Klagenævnet for Udbud
(Katja Høegh, Jeanet Vandling)

J.nr.: 20/03400
26. maj 2020

K E N D E L S E

Saipem Ltd.
(selv)

mod

Energinet Gas TSO A/S
(advokat Tina Braad, Aarhus)

Energinet Gas TSO A/S ("Energinet Gas") udbød ved udbudsbekendtgørelse nr. 2019/S 118-290561 af 21. juni 2019 en kvalifikationsordning efter forsyningsvirksomhedsdirektivet (2014/25/EU) om anlægsarbejder i forbindelse med offshore rørledningsprojekter til brug for transmission af gas. Syv virksomheder blev kvalificeret til at deltage i ordningen.

Ved udbudsbrev af 22. juli 2019 inviterede Energinet Gas fire af de optagne virksomheder, herunder Saipem Ltd. ("Saipem") og Allseas Deepwater Contractors S.A. ("Allseas"), til at deltage i et udbud om forhandling om anlæg af gasrørledningen mellem Norge og Danmark. I den sidste afsluttende forhandlingsrunde deltog alene disse to virksomheder.

Den 10. februar 2020 meddelte Energinet Gas Saipem, at Energinet Gas havde besluttet at tildele kontrakten til Allseas.

Den 12. marts 2020 indgav Saipem klage til Klagenævnet for Udbud over Energinet Gas.

Klagen har været behandlet skriftligt.

Saipem har i klageskriftet anført blandt andet:

> ”Saipem anmoder om, at Klagenævnet gennemgår Energinets udbudsprocedure med den begrundelse, at Energinet ved tildeling af kontrakten til Allseas enten ikke har overholdt princippet om ligebehandling og gennemsigtighed, der er beskrevet i afsnit 2, stk. 1, i loven om offentlige indkøb eller vildledte Saipem ved ikke at lade Saipem indsende alternative forslag.”

Herudover er der i replikken anført blandt andet:

> ”I Resultattavlen i Meddelelsen om tildeling vedrørende 218196-18/01995- Indkaldelse af udbud under "SQS" - Udbud på baltisk rør - Europipe II Branch Pipeline Installation udstedt af Energinet den 10. februar 2020 bemærkede Saipem, at alle kriterier (bortset fra pris/økonomi) blev givet nøjagtigt samme score for begge udbudsgivere.
>
> Mens Saipem forstår tildelingskriteriet, bemærkes følgende kommentarer som eksempler på, hvorfor det ville være umuligt for de to bud at få nøjagtigt samme score/point:
> …”

Energinet Gas har principalt nedlagt påstand om afvisning og subsidiært påstand om, at klagen ikke tages til følge.

Sagens nærmere omstændigheder

Baggrund

Kvalifikationsordningen og den udbudte kontrakt indgår i det såkaldte ”Baltic Pipe-projekt”.

Energinet Gas har om Baltic Pipe-projektet oplyst:

Baltic Pipe-projektet angår en gasrørledning på 800-950 km, der skal transportere 10 mia. kubikmeter gas årligt fra de norske gasfelter i Nordsøen gennem Danmark og videre til Polen. Gasrørledningen forventes at være klar til drift i 2022. Projektet udføres i et samarbejde mellem Energinet Gas og det polske gastransmissionsselskab Gaz-System S.A.

Baltic Pipe-projektet består af følgende 5 tekniske hovedelementer (tekniske anlæg og installationer):

1. Nordsøen offshore
Ca. 105 km ny offshore gasrørledning i Nordsøen fra den norske gasrørledning Europipe II i Nordsøen til modtageterminal i Nybro nord for Varde.

2. Danmark onshore
Udbygning af det danske transmissionssystem med ca. 210-230 km ny gasrørledning mellem Egtved i Jylland og Sydøstsjælland.

3. Kompressorstation i Danmark
En kompressorstation på Sydøstsjælland (i Everdrup). Kompressorstationen øger trykket og gasflowet i gasrørledningen i Østersøen.

4. Østersøen offshore
En ny gasrørledning i Østersøen mellem Danmark og Polen.

5. Polen onshore
Udbygning af det polske transmissionssystem.

Energinet Gas står for de første tre elementer og tekniske hovedelementer, mens Gaz-System S.A. står for de sidste to.

De samlede omkostninger til Baltic Pipe-projektet skønnes at beløbe sig til 12-16 mia. kr., hvoraf Energinet Gas skal finansiere ca. halvdelen.

Den udbudte kontrakt vedrører udførelse af den gasrørledning, som skal forbinde det norske gasledningsnet til ilandføringen ved Houstrup Strand (Nordsøen offshore). Forbindelsen til det norske gasledningsnet etableres ved, at den nye gasrørledning forbindes til den allerede eksisterende nord og syd infrastruktur i Nordsøen (Europipe II), som på nuværende tidspunkt forbinder Norge og Tyskland.

Udbuddet

Ifølge udbudsbetingelsernes pkt. 1.2 består udbudsmaterialet af følgende hoveddokumenter:

”

Document	Document no.
These Tender Conditions including:	
• Contract Notice	
• European Single Procurement Document (ESPD)	
• Clarification List	18/01995-17
• Form of Agreement including Appendix 1	18/01995-12
• (a) General Conditions of Contract for Construction - Edition 3, November 2018 issued by LOGIC, Oil & GAS UK	18/01995-11
• (b) Special Conditions of Contract	18/01995-11
• Remuneration	18/01995-10
• Scope of Work including Appendix A/ B	18/01995-9
• Administration Instructions including Appendix A/ B/ C	18/01995-8
• Health, Safety & Environment including Appendix A	18/01995-7
• Documents and Drawings (COMPANY - IKM)	18/01995-5
• Documents and Drawings (COMPANY)	18/01995-16
• Materials, Services and Facilities to be provided by the COMPANY	18/01995-4
• Schedule of Key Dates	18/01995-3
• The Contractor's Proposal in the form as updated by the BAFO dated [xx], and any other documents forming part of the Contract	

”

Der var tillige et betydeligt yderligere materiale.

Af pkt. 1.3.1 ”Scope of Work” fremgår blandt andet, at arbejderne opdeles i følgende hovedområder:

”

- Offshore Survey and Guard Vessels
- Landfall Detail Engineering and Construction
- Seabed Intervention
- Pipeline Installation
- Pre-Commissioning Operation”

Af pkt. 2.3 “Submission of tender” fremgår:

“…
Each prequalified tenderer may only submit one tender.

…"

og i pkt. 2.8 "Variants" hedder det:

> "The Contracting Authority does not accept variants."

I pkt. 2.7 "Reservations" er det blandt andet anført:

> "Any discrepancy between the Tender Documents and the tender will be considered as a reservation. This also includes insufficient information, errors and missing responses. Discrepancies between the Tender Documents and the tender are the sole responsibility of the tenderer and The Contracting Authority is not responsible to identify reservations as part of the negotiations (if any).
>
> The Contracting Authority is entitled to reject any tender with reservations to the Tender Documents (un-less the reservations are part of the evaluation, cf. section 3.1). Regarding reservations towards non-man-datory parts, the Contracting Authority may, however, at its sole discretion choose to convert such reservations into a monetary value if this can be done with due respect of the principles of equality and transparency.
>
> The Contracting Authority is obligated to reject tenders with reservations towards mandatory parts of the Tender Documents and as a result cannot award the contract to a tender including such reservations. The Contracting Authority does, however, reserve the right to commence negotiations with tenderers who has included reservations to the Tender Documents (including mandatory requirements) in their initial tender or a revised tender."

Ifølge udbudsbetingelsernes pkt. 3.1 var tildelingskriteriet "the most economically advantageous tender based on the best price-quality ratio" med følgende underkriterier:

- Price 40 %
- Contractual Terms 15 %
- Solution Description 25 %
- Organisation and Key Personnel 10 %
- Detailed Time Schedule 10 %

Om underkriteriet "Solution Description" fremgår det videre:

”

Solution Description 25 %	
Documentation	Evaluation
The tenderer must include a comprehensive, detailed and project specific solution description for the tendered assignment, demonstrating the suitability of the proposed installation and construction methods, proposed equipment/tools/spreads, interface management and proposed processes and procedures for all of the project activities. The deliverables shall also include a comprehensive and detailed description of the applied quality assurance, quality control and procedures for all activities performing the Work. The description shall include a comprehensive and detailed overview of quality activities and measures both in text and chart and how quality is ensured across all steps. A Draft Quality Management Plan and Draft Risk Management Plan as well as Inspection and test plan shall be included in the tender. The deliverables shall also include a comprehensive and detailed description of the applied HSE management and procedures for performing the Work. The description shall include a comprehensive and detailed overview of activities and HSE control measures both in text and chart and how HSE management is ensured across all steps. HSE Management Procedure and a draft HSE Management Plan/Programme shall be included in the tender. Further, the HSE deliverables shall include the top five of HSE-risks identified by the tenderer.	The Contracting Authority will evaluate the proposed project specific solution description including the applied quality assurance etc. and the applied HSE management etc. in relation to the scope and complexity of the tendered assignment. That is to which extent the detailed solution description demonstrates a high level of ability to identify relevant activities and address challenges and proposes appropriate and project specific methods, equipment/tools/spreads, processes and procedures for managing such, especially concerning: - to which degree the proposed installation engineering incl. the design, fabrication and testing of temporary equipment, demonstrates the technical integrity of the pipeline system during the construction and installation activities. - how execution of the works (e.g. storyboards) is intended to be performed, including the physical lay-out of the work sites - to which degree the Company provided site specific data (location, geotech., metocean, etc.) is scrutinized and included in the proposed project specific solution - to which extent the detailed description of the proposed equipment/tools/spreads demonstrates their suitability with respect to the individual construction and installation activities - to which extent the tenderer has identified relevant challenges and failure modes for the construction and installation activities and how these are managed by associated relevant and practical contingency procedures/plans. - to which degree the tender describes a draft specific and proactive quality set-up which are adapted for ensuring the quality of the requested deliverables - to which degree the tender describes a detailed, specific and proactive HSE set-up, where the HSE-planning demonstrates a systematised management of tasks (work permit system), risk assessment for the scope of work, and conduction of HSE accidents and incidents identification, mitigation and investigation. An overall evaluation will be made of this sub-criterion.

