Parties are interested in, the same could be restarted earlier based on the agreement between operating staff of both Contractual Parties, whereby daily delivered quantity could not exceed daily quantity defined in the Contract. Delivered energy referred to in the paragraph above shall be subject to all Clauses in the Contract.

V REALIZATION OF THE CONTRACT

Article 7

- 7.1. This Contract shall operationally – technically be performed by:

For the Seller: MH Power Utility of the Republic of Srpska
 Parent Joint-stock Company Trebinje
 Department of Electricity Production Control
 Dispatching Centre
 Tel: + 387 59 277 154, + 387 59 277 155
 Fax: + 387 59 277 159

For the Buyer: XXXXXXXXXXXXXXXX
 YYYYYYYYYYYYYYYYYYYY
 Street
 City
 Tel: + _____
 Fax: + _____

- 7.2. The Seller and the Buyer shall nominate, through written letters of authorization and three working days before the commencement of deliveries, the persons who shall perform technical and financial duties under this Contract (Attachment No. 2).

VI SETTLEMENT OF DISPUTES

Article 8

- 8.1. Any eventual dispute arising out of this Contract shall be settled in an amicable way between Parties, primarily through negotiation but in a way that each Party shall appoint one authorized person for disputing within 30 (thirty) days.
- 8.2. The solving of eventual dispute arisen in the way described in above items must be filed in written form.
- 8.3. In case that the dispute is not solved pursuant to the Clause 8.1, the Parties agree that the Commercial County Court in Trebinje (Republic of Srpska/BiH) shall be in charge of solving the arisen dispute.

VII TERMINATION OF THE CONTRACT AND LEGAL CONSEQUENCES OF THE TERMINATION

Article 9

- 9.1. This Contract may be terminated primarily on the basis of mutual written agreement of both Parties.
- 9.2. If one Party considers that due to non-fulfillment of the obligations of the Contract by the other Party, or due to circumstances which prevent or make difficult the continued performance of the Contract, the Party affected by the above-mentioned shall be obliged to inform in writing the other Party of the Contract termination stating the reasons.
- 9.3. The Party who received such an information as stated in the above item, is obliged within 3 (three) days to submit official written information to the other Party about its standpoint referring to the Contract termination.
- 9.4. If, from the standpoint of the Party who has been informed about the possibility of termination, one could expect that consequences of non-fulfillment, delaying and others difficulties referring to the Contract performing would not be eliminated, or if the Contract performing could not be continued within 5 (five) days, the other Party has the right to terminate the Contract in writing, as well as appropriate compensation.

Compensation from the previous item involves:

- (a) An obligation of the Seller to pay to the Buyer negative difference between the value of replacement electricity (which the Buyer can purchase on the market and what approves by the relevant documentation on the purchasing) and the value of non-delivered electricity determined in this Contract, from the date of Contract termination till the planned date of Contract completion.
The Seller shall pay the difference in value to the Buyer within 30 (thirty) days from the date of invoice receipt.
- (b) An obligation of the Buyer to pay 5% of the contracted value to the Seller as well as the difference in value to be equal to the difference between value of non-received electricity according to the price determined in the Contract and value of sold electricity by the Seller to the third party approved by the relevant sale documentation, from the time of Contract termination till the planned date of Contract completion. The Buyer shall pay the difference in value to the Seller within 30 (thirty) days from the date of invoice receipt.

The above mentioned is valid under conditions that interruption / reduction of delivery / acceptance is not a result of the event of Force Majeure, or amicable termination of the Contract.

- 9.5. The provisions of the Law on Obligations in the Republic of Srpska shall be applied on everything that is not included in this Contract.

VIII OTHER PROVISIONS**Article 10**

- 10.1 Except as otherwise stated, the Parties shall consider all information relating to this Contract and its implementation, which are not in public, as confidential and therefore not to be revealed to the third parties.
- 10.2. Neither Party shall disclose any content of this Contract to any third party without the prior written consent of other Party, other than to the third parties entitled by the law.

