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Gas Corporation (Business Disposal) Act 1999

## Gas Corporation (Business Disposal) Order 2000

Made by the Minister for Energy with the approval of the Treasurer.

### 1. Citation

This order may be cited as the *Gas Corporation (Business Disposal) Order 2000*.

### 2. Meaning of terms

In this order —

“ASSC” means the AlintaGas Sale Steering Committee appointed under section 7(3) of the Act;

“corporation” means the Gas Corporation established under the *Gas Corporation Act 1994*;

“the Act” means the *Gas Corporation (Business Disposal) Act 1999*.

### 3. Purpose of order

This order is made for the purpose of the disposal of the corporation’s businesses through AlintaGas Limited (ACN 087 857001) which is the “corporate vehicle” within the meaning of the Act and the shares in which are to be issued to the corporation.

### 4. Disposal to cornerstone investor

- (1) On completion of the tender process described in the Schedule and on the issue of the shares in AlintaGas Limited to the corporation, the corporation on behalf of the State is to sell 45% of those shares (the “cornerstone shareholding”) to the bidder whose bid is accepted under that tender process.

- (2) The sale of the cornerstone shareholding under subclause (1) has effect for the purposes of section 5(5)(a) of the Act and the bidder to whom the shares are sold becomes the “**cornerstone investor**” within the meaning of the Act.
- (3) The corporation on behalf of the State is to sell to the cornerstone investor the number of unsecured, subordinated loan notes issued to it by AlintaGas Limited that is equal to the number of shares required to be sold under subclause (1).

### **Schedule — Tender process**

#### **Stages preliminary to competitive tender — selection of tenderers**

1. The first stage involved the ASSC requesting prospective bidders for the cornerstone shareholding to register their interest with the ASSC. Prospective bidders registered their interest and provided limited operating and financial information as set out in the Request to Register Interest publication. Prospective bidders signed and returned a confidentiality agreement before they were able to move to the indicative bid stage. A group of prospective bidders numbering 11 were selected by the ASSC to move to the indicative bid stage. Ten of those selected bidders, which elected to move to the indicative bid stage, received the Information Memorandum prepared by the State and the corporation for the purpose of conducting the proposed sale of the cornerstone shareholding.
2. Non binding indicative bids were sought on the basis of the Information Memorandum provided to the selected bidders. The ASSC selected a short list of 4 bidders on the basis of indicative bids, who moved to the due diligence and final bid stage.
3. The 4 selected short listed final bidders were invited to undertake a due diligence investigation of the assets, liabilities, rights, obligations and contracts of AlintaGas Limited by inspection of purchaser due diligence data rooms. Shortly after the opening of the purchaser due diligence data rooms, one selected bidder withdrew, leaving 3 selected bidders to make final binding bids.

#### **Competitive tender**

4. Final bids for the cornerstone shareholding are to be lodged by bidders with the ASSC by 3:00pm Australian Western Standard Time on Friday, 28 July 2000, or by such other time as may be notified by the ASSC.
5. In order to be considered for selection as the cornerstone investor, the bidders must lodge a complying final bid which must include the following:
  - 5.1 The binding bid price.
  - 5.2 An acknowledgment that the bid remains open for one month.

- 5.3 The executed sale documents required by the ASSC in a form capable of immediate acceptance by the State, including the share sale agreement by which the bidder agrees to purchase from the corporation the cornerstone shareholding and an equal number of unsecured subordinated loan notes issued by AlintaGas Limited.
- 5.4 The identity, structure and financial resources and the technical experience and expertise of the bidder and if relevant, its parent entity.
- 5.5 Evidence of unconditional funding for its bid.
- 5.6 Confirmation that no conditions are attached to the bid.
- 5.7 Confirmation of the bidder's external and internal approvals.
- 5.8 A description of the differences from the previous indicative bid given to the ASSC.
- 5.9 The bidder's ownership intentions for AlintaGas Limited; and
- 5.10 Contact details for the bidder.
6. Bidders may, additionally, submit one or more final bids which do not comply with the above requirements, which will be regarded as non-complying bids.
7. Final bids will be evaluated by the ASSC in accordance with the following evaluation criteria:
  - 7.1 Maximisation of price.
  - 7.2 Minimisation of ongoing risk to the State arising from the share sale agreement and other relevant sale documents.
  - 7.3 Facilitation of the initial public offering process for the balance of the shares and loan notes in AlintaGas Limited in accordance with the ASSC's timetable.
  - 7.4 Minimisation of short term risk for the State arising from completion of the sale.
  - 7.5 Facilitation of the ASSC's other sale objectives including to:
    - 7.5.1 maintain good relations with key stakeholders including customers and suppliers;
    - 7.5.2 avoid the risk of any significant tariff increase in the short term; and

- 7.5.3 enhance the operating efficiency and utilisation of AlintaGas' distribution network.
8. Maximisation of price is the most important criteria for both complying final bids and non-complying final bids.
9. Non-complying final bids may be considered by the ASSC provided that if accepted the non-complying final bid:
- 9.1 can be accommodated within the provisions of the Act;
  - 9.2 adds to the total value of the bid to the State;
  - 9.3 does not substantially increase short term completion risk to the State;
  - 9.4 does not substantially increase ongoing risk to the State post-completion; and
  - 9.5 does not adversely impact the timing of completion of the sale and in particular the timing of the initial public offering.
10. The ASSC will evaluate the bids and make a recommendation to the Minister for Energy as to the bid which best meets the interests of the State. The ASSC may recommend a bid even if it is not the highest bid, or may decide not to recommend any bid. The ASSC may evaluate final bids by reference to its own investigations and to any other matters which the ASSC in its sole and absolute discretion considers to be relevant.
11. Subject to clause 12 of this Schedule, on receiving the ASSC's recommendation the Minister for Energy, on behalf of the State, will accept one of the final bids and notify each of the bidders, in writing, of that decision.
12. The State will not be obliged to enter an agreement to sell the cornerstone shareholding. The State is not required to, and will not, give an explanation of the reasons for, or grounds upon which, it changed or cancelled any requirement of the tender process, rejected or accepted any final bid or declined to enter into any agreement to sell the cornerstone shareholding

Approved on 26 July, 2000.

RICHARD COURT, Treasurer.

Made on 27 July, 2000.

COLIN BARNET, Minister for Energy.