”

I ”Scope of Work” står der blandt andet:

”**1. Introduction**

1.1 General

The Section IV – Scope of Work describes the Work related to pipelaying for installation of a new branch pipeline between Europipe II in the North Sea and the landfall at Houstrup (hereafter Europipe II Branch Pipeline) and shall be read in conjunction with other sections of the Contract.

…

1.3 Content of the Work

1.3.1 General

Contractor shall perform all activities required to complete the Work in accordance with the Contract necessary for installation of the Europipe II Branch Pipeline. In particular this includes, but is not limited to, the following:

a) Develop and submit to Company all requested documentation related to: - Cost and schedule planning and reporting - Health, Safety, Environment and Quality compliance - Engineering, procurement, fabrication, construction, installation and survey activities

b) Design, fabricate and supply all materials for pull-in/laydown heads and arrangements, installation aids and equipment necessary to complete the Work.

c) Perform all required activities related to safe and efficient construction of landfall and shore approach of the pipeline including nearshore dredging, sheet piling, shorepull etc.

d) Inspect, handle and unload for sea transportation and installation Company provided linepipe from storage yard as described in Section X - Materials, Services and Facilities provided by Company.

e) Development of all welding and welding repair procedures and perform all welding activities and non-destructive examination (NDE). f) Procurement, qualification and application of field joint coating (FJC) in accordance to requirements outlined in Section IX - Documents and Drawings provided by Company.

g) Perform all required activities related to safe and efficient pipelaying, crossing of existing infrastructure cables including shore pull, laydown, seabed intervention and pipeline trenching, backfilling and rock installation along the pipeline route in accordance to requirements outlined in Section IX - Documents and Drawings provided by Company.

h) Pre- and post-lay Survey activities.

i) Perform design, procurement, fabrication and supply of all materials required for performing pre-commissioning operations (PCO) for the pipeline (flooding, cleaning, gauging and pressure testing).

j) Perform all required activities related to safe and efficient execution of PCO for the pipeline (flooding, cleaning, gauging and pressure testing).
k) Obtain statement of conformity from third party verification agency DNV GL in Esbjerg.

l) Delivery of Documentation for Operation (DFO)
The Work can be divided into the 5 (five) following main areas:
…

1.3.4 Seabed Intervention

Includes all activities required for performance of seabed intervention and pipeline stabilization including, but not limited to the following:

- Nearshore dredging and backfilling
- Post-lay trenching and backfilling
- Subsea rock installation
- Crossings construction and installation
- Site clean-up

…

2.4.5 Planning and Execution of the Work

Contractor shall perform all planning and execution of the Work in accordance with the following main requirements:

- The Work shall be planned in accordance with the milestones, notification windows and CPI delivery dates as described in Section X - Materials, Services and Facilities provided by Company and Section XII - Schedule of Key Dates.
- Installation manuals shall be subject to Company review and acceptance.
- Contractor shall provide qualified personnel for performance of any Work with necessary training courses and familiarizations well in advance of start of Mobilization.
- Contractor shall prepare a detailed plan for the Work. Offshore activities shall be planned on a per vessel/installation basis. See section V – Administrative Instructions – Programme.
- Contractor shall prepare, plan and execute all Work in such a manner that the Work itself does not impose any restrictions, malfunctions or reduced lifetime expectancy to the Contract Object.

…

3. Engineering

3.1 General

Contractor shall be solely responsible for its own equipment design, construction engineering and documentation/drawings in accordance with Company requirements and mandatory regulations.

Contractor shall perform all design, engineering, analyses and planning required to perform the Work.

All computer programs used by Contractor and/or its Subcontractors to perform construction engineering shall be validated by Contractor, and this validation shall be subject to Company Acceptance upon request from Company.

3.2 Company Provided Engineering

Company will provide Contractor with design documentation on the basis of which Contractor shall develop its own construction engineering, planning and procedures for execution of the Work in accordance with Section IX - Documents and Drawings provided by Company.

Company's Consultant IKM Ocean Design has performed detail design for in-place conditions of the Europipe II Branch Pipeline. The detail in-place engineering includes activities such as:

Detailed in-place design according to DNVGL-ST-F101
…
Pre- and post-lay seabed intervention engineering
…

No design, design elements, including design proposals, layout suggestions or similar, included in this Section IV - Scope of Work or otherwise communicated from or on behalf of Company to Contractor shall relieve Contractor from the design responsibility as stipulated above and elsewhere in the Contract and Contractor is specifically requested to examine such design elements etc. When examining this Section IV - Scope of Work as required under the Contract and any design or parts of design contained in this Section IV - Scope of Work shall be deemed verified and approved by Contractor.. Notwithstanding this, the Contractor is not responsible for the design of Company-provided items.
…

3.8 Construction Engineering

Contractor shall perform all construction engineering required for the performance of the Work.

Contractor engineering reports shall demonstrate that the construction and installation work is performed in the safe manner and satisfies the requirements as defined in Section IX - Documents and Drawings provided by Company.

Procedures shall be prepared for all activities, which are associated with the construction and installation Work on the Europipe II Branch Pipeline during relevant phase of Work. Typical activities are:

- …
- Seabed intervention
- …

As far as applicable, Contractor should use its own standard procedures for the development of construction manuals and installation procedures.

Contractor shall prepare Construction and Installation Manuals for all construction and installation activities. The manuals shall be submitted to Company for Company Acceptance prior to the commencement of any installation activities. These manuals shall include:
..

The procedures shall include description of all equipment, including CPI and related facilities, interfaces, provision of materials, test criteria, vessels, installation aids, plans and personnel to be utilized on Contractor vessels at each stage of the Work.
…

Contractor shall maintain an updated copy of all relevant engineering documents and drawings at the Site/onboard installation vessels, as well at landfall construction site as relevant, at all times during the execution of the Work. All documentation shall be onboard prior to start of mobilization and a copy shall be issued to Company.

…
5.2 Contractor Provided Items

Contractor shall fabricate and procure all parts and equipment required to perform the Work. Items not defined in Section X - Materials, Services and Facilities provided by Company, are Contractor’s scope of supply and responsibility.

This includes, but is not limited to:

- …

- All materials and equipment for seabed intervention
- …

…

14. Seabed intervention

14.1 General

Contractor shall perform seabed intervention in accordance with the requirements given in Section IX - Documents and Drawings provided by Company.

Contractor shall provide all seabed intervention services. Contractor shall have full responsibility for all seabed intervention issues including coordination and interfaces, incl. Third Party Verification Agency as per section 3.5.

The seabed intervention includes following general operations:

- Nearshore dredging and backfilling
- Post-lay trenching and backfilling
- Subsea rock installation
- Crossings construction

14.2 Nearshore dredging and backfilling

Contractor shall perform dredging in the nearshore section of the pipeline route prior to performance of the shorepull operations. The nearshore trench shall extend from the landfall to the KP with water depth sufficient to start post-lay trenching. The trench depth shall be maintained during entire duration of the shore pull operations. If necessary, the access channel for pipelay vessel shall also be excavated.

Contractor shall provide all necessary engineering, equipment and personnel for the execution of the nearshore dredging and backfilling.

Contractor shall identify and agree with Company the seabed area for temporary storage of the excavated soil. The soil storage location shall be determined to minimize risk of trench backfilling due to sediment transport from the soil storage location. The excavated soil should not be transported away from the trenching/dredging area or replaced with material from other locations as much as it is practically possible.

On successful completion of the shorepull the nearshore trench shall be backfilled as quickly as possible to ensure the stability of the pipeline.

14.3 Offshore trenching and backfilling

The pipeline shall be trenched and backfilled. If the post-lay trenching equipment to be used will lift the pipeline or in other ways come in contact with the pipeline during the post-lay trenching operation, the post-lay trenching shall be performed before the gauging as part of the FCG operations, ref. section 16.2. The post-lay trenching and backfilling operations shall be performed for the entire length of the pipeline, except for nearshore trench, crossings and the section of the pipeline in the vicinity of the Europipe II.

Contractor shall provide all necessary engineering, equipment and personnel for the execution of the post-lay trenching and backfilling.

In case Contractor can prove it beneficial for the quality of Work, technical consideration and do consider the overall schedule perspective, the post-lay trenching and backfilling may be executed in a single operation. Such proposal shall be properly supported in order to ensure that the requirements given in Section IX - Documents and Drawings provided by Company are met.