Article 11

This Contract has been made and signed in four (4) identical copies in the Serbian language, of which each Party shall keep two copies.

FOR THE BUYER

FOR THE SELLER
MH Power Utility of
the Republic of Srpska Parent Joint-
stock Company Trebinje

Acting General Manager
PhD Željko Kovačević

Executive Manager of
Technical Affairs
MSc Maksim Skoko

Attachment No. 1

**Report
on the Electricity Supply
for the month of February 2018**

SELLER: Mixed Holding Power Utility of the Republic of Srpska – Parent Joint-stock Company (MH ERS), Trebinje, Stepe Stepanovica bb, Republic of Srpska/BiH

BUYER: _____

Total electricity supplied by the Seller: _____ MWh

Day	MWh	Day	MWh
1		16	
2		17	
3		18	
4		19	
5		20	
6		21	
7		22	
8		23	
9		24	
10		25	
11		26	
12		27	
13		28	
14			
15			
TOTAL:		_____ MWh	

Confirmation:

On behalf of MH ERS

On Behalf of _____

Date: _____

Date: _____

Attachment No. 2

Authorized Representatives of the Parties

SELLER: Mixed Holding Power Utility of the Republic of Srpska – Parent Joint-stock Company (MH ERS), Trebinje, Stepe Stepanovica bb, Republic of Srpska/BiH

First and last name

First and last name

First and last name

.

BUYER:

First and last name

First and last name

First and last name

Section IV Forms

1. Bid Form

Bid for Electricity Purchase per LOT no. _____

To: Mixed Holding Power Utility of the Republic of Srpska – Parent Joint-stock Company
(MH ERS), Stepe Stepanovica bb, Trebinje, Republic of Srpska

Dear Sir/Madam,

On the basis of the Bidding Documents, including Addenda, No. 1.1/01-177-3/18, the receipt of which is hereby acknowledged, we, the undersigned, offer to buy the electricity, according to the Bid, and in full compliance with the stated Tender Documentation, as follows:

1. power: _____ MW

2. for the unit price in the amount of: *[amount in figures]* €/MWh, *[amount in words]* €/MWh,

at Delivery Point _____.

3. If our Bid is accepted, we offer the following method (*specify - a or b*):

- a) Advance payment;
- b) payment after delivery with payment deadline till 15th day of the month following the month in which the electricity was delivered.

The Bid is valid and binding for us in the period of 10 days from the date fixed for submission of bids as stipulated in the Bidding Documents, and it may be accepted by you at any time before the validity period expiration.

Until the formal Contract is prepared and signed between us, this Bid, together with your written acceptance thereof (notification on the most successful Bidder), shall constitute a binding contract between us.

We understand that you are not bound to accept any bid you may receive.

Dated _____, _____ year

[first and last name and signature]

In the capacity of

Duly authorized to sign this Bid for and on behalf of

[Name of the Bidder]

The Business Leader (in case of the common Bid of more Bidders) is *[please state the name of the Bidder who is the Business Leader]*, represented by authorized person *[name]* and who acts on behalf of all Bidders: *[please state all Bidders who commonly appear in the Bid]* among whom there is a relationship of joint and several liabilities.

Names of all Bidders:

[Company]

[Authorized persons]

2. Bank Guarantee for Bid Security – Form

Date: _____

Bid for Electricity Purchase

To: Mixed Holding Power Utility of the Republic of Srpska - Parent Joint-stock Company
(MH ERS), Stepe Stepanovica bb, Trebinje, Republic of Srpska

Dear Sirs/Madams,

WHEREAS _____ [*name of the Bidder*] (hereinafter called "the Bidder") has submitted its Bid dated _____ [*date of the Bid*] for the performance of the above-named Contract (hereinafter called "the Bid").

We, _____ [*name of bank*] from _____ [*city of bank*] with its registered office in _____ [*address of bank*] (hereinafter called "the Bank"), are bound unto Mixed Holding Power Utility of the Republic of Srpska, Trebinje, Stepe Stepanovica bb (hereinafter called "the Seller") in the sum of: _____ €, (in words: _____ €) which is 3% of the total Bid value , which amount is to be made to MH ERS Parent Joint-stock Company Trebinje by the Bank or its successors.