Contractor shall perform trenching and backfilling in accordance with requirements as outlined by requirements in Section IX – Documents and Drawings. Backfill material shall be used to achieve cover requirements for the entire pipe length except for crossings. In the event cover requirements cannot be fulfilled by use of backfill material, use of alternative cover method, e.g. SRI, shall be agreed with Company. Any claims by Contractor for subsea rock installation in excess of the quantities calculated in Section IX – Documents and Drawings shall be justified by the soil conditions being significantly different from the conditions described.
…"

I " Detail Design Seabed Intervention and Cover Design Specification" er det blandt andet anført:

"**1.2 Scope of This Document**

The scope of this document is to define minimum requirements and tolerances for trenching and subsea rock installation (SRI).
…

1.4 Definitions

Definition	Explanation
Company	Energinet
Shall (requirement)	Requirement strictly to be followed in order to conform to the document and from which no deviation is permitted, unless a deviation is approved.
Should (recommendation)	Indicates that among several possibilities one is recommended as particularly suitable, without mentioning or excluding others, or that a certain course of action is preferred but not necessarily required, or that (in negative form) possibility or course of action is deprecated but not prohibited.

…

3. General Requirements

3.1 General

The general seabed intervention shall satisfy the specified design criteria and shall withstand the environmental conditions for the design lifetime. Seabed intervention on submarine pipeline systems shall meet the terms with the standards presented by DNVGL-ST-F101, Ref. /1/.

3.2 Functional Requirements

All vessels and equipment used in this project shall comprehend certification.

The trenching and backfilling equipment shall consist, as a minimum, of the following monitors:

- …
- Depth, speed and height of trenching/backfilling equipment
- …

All equipment shall be prepared and calibrated by Contractor prior to operation. The results of the calibration and testing of the equipment shall be sent to Energinet for review and acceptance. Energinet shall be allowed to be present during the calibration of equipment.

…

4. Seabed Intervention Methods and Specific Requirements

4.1 Trenching

Two methods for trenching are considered for this project. Dredging for pre-lay operation, and ploughing for post-lay operation. The trenching equipment shall be capable to operate in all anticipated soil conditions.

The trench shall be a certain depth in which the top of the pipe is satisfactorily below the natural seabed, see Figure 4-1. The minimum requirements to depth of cover (DOC) and depth of trench (DOT) are presented in Pipeline Cover Design Report, Ref. /3/, based on QRA requirements, Ref. /15/, and expansion design requirements, Ref. /4/.

The Contractor shall aim to complete the trenching operation in one pass and shall notify Energinet of all areas were multiple passes may be necessary to meet the required trenching parameters.

…

The trench shall maintain a smooth (continuous) profile at the bottom to reduce the possibility for OOS features. The trench width shall be kept to a minimum to provide protection to the pipeline.

- The DOT and DOC shall be accurate to a point of ± 0.1 m.
- The depth of cover (DOC) is the distance from the top of backfill to the top of product (TOP).

A pre-lay trench shall be built for the shore approach by dredging, in such a way that it ensures a flat base and sufficient width to accommodate the pipeline being laid on it. The trench may be built by use of a trailing suction hopper dredger or similar vessel type, Ref. /14/. Wherever possible, and particularly close to landfall the contractor shall use operational techniques to reduce the input of sediments into the water column.

The post-lay trenching will be carried out by ploughing for the offshore sections. The trenching result shall be checked to ensure that the trench specifications based on QRA, Ref. /15/, and expansion (UHB) requirements are met, Ref. /4/. During trenching, regular checks shall be included to verify the accuracy of sensors on the trenching equipment. These checks shall be carried out within the first 500 m from the deployment location.

The trenching operations shall be carried out in such a manner that the pipeline nor associated coatings and field joints, or any attachment will be damaged.

The trenching equipment shall be able to remove obstructions like large objects and boulders, so that they do not affect or damage the pipe.
If rocks or boulders beneath the surface require the Contractor to interrupt trenching, trenching shall be re-initiated as close as possible to the interruption point.

The trenching distance to any subsea asset shall be at least 250 m. At crossings, the trenching equipment shall be recovered to the vessel and secured on deck, until the crossing point is traversed. The support vessel shall maintain a safe offset clearance to the crossing location prior to the recovery of trenching equipment.

The trench transition zone is the zone between pipeline exposed on seabed and pipeline in trench. Trench transition zones shall be provided in all trench start/stop locations. The transition shall not cause additional stress or spanning to the pipe. The bottom of the trench transition zone shall be at a constant gradient to provide a smooth profile to support the pipeline and to ensure that the transition geometry complies with the drawings, Ref. /7/.

Seabed material shall not be transported away from the trenching/dredging area and replaced with material from other locations.

Trenching operation shall stop if the weather conditions do not permit safe or satisfactory trenching.
…

4.3 Backfilling

The backfilling equipment shall be able to operate in all anticipated soil conditions, in order to re-place the sediment heaps, created by ploughing, back in the trench. Backfilling shall begin as soon as practically possible after trenching is completed and the trenching profile is approved. As-trenched survey shall be conducted to approve the trenching profile, prior to backfilling. The trench depth and OOS shall be maintained as requested. The amount of backfilling shall fulfil the QRA requirements, Ref. /15/, and expansion design requirements, Ref. /4/. The minimum required cover height regarding upheaval buckling along the route is 0.6 m TOP when including 10% scouring effect, Ref. /4/. During backfilling, regular checks shall be included to verify the accuracy of sensors on the backfilling equipment. These checks shall be carried out within the first 500 m from the deployment location.

Backfilling depths is referred to as the vertical distance between TOP and top of backfill, see Figure 4-1.

The aim of backfilling operation is to complete the backfilling in one pass and obtain a smooth and continuous backfill profile.

Any movements or damage of the pipeline during backfilling operation shall be avoided. Backfilling equipment shall be designed such that it shall never touch the pipe in the trench. The speed of the backfilling

equipment shall be continuously calculated in order to limit the susceptibility. The average backfilling speed of the plough shall be of maximum 300 m/hr.

At crossing locations, the backfilling equipment shall be recovered to the vessel similar to the trenching requirements described in Section 4.1. Backfilling operation shall stop if the weather conditions do not permit safe or satisfactory backfilling.
…"

I Appendix A to section IV – Scope of Work – Contractors documentation list står der blandt andet:

"**Introduction:**

This Contractors Documentation Requirement List (CDRL) is a preliminary list of information and documentation to be supplied by Contractor and further detailed in his Master Document Register (MDR).

Tenderer shall fill in the below table where "TTI" is indicated and in accordance with the legend below. Where Company has indicated timing for first issue, Tenderer can suggest alternative timing using definitions in below legend.

Tenderer is allowed to delete lines by strike-through in below table if some deliverables is considered irrelevant as well as Tenderer can insert additional lines with deliverables not already listed.
…"

Under "Seabed Intervention (incl. Nearshore)" stilles der krav om dokumentation vedrørende blandt andet:

"

- Nearshore Dredging and Backfilling Procedures
- Nearshore Dredging and Backfilling Report
- Post-lay Trenching and Backfilling Procedures
- Post-lay Trenching and Backfilling Report"

I "Pipeline Cover Design Report", som også indgik i udbudsmaterialet, står der blandt andet:

"**1.2 Scope of This Document**

The purpose of this document is to report the required pipeline cover design for Europipe II Branch Pipeline. The seabed intervention design includes post-trenching and SRI along the route and SRI where trenching is not possible and the pipeline is exposed on seabed, e.g. PLEM approach and crossing locations. Seabed intervention also includes pre-trenching at landfall approach.
…

3. Summary and Recommendations

3.1 Summary

3.1.1 Seabed Intervention Design

The seabed intervention design for Europipe II Branch Pipeline covers the following:

- Trenching
- Backfilling
- SRI

Europipe II Branch Pipeline will be trenched through the entire route, except at crossing locations and at the PLEM approach where the pipeline will be rock covered.

Trenching is evaluated for three methods: pre-lay dredging and post-lay ploughing and jetting.

Pre-lay dredging will be carried out at landfall approach, from KP 101.750 to 104.505, while cofferdams will be used for the rest of route, i.e. KP 104.505 to KP 104.593.

Post-lay trenching is evaluated with trenching success rates taken as 90 % and 72 % for ploughing and 90 % and 54 % for jetting. 90 % is the maximum expected trenching success rate, due to hard soil between KP 61.5 to 71.7, see Table 3-1.

Based on the Seabed Intervention and Cover Design Specification, Ref. /17/, ploughing is the base case trenching method for this project. Jetting is included in this report for comparison only.

The following applies:

- Ploughing shall start/stop 250 m from crossing locations and from Nybro 32” tie-in spool (KP 0.000).

- Jetting shall start/stop 50 m from crossing locations and 250 m from Nybro 32" tie-in spool (KP 0.000).

…

3.2 Recommendations

If the LB of the soil parameters used in this report are reduced, the slope stability should be reevaluated.

It is recommended that trenching is done with caution in areas where there is higher amount of boulders. The boulder fields are mapped out in the Route Survey Report from MMT, Ref. /5/ and /7/.

…

Based on the soil properties and presence of boulder fields, it is recommended that the trenching is performed using a plough. Additionally, based on the Syd Arne project experience, jetting was not a good option as a trenching method.

…

4.3.3 Trenching Equipment

The trenching equipment shall be able to handle the 32 inch EPII Branch Pipeline. Table 4-4 shows examples of trenching equipment available in the market to conduct post-lay ploughing.

Trencher	Vendor 1	Vendor 2	Vendor 3
DOT (m)	2.5	1.5 - 2.0	2.5
Submerged mass (Te)	135 (in air)	125 - 155	150
Max product diameter (mm)	1450	700-1460	1550
Pipe lift capacity per cradle (Te)	75	75	100

Table 4-4 Trenching Equipment

The expected combined length of span to seabed and to bottom of trench, when the plough is lifting the pipe, is about 80 m. This means that for the flooded pipeline, the ploughs shown in Table 4-4 should be capable to lift the pipe with two operative cradles."

Udbuddet blev gennemført som et udbud med forhandling. Der var tre forhandlingsrunder, herunder med Saipem den 28.-29. oktober 2019, den 12. december 2019 og den 27. januar 2020.

Den 6. august 2019 stillede Saipem følgende spørgsmål til Energinet Gas:

"Reference to Tender Conditions in the ITT.

> Tenderer notes that a Base Case Proposal as per ITT will be submitted by Tenderer.
>
> However, will Company consider Alternative Solutions to be proposed by Tenderer?"

Energinet svarede (svar 61490) den 8. august 2019:

> "No, it is not possible to propose alternative solutions.
>
> Cf. the Tender Conditions (ITT) section 2.3, each prequalified tenderer may only submit one tender.
>
> Cf. the Tender Conditions section 2.8 Energinet does not accept variants (alternative offers).
>
> Tenderers are, however, able to ask written clarifying questions to the tender documents, cf. section 2.2 in the Tender Conditions. If the Contracting Entity does not award the contract based on the initial tender, cf. section 2.9, tenderers further have the opportunity to submit a revised tender following the initial negotiations."

Tre af de fire inviterede virksomheder, herunder Saipem og Allseas, afgav indledende tilbud den 20. september 2019 og reviderede tilbud den 25. november 2019 og den 10. januar 2020.

Efter en evaluering af de sidstnævnte tilbud udskilte Energinet Gas den 10. januar 2020 én af tilbudsgiverne fra den afsluttende forhandlingsrunde og foretog herefter afsluttende forhandlinger med Saipem og Allseas, som herefter afgav endelige tilbud den 4. februar 2020.

Vedrørende forløbet er fremlagt en afklaringsliste fra forhandlingsrunde 3 med Saipem.

Der er for klagenævnet fremlagt uddrag af Allseas tilbud med beskrivelse af den tilbudte løsning. Heraf fremgår, at Allseas ville anvende udstyr/maskine "Digging Donald", som Allseas har udviklet, til "post-lay trenching operations". Det anføres:

> "The post-lay trenching operations will consist of the following activities:

- First pass mechanical trenching, ensures that the soil within the full target trench depth is cut and loosened.
- Second and third pass jetting, which will result in an increase of the depth of the pipeline, while minimising further losses of cover material. The amount of jetting passes that are required is dependent on the required amount of cover and corresponding lowering depth for this pipeline, reference is made to the method statement in Attachment 6.
- Backfilling using the backfill blades or the backfill nozzles. The method of backfilling depends on the shape of the trench and the presence of spoil heaps next to the trench.

The pipeline will be in a flooded condition during the trenching and backfilling operations. The specific gravity of the empty pipeline is too low to achieve the required lowering. The increase in specific gravity improves the trenching results."

Energinet traf på grundlag af en evalueringsrapport af 6. februar 2020 den 10. februar 2020 beslutning om at tildele kontrakten til Allseas.

Af tildelingsmeddelelsen af 10. februar 2020 fremgår blandt andet:

"

Criteria	Subcriteria	Weight	Interpolation	Allseas		Saipem	
				Score	Points	Score	Points
Price/Economy		40,00%	25,00%	10,000	4,000	7,952	3,181
Solution Description		25,00%		9,000	2,250	9,000	2,250
Org. and Key Personal		10,00%		8,000	0,800	8,000	0,800
Detailed Time Schedule		10,00%		9,000	0,900	9,000	0,900
Contractual Tems		15,00%		7,000	1,050	7,000	1,050
Total score					**9,000**		**8,181**

Characteristics of the tender
The winning tender is characterized as follows:
…

Your tender is characterized as follows:
…"

Der var efterfølgende en korrespondance mellem Saipem og Energinet Gas om rigtigheden af tildelingsbeslutningen. Det fremgår i den forbindelse af Energinet Gas' mail af 20. februar 2020:

> "Accordingly, Energinet has not declared that Saipem should have suggested an alternative method of trenching as compared to the requirements laid down in "Seabed Intervention and Cover Design Specification" (Client Document No. 21-241-RB-0003), but has solely declared that, within the framework of the requirements made in the said Specification, Saipem was allowed to suggest other trenching solutions as compared to the solutions stated in Saipem's preliminary tender.
>
> Similarly, as also discussed at our meeting yesterday, it is due to a misunderstanding when Saipem assumes that the successful tenderer, Allseas, has offered trenching equipment, which is not in accordance with the requirements laid down in the aforesaid Specification, or has otherwise submitted an alternative tender.
>
> An alternative tender is either a tender in addition to the tenderer's original tender submitted or a tender deviating from the requirements laid down in the contract documents. Allseas has neither submitted alternative tenders in the form of more tenders nor any alternative tender in the form of a solution which is an alternative to the solution following from the requirements laid down in the contract documents and which, consequently, does not comply with such requirements.
>
> The comment made in Energinet's Notification letter dated 10 February in respect of the solution offered by Allseas according to which "Thoughts with the proposed trenching equipment modifications are believed to be well thought off in relation to reducing the burial depth challenge" is, consequently, only expressive of the fact that, during negotiations, Allseas made modifications to the equipment offered for increased performance of trenching."

Energinet Gas indgik den 2. marts 2020 kontrakt med Allseas, og tildelingsbekendtgørelse herom blev offentliggjort i EU-Tidende den 9. marts 2020.

Parternes anbringender

Ad påstanden om afvisning

Energinet Gas har gjort gældende, at Saipems klage af 3. marts 2020 alene indeholder en anmodning om en undersøgelse af den gennemførte udbudsprocedure og beslutningen om at tildele kontrakten til Allseas og herunder

vurdere, om Energinet Gas har handlet i strid med principperne om ligebehandling og gennemsigtighed i udbudslovens § 2, stk. 1, eller vildledt Saipem ved ikke at lade Saipem afgive et alternativt tilbud.

Da Saipem ikke har nedlagt og formuleret en påstand eller i øvrigt angivet de specifikke forhold, som Saipem ønsker, at klagenævnet skal forholde sig til, skal klagen afvises.

Klagenævnet har ikke kompetence til at foretage den undersøgelse og vurdering, der anmodes om, og klagen er efter sit indhold uegnet til at danne grundlag for sagens behandling, jf. tilsvarende kendelse af 25. januar 2017, Euro Group mod Roskilde Kommune, kendelse af 7. april 2017, Orkideen Hjemmepleje og Personlig Service ApS mod Horsens Kommune (ad påstand 4) og kendelse af 6. december 2017, Imatis A/S mod Region Hovedstaden (ad påstand 1).

Hertil kommer, at udbuddet er gennemført efter forsyningsvirksomhedsdirektivet. Udbudslovens § 2 finder således ikke anvendelse, jf. bekendtgørelse nr. 1624 af 15. december 2015 om implementeringen af forsyningsvirksomhedsdirektivet i dansk ret (implementeringsbekendtgørelsen). Klagen skal også af denne grund afvises.

Saipem har i replikken gjort følgende gældende:

> ”Saipems holdning er klar og blev sammenfattet i Saipems brev til det danske klagenævn dateret 3. marts 2020 og gentaget som nedenfor:
>
> Saipem mener, at enhver foreslået gravemetode og andet udstyr end pløjning ikke er i overensstemmelse med kravene i Energinets udbud. Derfor er Allseas forslag om at levere graveudstyr (andet end plov) i sit udbud ikke i overensstemmelse med Energinets krav.
>
> For at undgå tvivl og ufuldstændighed angav Energinet på intet tidspunkt i udbudsprocessen, at de ville acceptere andet graveudstyr end en plov med hensyn til arbejdsområdet.
>
> Saipems forslag blev fremsat på baggrund af at udføre offshore-udgravningen og efterfyldningen af arbejdsområdet ved hjælp af en plov, hvilket er i overensstemmelse med kravene i Energinets udbud.

> Saipems forslag inkluderede ingen alternative forslag (eller alternative graveløsninger) som instrueret af Energinet i deres svarmeddelelse 61490 i EU Supply den 8. august 2019."

Ad realitetspåstanden

Saipem har gjort følgende gældende:

Ad graveudstyr (plov)

I forbindelse med et debrief-telekonferencemøde, der blev afholdt med Saipem den 19. februar 2020, erkendte Energinet Gas, at Allseas ikke havde foreslået plovudstyr i sit tilbud. Dermed var tilbuddet ukonditionsmæssigt, idet der i pkt. 14.3 i Scope of Work, pkt. 1, 4 i "Detail Design Seabed Intervention and Cover Design Specification" og Appendix A er krav om at anvende plovudstyr til at udføre offshore-udgravningsarbejder, ligesom der ikke i øvrige udbudsdokumenter er anført noget om mulighed for at anvende en udgravningsmetode, der ikke bestod af pløjning og andet udgravningsudstyr end plov.

Energinet Gas har ikke på noget tidspunkt under udbudsprocessen indikeret at ville acceptere andet udgravningsudstyr end en plov.

På den baggrund og i lyset af Energinet Gas' svar på Saipems spørgsmål af 6. august 2020 indleverede Saipem tilbud af 20. september 2019, 27. november 2019, 10. januar 2020 og sidste og endelige tilbud af 4. februar 2020.

Alle Saipems tilbud overholdt kravet om plov i udbudsmaterialet, og der blev ikke søgt tilbudt alternativer hertil.

Saipem anmoder på den baggrund klagenævnet om at undersøge Energinet Gas' udbudsprocedure og beslutning om at tildele kontrakten til Allseas. Energinet Gas har således ved tildelingen af kontrakten til Allseas enten ikke overholdt princippet om ligebehandling og gennemsigtighed eller vildledt Saipem ved svar 61490, så Saipem blev forhindret i at foreslå alternative graveløsninger.