THE CONDITIONS of this obligation are the following:

1. If the Bidder withdraws its Bid during the period of Bid validity specified in the Bid Form, or
2. If the Bidder, having been notified of the acceptance of its Bid by MH ERS Parent Joint-stock Company Trebinje during the period of bid validity:
 - a) Refuses to sign the Contract, or
 - b) Refuses to issue, or issues an inappropriate Payment Security, or does not make the advance payment the delivery of the electricity in accordance with the Bidding Documents,

We irrevocably undertake, without objection right, to pay to MH ERS Parent Joint-stock Company Trebinje up to the above mentioned amount upon receipt of its first written demand, without MH ERS Parent Joint-stock Company Trebinje having to substantiate its demand, provided that in its demand the Seller will note that the amount claimed by it is due it, owing to the occurrence of one or both of the two above-named conditions, and specifying the occurred condition or conditions.

This guarantee is valid up to and including 10 (ten) days after the period of Bid validity, i.e. till 13 February 2018, and any demand in respect thereof is obliged for the Bank if received in the stated validity deadline of this guarantee.

In _____ on _____

[Signature and stamp of the Bank]

3. Bank Guarantee for Payment Security – Form

(Note: This Guarantee will be used only in case of deferred payment after electricity delivery)

Date: _____

Electricity Sale Contract

To: Mixed Holding Power Utility of the Republic of Srpska – Parent Joint-stock Company
(MH ERS), Stepe Stepanovica bb, Trebinje, Republic of Srpska

Dear Sir/Madam,

We refer to the Contract (“the Contract”) signed on *[date]* between you and *[name of the Buyer]* (“the Buyer”) concerning the electricity sale.

By this letter we, the undersigned, *[name of the Bank]*, a Bank organized under the laws of *[country of Bank]* and having its registered/principal office at *[address of Bank]*, do hereby jointly and severally with the Buyer irrevocably guarantee payment owed to you by the Buyer, pursuant to the Contract, up to the sum of *[in figures and words]*, equal to equivalent financial amount of the total contractual electricity quantity.

We undertake to make payment under this Letter of Guarantee upon receipt by us of your first written demand signed by your duly authorized officer declaring the Buyer to be in default under the Contract and without cavil or argument any sum or sums within the above-named limits, without your need to prove or show grounds or reasons for your demand and without the right of the Buyer to dispute or question such demand.

Our liability under this Letter of Guarantee shall be to pay to you whichever is the lesser or equal of the sum hereunder set forth in respect of any demand duly made hereunder prior to expiry of this Letter of Guarantee, without being entitled to inquire whether or not this payment is lawfully demanded.

This Letter of Guarantee shall be valid until 15 April 2018 i.e. 45 days upon expiration of the Contract on Electricity Sale.

Except for the documents herein specified, no other documents or other action shall be required, notwithstanding any applicable law or regulation.

Our liability under this Letter of Guarantee shall become null and void immediately upon its expiry, whether it is returned or not, and no claim may be made hereunder after such expiry or after the aggregate of the sums paid by us to you shall equal the sums guaranteed hereunder, whichever is the earlier.

All notices to be given hereunder shall be given by registered (airmail) post to the addressee at the address herein set out or as otherwise advised by and between the parties hereto.

We hereby agree that any part of the Contract may be amended, renewed, extended, modified, compromised, released or discharged by mutual agreement between you and the Buyer, and this Security may be exchanged or surrendered without, in any way, impairing or affecting our liabilities hereunder, without notice to us and without the necessity for any additional endorsement, consent or guarantee by us, provided, however, that the sum guaranteed shall not be increased or decreased.

No action, event or condition which by any applicable law should operate to discharge us from liability hereunder shall have any effect, and we hereby waive any right we may have to apply such law, so that in all respects our liability hereunder shall be irrevocable and, except as stated herein, unconditional in all respects.

Yours truly,
[Name of the Bank]

Authorized Signature