Energinet Gas' handlinger har fået Saipem til at tro, at der ikke kunne foreslås nogen anden metode end pløjemetoden, og Energinet Gas har herefter accepteret Allseas' tilbud, der er i strid med de stillede krav, idet Allseas' graveudstyr ikke er en plov, men snarere er en gravemaskine med spuling. Energinet Gas har herved handlet i strid med principperne om ligebehandling og gennemsigtighed, jf. artikel 36, stk. 1, i forsyningsvirksomhedsdirektivet.

Energinet Gas har heller ikke på noget tidspunkt opfordret Saipem til at bruge spuleudstyr. Saipem kunne i så fald have fremsat tilbud baseret på spuleudstyr, da Saipem ejer sådant udstyr. Brug heraf ville have givet Saipem en betydelig kommerciel fordel, fordi en sådan spredning er meget mere økonomisk end den pløjespredning, der (i overensstemmelse med udbudsbetingelserne) blev tilbudt af Saipem.

Yderligt anført

I replikken har Saipem som nævnt yderligere anført:

> ”I Resultattavlen i Meddelelsen om tildeling vedrørende 218196-18/01995- Indkaldelse af udbud under "SQS" - Udbud på baltisk rør - Europipe II Branch Pipeline Installation udstedt af Energinet den 10. februar 2020 bemærkede Saipem, at alle kriterier (bortset fra pris/økonomi) blev givet nøjagtigt samme score for begge udbudsgivere.
>
> Mens Saipem forstår tildelingskriteriet, bemærkes følgende kommentarer som eksempler på, hvorfor det ville være umuligt for de to bud at få nøjagtigt samme score/point:”

Det anføres herefter:

> ”<u>Detaljeret tidsplan</u>
> Uddrag fra ovennævnte Meddelelse om tildeling:
>
> <u>Vindende udbud</u>
> *"Generelt ser tidsplanen ud til at være forindlæst, dvs. kritiske aktiviteter er planlagt udført så tidligt som muligt for at sikre et minimum af variation mod de kritiske milepæle M10, M11-1 og M11-2."*
>
> <u>Saipems udbud</u>
> *"Generelt ser tidsplanen ud til at være noget forindlæst, dvs. kritiske aktiviteter planlægges udført tidligt nok til at muliggøre et godt niveau af variation mod de kritiske milepæle M10, M11-1 og M11-2. Derudover*

ser udførelsen af offshore-undersøgelsesarbejde ud til at være optimeret for at give mulighed for denne variation."

Selvom den indsendte tidsplan for begge budgivere opfylder den Ordregivende myndigheds kriterier, er det åbenlyst, at Saipems foreslåede tidsplan med et godt niveau af variation er bedre end minimumsniveauet for variation i det vindende bud, hvilket absolut må betyde en bedre score/flere point til Saipem.

Saipem har endvidere accepteret samlet erstatningsansvar for likviderede skader begrænset til 20 % af kontraktprisen, mens det vindende bud kun accepterede en begrænsning på 10 %. Når det endvidere bemærkes, at det vindende bud har en minimumsvariation i sin tidsplan, burde dette ydermere have givet en anden score mellem de to bud.

Kontraktsmæssige betingelser

Uddrag fra ovennævnte Meddelelse om tildeling:
"...såvel som en anmodning om ubegrænset adgang til stedet (både on- og off-shore), som medfører en øget risiko for den Ordregivende myndighed".

Det bemærkes, at der ifølge den Ordregivende myndighed ikke var nogen øgede risici med hensyn til adgang til stedet, hvilket fremgår af godkendelsen af den Ordregivende myndigheds tekniske team. Se punkt 113 i Tekniske afklaringer, men der er fremhævet uddrag som nedenfor for lettere reference:

Saipems afklaring: *"Forslaget er baseret på ubegrænset og uhindret adgang til Offshore arbejdsstedet baseret på 24 timer i døgnet alle ugens 7 dage, og udbudsgiverens arbejdsplan er i overensstemmelse hermed."*

Den Ordregivende myndigheds svar: *"Accepteret. Der er ingen adgangsbegrænsninger eller planlagte samtidige operationer - andre end dem, der håndteres inden for udbudsgiverens arbejdsområde."*

Beskrivelse af løsning

Vindende udbud

Uddrag fra ovennævnte Meddelelse om tildeling:
"Overvejelser i forhold til de foreslåede ændringer til graveudstyr antages at være gennemtænkt for at kunne reducere problemer med gravedybden."

> Saipem foreslog ploven i overensstemmelse med ITT-dokumentationen, mens Allseas foreslog ikke-graveudstyr, og den givne score var nøjagtig den samme.
>
> Endvidere kan det fastslås ud fra ovenstående, at Energinet mangler tillid til effektiviteten af Allseas foreslåede gravemetode, da Allseas foreslåede graveudstyr ikke kan imødekomme de gravedybder, der kræves i ITT."

Energinet Gas har gjort følgende anbringender gældende:

Ad graveudstyr (plov)

Hvis Saipems påstand skal forstås sådan, at *Saipem uberettiget er blevet forhindret i at afgive alternative tilbud*, er det uklart, om der henvises til en manglende mulighed for at afgive flere parallelle tilbud eller mulighed for at give alternative tilbud i form af tilbud, der indeholder andre løsninger, end de løsninger der er foreskrevet i udbudsmaterialet, jf. forsyningsvirksomhedsdirektivets artikel 64.

Det fremgår klart af udbudsbetingelsernes pkt. 2.3 og 2.8, at det ikke var muligt at afgive alternative tilbud eller afgive mere end ét tilbud.

Til trods herfor modtog Energinet Gas under udbuddet spørgsmål af 6. august 2019 fra Saipem om muligheden for at afgive alternative tilbud, hvilket Energinet Gas besvarede benægtende med henvisning til pkt. 2.3 og 2.8.

Energinet Gas har efter de nævnte bestemmelser både været berettiget og forpligtet til at afvise, at tilbudsgiverne afgav mere end ét tilbud, og at de kunne afgive alternative tilbud.

I det omfang Saipems klage skal forstås således, at Saipem gør gældende, at Energinet Gas uberettiget har afskåret Saipem fra at afgive alternative tilbud i form af enten et eller flere parallelle tilbud, skal Saipems klage derfor ikke tages til følge.

Saipems klage kan desuden opfattes således, at Saipem gør gældende, at *Saipem uberettiget, og i strid med ligebehandlings- og gennemsigtighedsprincippet i forsyningsvirksomhedsdirektivets artikel 36, stk. 1, er blevet afskåret fra at tilbyde alternative løsninger* i forhold til de løsningsforslag, der er indeholdt i udbudsmaterialet.

Udbuddet er gennemført som et funktionsudbud, hvor tilbudsgiverne havde metodefrihed, idet de, jf. beskrivelsen af tildelingskriteriet "Solution Description" i udbudsbetingelsernes pkt 3.1, konkurrererede på, "to which extent the detailed solution description demonstrates a high level of ability to identify relevant activities and address challenges and proposes appropriate and project specific methods, equipment/tools/spreads, processes" med særlig fokus på blandt andet "how execution of the works (e.g. storyboards) is intended to be performed", og "to which extent the detailed description of the proposed equipment/tools/spreads demonstrates their suitability with respect to the individual construction and installation activities".

I overensstemmelse hermed var kravsspecifikationerne for de enkelte ydelser opbygget således, at kravsspecifikationen dels indeholdt en beskrivelse af funktionskravene, dels et oplæg til hvordan tilbudsgiverne kunne opfylde disse funktionskrav i form af forslag til løsningsbeskrivelser mv., og således at det entydigt fremgik af kravsspecifikationen, i hvilket omfang de heri indeholdte krav kunne fraviges.

Kravsspecifikationen for arbejder på havbunden (Seabed Intervention) pkt. 1.4 indeholder i den forbindelse følgende definitioner:

> "Shall (requirement) Requirement strictly to be followed in order to conform to the document and from which no deviation is permitted, unless a deviation is approved.
>
> Should (recommendation) Indicates that among several possibilities one is recommended as particularly suitable, without mentioning or excluding others, or that a certain course of action is preferred but not necessarily required, or that (in negative form) possibility or course of action is deprecated but not prohibited."

Som en konsekvens af, at tilbudsgiverne konkurrerede på løsningen af den udbudte opgave, og at løsningsbeskrivelserne mv. i udbudsmaterielet derfor kun havde karakter af oplæg til, hvordan Energinet Gas' krav kunne opfyldes, fremgik det af udbudsbetingelsernes pkt. 2.7.1 "Tenderers reservations": "…The Contracting Authority is entitled to reject any tender with reservations to the Tender Document (unless the reservations are part of the evaluation, cf. section 3.1)."

Det fremgik således entydigt af udbudsmaterialet, at tilbudsgiverne kunne tilbyde alternative løsninger i forhold til de løsningsforslag og krav, der var indeholdt i udbudsmaterialet, i det omfang sådanne alternative løsningsforslag kunne rummes inden for tildelingskriterierne.

I overensstemmelse hermed har Saipem som led i sit tilbud fremsat flere alternativer til de løsningsforslag, der var indeholdt i udbudsmaterialet, herunder også løsningsforslag, som fraviger udbudsmaterialets skal-krav (shall requirements).

Der henvises til afklaringslisten fra forhandlingsrunde 3 med Saipem, hvor det af ID 108, ID 124, ID 125, ID 126, ID 136 og ID 196 i denne afklaringsliste fremgår, at Saipem har tilbudt alternativer til de løsninger, der var indeholdt i udbudsmaterialet:

Placering iht. afklaringslisten og udbudsmaterialet	Kravets ordlyd iht. udbudsmaterialet	Saipems løsningsforslag jf. afklarings-listen	Kommentar fra Energinet jf. afklaringslisten	Afsluttende bemærkninger fra forhandlingsmødet jf. afklaringslisten
Afklaringslisten: **ID 108** (Survey) **Udbudsmaterialet:** Kravet fremgår af "Seabed Survey and Monitoring Specification" (**bilag E**), afsnit 4.1 (s. 9-10 af 12)	**Afsnit 4.1:** Pipeline pre-lay survey **<u>should</u>** be carried out with video, high resolution MBES, SBP, cable- and pipetracker and SSS mounted on a survey platform. The survey **<u>shall</u>** include, but not limited to, the following: • Determine the bathymetry along the route and create DTM, particularly in areas where seabed interventions have been carried out recently. The water depth shall be verified and reduced to LAT. • Establish the topography at the dredge/trenching location in order to generate a reference for the DTMs. • Locate and identify seabed features and obstructions such as UXOs, debris, rocks and boulders that may affect seabed interventions and require removal. • Identify any other potential hazards that may affect succeeding operations. • Video documentation.	For Pre-lay and As-laid surveys in nearshore sections, Tenderer proposes to use a shallow water vessel utilizing a combination of Acoustic methods Tenderer proposes the utilization of only SSS and MBES for Anchor Corridor survey (no gradiometer). Any identified object which is classified as high risk during the Anchor Corridor survey, will be subjected to further investigation.	Noted	Noted and accepted. Closed without amendments.

Afklaringslisten: **ID 124** (Cathodic disbondment at 23°, 28 days) (Cathodic disbondment at 65°C, 24 hrs at -3.5 V) **Udbudsmaterialet:** Løsningsbeskrivelsen fremgår af "Field Joint Coating Specification" (**bilag F**) afsnit 5.11 (s. 14 af 19) samt afsnit 5.11.1 (s. 14-15 af 19) vedrørende tester som skal udføres under produktion.	**Section 5.11.1 in Fields Joint Coating Specification:** Table 5.5 summarises inspection and testing activities during **production**: Cathodic Disbondment at 23° for every 10 joints with reference to ISO 21809-3, Annex G Maximum 5 mm disbondment.	To take the sample for this test, it would be necessary to cut approx. half meter of pipe from the field joint area and then ship it to the laboratory. This test can be performed during PQT (Procedure Qualification Trial) only. Please refer to Table A.1 of ISO 21809-3. Performing this test during porduction as required will make the laying of the pipeline impossible (1/2 meter loss will have a non recoverable impact in cut backs). Moreover, the test results will be available after 28 days as a minimum, making impossible to proceed whit the pipeline laying for the duration of the tests. Finally, it is noted that the CDT at 65°C is required only for linepipe coating as per ISO 21809-1 i(not FJC).	Accepted. Test to performed during the PQT. The reference to ISO 21809-1 is to make sure the parent coating requirements are met.	Noted and accepted

Afklaringslisten: **ID 136** (Hardness value of pipes) **Udbudsmaterialet:** Kravet fremgår af "Specification for Offshore Line Pipe" (**bilag G**), afsnit 5.5 (s. 12 af 15) Tabel 5-3 (s. 13 af 15)	**Afsnit 5.5:** Table 6-3 summarises inspection and testing activities during the production. The references made in Table 6-3 all refer to DNVGL-ST-F101. Requirements for inspection and testing frequency for the Line Pipe shall be as per Table 7-7 in DNVGL-ST-F101, Ref. /1/. The list of test is not limited to those presented in Table 5-3 and the supplier **shall** ensure the test regime comply with DNVGL-ST-F101. The test results **should** be of sufficient quality to be used as basis for ECA by installation Contractor. **Tabel 5-3:** Hardness testing: Max 300 HV10, Table 7.5	The defined max 300HV10 for the parent material will yield in higher hardness value in the HAZ after the girth welding. Our experience of dealing with the similar material the hardness value of max 220HV10 expected for the base metal.	Specification is based on the requirements of DNVGL-ST-F101, which specifies maximum hardness 300HV10 for both BM, WM and HAZ for 485 steel SAWL linepipe. Line pipe supplier delivers linepipe with maximum hardness of 300 HV10.	Company will consider and revert. Post meeting note: The maximum hardness value of 325 HV10 at the weld metal and Heat Affected Zone (HAZ) is acceptable, subject to DNVGL approval. The hardness of the parent metal shall remain unchanged.
Afklaringslisten: **ID 196** **(**Average back-filling speed**)** **Udbudsmaterialet:** Kravet fremgår af "Seabed Intervention and Cover Design Specification" (bilag 5), afsnit 4.3 (s. 12 af 18)	**Afsnit 4.3:** Any movements or damage of the pipeline during backfilling operation shall be avoided. Backfilling equipment shall be designed such that it shall never touch the pipe in the trench. The speed of the backfilling equipment shall be continuously calculated in order to limit the susceptibility. The average backfilling speed of the plough **shall** be of maximum 300 m/hr.	On basis that Tenderer is flooding the pipeline prior to backfilling, Tenderer's experience is that average backfill speed can be increased without risk of pipeline floatation during backfilling and **Tenderer's Proposal is based accordingly.**	Noted - To be discussed in meeting	Noted and accepted. Contracting Authority will update Seabed intervention and cover design specification with regards to maximum backfilling speed after contract award but before contract signature.

Som det fremgår, har Saipem i overensstemmelse med udbudsmaterialet haft lejlighed til at tilbyde og rent faktisk tilbudt adskillige alternativer til de løsningsforslag, der er angivet i udbudsmaterialet. Det bemærkes i den forbindelse, at ingen af Saipems alternative løsningsforslag har ført til rettelser i udbudsmaterialet.

Det er derfor heller ikke korrekt, når det i klagen er angivet, at Saipem er blevet forhindret i at komme med alternative forslag.

Klagen kan også opfattes sådan, at Saipem påstår, at *Allseas' tilbud er ukonditionsmæssigt, og/eller at Allseas har haft mulighed for at tilbyde alternative løsningsforslag i et videre omfang end Saipem*, fordi tilbudsgiverne i relation til arbejderne på havbunden ved nedgravning (trenching) af røret, efter nedlægning og efterfølgende tilbagefyldning (backfilling), var forpligtet til at bruge en såkaldt plov, og at tilbudsgiverne således ikke har haft metodefrihed i relation til valg af "trenching and backfilling equipment".

Som en del af udbudsmaterialet indgik en baggrundsrapport "Pipeline Cover Design Report", hvori det i pkt. 3.1.1 er anført "Based on the Seabed Intervention and Cover Design Specification, Ref. /17/, ploughing is the base case trenching method for this project. Jetting is included in this report for comparison only." I "Scope of work" er der da heller ikke i pkt. 14.3 om "Seabed intervention", "Offshore trenching and backfilling" stillet krav om, at tilbudsgiverne benytter specifikt udstyr i forbindelse med, at jorden skal skubbes tilbage omkring rørledningen. Dokumentet "Seabed Intervention and Cover Design Specification", som indeholder de mere specifikke krav til anlægsarbejderne på havbunden, stiller heller ikke i pkt. 4 om "Seabed Intervention and Cover Design Specification" krav til det materiel, der bliver anvendt i forbindelse med nedgravning, hvor der dannes en grøft til røret (trenching), eller til jorden som skubbes tilbage (backfilling), men omtaler konsekvent dette som "the trenching equipment" og "the backfilling equipment". Ligeledes fremgår det entydigt af beskrivelsen, at "ploughing" er brugt som en betegnelse for aktiviteten at danne en grøft til røret. Der er intet steds stillet krav om, at "post-lay trenching shall be carried out by ploughing".

For så vidt angår Appendix A til "Scope of work" og den heri krævede "ploughing analysis", som der henvises til i Saipems klage, bemærkes, at der er tale om et element i en rapport, som skal indgå i det endelige kvalitetssikringsmateriale, og som har til formål at sikre, at kravene til "trenching and backfilling" er opfyldt.

Tilbudsgiverne har derfor haft metodefrihed i forhold til, hvilket udstyr (og hvilken metode) tilbudsgiverne ville benytte til "trenching and backfilling".

Som det fremgår af det for klagenævnet fremlagte uddrag af Allseas tilbud, tilbød Allseas at udføre "trenching and backfilling" med Allseas eget udviklede udstyr/maskine benævnt "Digging Donald". Det følger af den givne beskrivelse, at maskinen på samme måde som en plov danner en grøft til røret

i forbindelse med nedgravning (trenching), og skubber jorden tilbage igen (backfilling) ved at bruge ”the backfill blades or the backfill nozzles”. Allseas’ løsningsbeskrivelse opfylder dermed kravene i udbudsmaterialet, herunder kravene i dokumentet "Seabed Intervention and Cover Design Specification”.

Det fremgik *ikke* af udbudsmaterialet, at tilbudsgiverne var afskåret fra at anvende jetting (spuling) i forbindelse med nedgravning af røret.

Baggrunden for, at Energinet Gas i sit løsningsforslag tog udgangspunkt i en pløje-metode og ikke en jetting-metode (spule-metode), jf. ”Pipeline Cover Design Report” pkt. 3.1.1 sammenholdt med pkt. 3.2, var som anført i rapporten: ”Based on the soil properties and presence of boulder fields, it is recommended that the trenching is performed using a plough. Additionally, based on the Syd Arne project experience, jetting was not a good option as a trenching method.”

Det er ikke rigtig, at Allseas' udstyr ikke er en plov ”men snarere en gravemaskine med spuling”, eller at Allseas' metode er en ren spule-metode.

Ved nedgravning af rørledninger sondres der, som det også fremgår af følgende link https://www.seatools.com/subsea-solutions/subsea-trenching/, typisk mellem følgende typer af udstyr:

- Mechanical trenchers
- Jet trenchers
- Pipeline ploughs
- Cable ploughs

Jetting-udstyret (jet trenchers) er kendetegnet ved, at udstyret, som det også fremgår af Saipems replik, fluidiserer jorden, og derved spuler den væk således, at jorden spredes over et større ukontrolleret område. Udgangspunktet er herefter, at ”backfiling” sker ved naturlig tilbagefyldning ved havets bevægelser. Det af Allseas tilbudte udstyr ”Digging Donald” er imidlertid ikke en jet trencher, men derimod en mechanical trencher.

Energinet Gas henviser i den forbindelse til beskrivelsen af ”Digging Donald” i Allseas tilbud samt til beskrivelse på Allseas hjemmeside (https://allseas.com/equipment/subsea-equipment), hvoraf følgende fremgår:

> ”Digging Donald
> Allseas’ mechanical trenching machine Digging Donald is a fully remote-controlled and diverless trencher that never touches the pipeline. The machine is operated from Allseas’ dynamically positioned trenching support vessel Calamity Jane. Digging Donald creates a V-shaped trench underneath the pipeline using mechanical digging arms and multi-pass jetting. The pipeline gradually sinks into the trench behind the machine.
>
> Digging Donald can operate in water depths up to 450 m and is capable of trenching all types of sedimentary soils from loose to dense sand and very soft to hard clay, as well as specific rock types. The machine has been deployed to trench more than 4000 km of pipeline worldwide. Mechanical trenching, up to 42” diameter, and jetting, up to 48” diameter, can be performed individually or simultaneously. Other trenching operations are possible, such as second pass jetting, backfilling, free span correction or exposing buried objects.”

Som det fremgår af disse beskrivelser, løsner ”Digging Donald” i forbindelse med nedgravningen af rørledningen først jorden med sine ”gravearme” og lægger den løsnede jord i en bunke langs tracéet. Hvis ønsket kan ”remedial jetting” benyttes, hvorved ”Digging Donald” spuler og yderligere løsner jorden i bunden af renden, forinden jorden via ”gravarmene” lægges op langs tracéet. Efterfølgende håndteres backfilling ved, at den opgravede jord, igen via ”Digging Donalds” ”gravearme”, skubbes tilbage i graven/renden ovenpå røret.

Der er således betydelige forskelle på en jetting-metode og den af Allseas tilbudte metode til nedgravning af røret (trenching and backfilling).

Selv for det tilfælde, at Energinet Gas under udbuddet havde udelukket en jetting-løsning (hvilket bestrides) eller i øvrigt uberettiget givet Saipem indtryk af, at der ikke kunne tilbydes en jetting-løsning (hvilket ligeledes bestrides), er der således ikke grundlag for at statuere, at der er sket en forskelsbehandling af Saipem og den vindende tilbudsgiver Allseas allerede som følge af, at den af Allseas tilbudte metode til nedgravning af ledningsrøret ikke er en jetting-metode.

Der er heller ikke grundlag for et synspunkt om, at Energinet Gas under udbuddet skulle have *afskåret Saipem fra at benytte en anden metode* til "trenching and backfilling" end den i udbudsmaterialet forudsatte "ploughing"-metode.

Dels havde tilbudsgiverne således, som det fremgår af udbudsmaterialet, herunder dokumentet "Seabed Intervention and Cover Design Specification", metodefrihed, dels opfordrede Energinet Gas specifikt Saipem til under forhandlingerne at overveje andre metoder for "the post-lay trenching/backfilling", jf. afklaringslistens ID 142, hvoraf fremgår:

> "Although the jetting method is clearly stated not to be used for post-lay trenching/backfilling. Tenderer is requested to evaluate pro/cons by use of jetting opposed to ploughing for parts or entire post-lay section of pipeline."

Saipems metodefrihed i relation til "post-lay trenching and backfilling" har således ikke på nogen måde været begrænset i forhold til den metodefrihed, som den vindende tilbudsgiver, Allseas, havde.

Årsagen til, at Energinet Gas trak anmodningen til Saipem om at "evaluate pro/cons by use of jetting opposed to ploughing" tilbage, jf. afklaringslistens ID 142, var, at Saipem under forhandlingerne entydigt tilkendegav, at der ikke var noget bedre udstyr end en plov til nedgravning af rørledningen, og at det derfor ikke gav mening at evaluere på fordele og ulemper ved at benytte en jetting-metode frem for en pløje-metode.

I det omfang Saipems klage skal forstås således, at Saipem gør gældende, at Allseas' tilbud er ukonditionsmæssigt, og/eller at Allseas har haft mulighed for at tilbyde alternative løsningsforslag i et videre omfang end Saipem, skal Saipems klage derfor ikke tages til følge.

Klagenævnet udtaler:

Ad afvisningspåstanden

Klagenævnet finder, at den oprindelige del af Saipems klage ikke er så uklar, at klagen skal afvises i medfør af klagenævnslovens § 6, stk. 2. Efter indholdet af Saipems klageskrift sammenholdt med replikken må klagen således

forstås sådan, at Saipem påstår, at klagenævnet skal konstatere, at Energinet Gas har handlet i strid med ligebehandlings- og gennemsigtighedsprincippet i forsyningsvirksomhedsdirektivets artikel 36, stk. 1, ved ikke at afvise tilbuddet fra Allseas, uagtet dette ikke overholdt kravene om brug af "plov" som graveudstyr i udbudsbetingelsernes "Scope of Work" pkt. 14.3, "Detail Design Seabed Intervention and Cover Design Specification" pkt. 4.1 og Appendix A, og/eller ved at udelukke Saipem fra at tilbyde andet graveudstyr end plov.

Det, som Saipem yderligere har anført i replikken, om:

> "I Resultattavlen i Meddelelsen om tildeling vedrørende 218196-18/01995- Indkaldelse af udbud under "SQS" - Udbud på baltisk rør - Europipe II Branch Pipeline Installation udstedt af Energinet den 10. februar 2020 bemærkede Saipem, at alle kriterier (bortset fra pris/økonomi) blev givet nøjagtigt samme score for begge udbudsgivere.
>
> Mens Saipem forstår tildelingskriteriet, bemærkes følgende kommentarer som eksempler på, hvorfor det ville være umuligt for de to bud at få nøjagtigt samme score/point:
> ..."

er derimod, for så vidt som det anførte skal opfattes som en yderligere påstand, så uklart, at det er uegnet til at danne grundlag for klagenævnsbehandling. Denne del af klagen afvises derfor i medfør af klagenævnslovens § 6, stk. 2.

Ad realitetspåstanden

Ifølge udbudsbetingelsernes pkt. 3.1 var tildelingskriteriet "the most economically advantageous tender based on the best price-quality ratio" med blandt andet underkriteriet "Solution Description". Det er i pkt. 3.1 angivet, hvilken dokumentation tilbuddene skal indeholde i relation til underkriteriet, og hvorledes opfyldelsen af kriteriet vil blive bedømt.

I "Scope of Work" er de opgaver, som skulle udføres vedrørende rørlægningen af den ny forbindelse mellem Europipe II i Nordsøen og Houstrup i Danmark, beskrevet. Det fremgår herunder af pkt. 1.3.4 om "Seabed intervention", at denne opgave:

> "Includes all activities required for performance of seabed intervention and pipeline stabilization including, but not limited to the following:
>
> - Nearshore dredging and backfilling
> - Post-lay trenching and backfilling
> - …"

Overordnet fremgår det af pkt. 2.4.5, at "Contractor shall perform all planning and execution of the Work … " og ifølge pkt. 3.1 være "solely responsible for its own equipment design, construction engineering and documentation/drawings in accordance with Company requirements and mandatory regulations" samt **"**perform all design, engineering, analyses and planning required to perform the Work".

I pkt. 3.2 er det anført:

> "Company will provide Contractor with design documentation on the basis of which Contractor shall develop its own construction engineering, planning and procedures for execution of the Work in accordance with Section IX - Documents and Drawings provided by Company.
>
> Company's Consultant IKM Ocean Design has performed detail design for in-place conditions of the Europipe II Branch Pipeline. The detail in-place engineering includes activities such as:
>
> Detailed in-place design according to DNVGL-ST-F101
> …
> Pre- and post-lay seabed intervention engineering
> …
>
> No design, design elements, including design proposals, layout suggestions or similar, included in this Section IV - Scope of Work or otherwise communicated from or on behalf of Company to Contractor shall relieve Contractor from the design responsibility as stipulated above and elsewhere in the Contract and Contractor is specifically requested to examine such design elements etc. When examining this Section IV - Scope of Work as required under the Contract and any design or parts of design contained in this Section IV - Scope of Work shall be deemed verified and approved by Contractor. Notwithstanding this, the Contractor is not responsible for the design of Company-provided items."

Det fremgår endvidere af pkt. 3.8, at "Contractor shall perform all construction engineering required for the performance of the Work" og af pkt. 5.2, at "Contractor shall fabricate and procure all parts and equipment required to

perform the Work. Items not defined in Section X - Materials, Services and Facilities provided by Company, are Contractor's scope of supply and responsibility. This includes, but is not limited to: …All materials and equipment for seabed intervention."

Af pkt. 14 om "Seabed intervention" fremgår, at denne opgave blandt andet omfatter "Nearshore dredging and backfilling" og "Post-lay trenching and backfilling", idet nærmere anføres:

"**14.2 Nearshore dredging and backfilling**

Contractor shall perform dredging in the nearshore section of the pipeline route prior to performance of the shorepull operations. The nearshore trench shall extend from the landfall to the KP with water depth sufficient to start post-lay trenching. The trench depth shall be maintained during entire duration of the shore pull operations. If necessary, the access channel for pipelay vessel shall also be excavated.

Contractor shall provide all necessary engineering, equipment and personnel for the execution of the nearshore dredging and backfilling.
…

On successful completion of the shorepull the nearshore trench shall be backfilled as quickly as possible to ensure the stability of the pipeline.

14.3 Offshore trenching and backfilling

The pipeline shall be trenched and backfilled. If the post-lay trenching equipment to be used will lift the pipeline or in other ways come in contact with the pipeline during the post-lay trenching operation, the post-lay trenching shall be performed before the gauging as part of the FCG operations, ref. section 16.2. The post-lay trenching and backfilling operations shall be performed for the entire length of the pipeline, except for nearshore trench, crossings and the section of the pipeline in the vicinity of the Europipe II.

Contractor shall provide all necessary engineering, equipment and personnel for the execution of the post-lay trenching and backfilling.
…

Contractor shall perform trenching and backfilling in accordance with requirements as outlined by requirements in Section IX – Documents and Drawings. Backfill material shall be used to achieve cover requirements for the entire pipe length except for crossings. In the event cover requirements cannot be fulfilled by use of backfill material, use of alternative

cover method, e.g. SRI, shall be agreed with Company. Any claims by Contractor for subsea rock installation in excess of the quantities calculated in Section IX – Documents and Drawings shall be justified by the soil conditions being significantly different from the conditions described.
…"

I pkt. 1.4 i "Detail Design Seabed Intervention and Cover Design Specification" er "shall" krav defineret som obligatoriske krav, mens "should" krav er defineret som anbefalinger. Om "trenching" og "backfilling" fremgår det:

"**4.1 Trenching**

All vessels and equipment used in this project shall comprehend certification.

Two methods for trenching are considered for this project. Dredging for pre-lay operation, and ploughing for post-lay operation. The trenching equipment shall be capable to operate in all anticipated soil conditions.
The trench shall be a certain depth in which the top of the pipe is satisfactorily below the natural seabed, see Figure 4-1. The minimum requirements to depth of cover (DOC) and depth of trench (DOT) are presented in Pipeline Cover Design Report, Ref. /3/, based on QRA requirements, Ref. /15/, and expansion design requirements, Ref. /4/.

The Contractor shall aim to complete the trenching operation in one pass and shall notify Energinet of all areas were multiple passes may be necessary to meet the required trenching parameters.

…

The trench shall maintain a smooth (continuous) profile at the bottom to reduce the possibility for OOS features. The trench width shall be kept to a minimum to provide protection to the pipeline.

- The DOT and DOC shall be accurate to a point of ± 0.1 m.
- The depth of cover (DOC) is the distance from the top of backfill to the top of product (TOP).

A pre-lay trench shall be built for the shore approach by dredging, in such a way that it ensures a flat base and sufficient width to accommodate the pipeline being laid on it. The trench may be built by use of a trailing suction hopper dredger or similar vessel type, Ref. /14/. Wherever possible, and particularly close to landfall the contractor shall use operational techniques to reduce the input of sediments into the water column.

The post-lay trenching will be carried out by ploughing for the offshore sections. The trenching result shall be checked to ensure that the trench specifications based on QRA, Ref. /15/, and expansion (UHB) requirements are met, Ref. /4/. During trenching, regular checks shall be included to verify the accuracy of sensors on the trenching equipment. These checks shall be carried out within the first 500 m from the deployment location.

The trenching operations shall be carried out in such a manner that the pipeline nor associated coatings and field joints, or any attachment will be damaged.

The trenching equipment shall be able to remove obstructions like large objects and boulders, so that they do not affect or damage the pipe.
If rocks or boulders beneath the surface require the Contractor to interrupt trenching, trenching shall be re-initiated as close as possible to the interruption point.

The trenching distance to any subsea asset shall be at least 250 m. At crossings, the trenching equipment shall be recovered to the vessel and secured on deck, until the crossing point is traversed. The support vessel shall maintain a safe offset clearance to the crossing location prior to the recovery of trenching equipment.

The trench transition zone is the zone between pipeline exposed on seabed and pipeline in trench. Trench transition zones shall be provided in all trench start/stop locations. The transition shall not cause additional stress or spanning to the pipe. The bottom of the trench transition zone shall be at a constant gradient to provide a smooth profile to support the pipeline and to ensure that the transition geometry complies with the drawings, Ref. /7/.

Seabed material shall not be transported away from the trenching/dredging area and replaced with material from other locations.

Trenching operation shall stop if the weather conditions do not permit safe or satisfactory trenching.
…

4.3 Backfilling

The backfilling equipment shall be able to operate in all anticipated soil conditions, in order to re-place the sediment heaps, created by ploughing, back in the trench. Backfilling shall begin as soon as practically possible after trenching is completed and the trenching profile is approved. As-

trenched survey shall be conducted to approve the trenching profile, prior to backfilling. The trench depth and OOS shall be maintained as requested. The amount of backfilling shall fulfil the QRA requirements, Ref. /15/, and expansion design requirements, Ref. /4/. The minimum required cover height regarding upheaval buckling along the route is 0.6 m TOP when including 10% scouring effect, Ref. /4/. During backfilling, regular checks shall be included to verify the accuracy of sensors on the backfilling equipment. These checks shall be carried out within the first 500 m from the deployment location.

Backfilling depths is referred to as the vertical distance between TOP and top of backfill, see Figure 4-1.

The aim of backfilling operation is to complete the backfilling in one pass and obtain a smooth and continuous backfill profile.

Any movements or damage of the pipeline during backfilling operation shall be avoided. Backfilling equipment shall be designed such that it shall never touch the pipe in the trench. The speed of the backfilling equipment shall be continuously calculated in order to limit the susceptibility. The average backfilling speed of the plough shall be of maximum 300 m/hr.

At crossing locations, the backfilling equipment shall be recovered to the vessel similar to the trenching requirements described in Section 4.1.
Backfilling operation shall stop if the weather conditions do not permit safe or satisfactory backfilling.
…"

I Appendix A to section IV – Scope of Work – Contractors documentation list er der blandt andet stillet krav om dokumentation i form af rapporter om "Nearshore Dredging and Backfilling" og "Post-lay Trenching and Backfilling" (af parterne betegnet "ploughing analysis").

Udbudsmaterialet indeholder en "Pipeline Cover Design Report" med anbefalinger om blandt andet "Based on the soil properties and presence of boulder fields, it is recommended that the trenching is performed using a plough. Additionally, based on the Syd Arne project experience, jetting was not a good option as a trenching method". Der er i tabel 4.4 nævnt graveudstyr, som ifølge rapporten vil kunne udføre opgaven.

Efter indholdet af de nævnte bestemmelser og anbefalinger er der efter klagenævnets opfattelse ikke grundlag for at forstå udbudsmaterialet således, at

Energinet Gas har stillet et obligatorisk krav om, at det graveudstyr, som tilbydes til udførelse af "trenching" (udgraving til brug for rørlægningen), skal være en plov.

Beskrivelsen i Allseas tilbud af det graveudstyr, "Digging Donald", som Allsesas agter at anvende, giver endvidere ikke grundlag for at antage, at dette udstyr ikke vil opfylde de krav, som Energinet Gas har stillet vedrørende udgravning.

Klagenævnet finder, at Energinet Gas' besvarelse af Saipems spørgsmål af 6. august 2019 ikke efter indholdet af spørgsmålet og det givne svar samt forløbet af udbudsprocessen i øvrigt kan anses for at have udelukket Saipem fra at tilbyde andet graveudstyr end plov. At Saipem angiveligt har forstået svaret på denne måde, kan ikke bebrejdes Energinet Gas.

Saipems påstand tages derfor ikke til følge.

Efter sagens udfald, omfang og forløb skal Saipem betale sagsomkostninger til Energinet Gas som nedenfor bestemt.

Herefter bestemmes:

Saipem Ltd.'s påstand om, at klagenævnet skal konstatere, at Energinet Gas TSO A/S har handlet i strid med ligebehandlings- og gennemsigtighedsprincippet i forsyningsvirksomhedsdirektivets artikel 36, stk. 1, ved ikke at afvise tilbuddet fra Allseas Deepwater Contractors S.A., uagtet dette ikke overholdt kravene om brug af "plov" som graveudstyr i udbudsbetingelsernes "Scope of Work" pkt. 14.3, "Detail Design Seabed Intervention and Cover Design Specification" pkt. 4.1 og Appendix A, og/eller ved at udelukke Saipem Ltd. fra at tilbyde andet graveudstyr end en plov, tages ikke til følge.

Den øvrige del af klagen afvises.

Saipem Ltd. skal i sagsomkostninger til Energinet Gas TSO A/S betale 35.000 kr., der betales inden 14 dage efter modtagelsen af denne kendelse.

Klagegebyret tilbagebetales ikke.

Katja Høegh

Genpartens rigtighed bekræftes.

Heidi Thorsen
kontorfuldmægtig