

DARS, MOTORWAY COMPANY IN THE REPUBLIC OF SLOVENIA
DARS, d.d.

CHAPTER 1

INSTRUCTIONS TO TENDERERS ON THE ELABORATION OF THE TENDER

for

Quality Supervision During the ETS Operation Phase

July 2017

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CHAPTER 1

INSTRUCTIONS TO TENDERERS ON THE ELABORATION OF THE TENDER

A. GENERAL

Družba za avtoceste v Republiki Sloveniji, DARS d.d., Ulica XIV. divizije 4, 3000 Celje (hereinafter: the Contracting Entity), in accordance with Article 40, paragraph 1 of the Public Procurement Act (Official Gazette of the Republic of Slovenia, No. 91/15; hereinafter: ZJN-3), hereby announces an awarding procedure according to the open contract procedure:

Quality Supervision During the ETS Operation Phase

Definition of terms:

“Economic operator” shall mean any natural or legal person or group of such persons, including any temporary association of undertakings, which offers the execution of works, the supply of products or the provision of services on the market or in procurement procedures.

“Tenderer” shall mean an economic operator that has submitted a tender.

“Subcontractor” shall mean an economic operator – a legal or natural person – that supplies goods or services or performs works that are directly linked to the subject-matter of the contract for the Tenderer with which the Contracting Entity has concluded a contract or a framework agreement under the ZJN-3.

“ESPD” is the European Single Procurement Document established with the Commission Implementing Regulation (EU) 2016/7 of 5 January 2016.

“The Technical Commission” is a commission appointed by the Contracting Entity to implement the public procurement procedure pursuant to ZJN-3.

The tender shall be drawn up in accordance with the applicable legislation in the Republic of Slovenia.

1. Scope of work

The scope is set out in the Terms of Reference and the pro-forma invoice (Chapter 2).

Tenderers are invited to submit tenders for the entire contract.

2. Time limits for service performance

Pursuant to the Terms of Reference (Chapter 2).

3. Sources of funds

Tendered works shall be financed using own funds.

4. Highest acceptable values of tenders

Tenders in excess of EUR 4,000,000.00 (VAT included) shall be deemed inadmissible and the Contracting Entity shall not take them into account in the process of determining the most favourable tenderer.

5. Qualification assessment criteria

- 5.1 The economic operator may participate in the procurement procedure if there are no reasons for its exclusion and if it meets the conditions for participation stipulated in the continuation under Points 5.1

(a) through 5.1 r). The methods of qualification assessment are indicated in each Point separately. Forms and statements for the qualification assessment of economic operators are listed in ESPD and Chapter 6 – Qualification.

Prior to finalising its decision from Article 90 of the ZJN-3, the Contracting Entity will verify the existence and content of the information and other statements in the most advantageous and other tenders.

If the ESPD or the statement in Chapter 6 – Qualification does not contain data on free direct access to national databases (on-line address of the database, identification details (if necessary), and a consent allowing the Contracting Entity to acquire means of proof) where the Contracting Entity can obtain certificates or other necessary information, the tenderer is obliged, at the request of and within the time limit set by the Contracting Entity, to submit means of proof or other documentary evidence that proves the fulfilment of the set conditions.

The contents of completed forms must meet the requirements of the form specified in the contract documents, irrespective of the method of completion.

- (a) Details regarding the economic operator with a list of its authorised representatives and sample signatures and the basis on which the indicated persons are signing documents in the name and for the account of the economic operator (legal representative, procurator or person authorised for representation). The economic operator shall include all legal representatives, procurators, authorised persons and members of its supervisory body on the list of authorised representatives. If the list includes authorised persons, it must be accompanied by authorisations for signing.

Means of proof:

The economic operator submits a filled-in Form 5.1a “TENDERER INFORMATION”.

- (b) The economic operator must be registered with the competent authority and have the activity that is the subject of the contract and for which it is submitting the tender indicated as its basic act.

Means of proof:

The tenderer must submit a signed STATEMENT 1 or ESPD, which includes a current own statement, saying that the economic operator meets the condition to tender.

- (c) The economic operator or a person who is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control therein has not been the subject of a conviction by a final judgement containing elements of the following criminal offences defined in the Criminal Code (Official Gazette of the Republic of Slovenia, Nos. 50/12 – official consolidated text and 54/15; hereinafter: the KZ-1) or in Paragraph 1 of Article 75 of the ZJN-3:

- terrorism (Article 108 of the KZ-1);
- financing of terrorist activities (Article 109 of the KZ-1);
- incitement and public glorification of terrorist activities (Article 110 of the KZ-1);
- conscripting and training for terrorist activities (Article 111 of the KZ-1);
- enslavement (Article 112 of the KZ-1);
- trafficking in human beings (Article 113 of the KZ-1);
- acceptance of a bribe during an election or ballot (Article 157 of the KZ-1);
- violation of the fundamental rights of employees (Article 196 of the KZ-1);
- fraud (Article 211 of the KZ-1);
- unlawful restriction of competition (Article 225 of the KZ-1);
- causing bankruptcy by fraud or careless operations (Article 226 of the KZ-1);
- defrauding creditors (Article 227 of the KZ-1);
- business fraud (Article 228 of the KZ-1);
- fraud affecting the European Union (Article 229 of the KZ-1);
- loan and benefit fraud (Article 230 of the KZ-1);
- fraud in securities trading (Article 231 of the KZ-1);
- deception of purchasers (Article 232 of the KZ-1);
- the unauthorised use of another’s mark or model (Article 233 of the KZ-1);
- unauthorised use of another’s patent or topography (Article 234 of the KZ-1);

- forgery or destruction of business documents (Article 235 of the KZ-1);
- the disclosure or unauthorised acquisition of trade secrets (Article 236 of the KZ-1);
- information system abuse (Article 237 of the KZ-1);
- the abuse of insider information (Article 238 of the KZ-1);
- the abuse of a financial instruments market (Article 239 of the KZ-1);
- the abuse of a position or trust in a business activity (Article 240 of the KZ-1);
- unauthorised acceptance of gifts (Article 241 of the KZ-1);
- unauthorised giving of gifts (Article 242 of the KZ-1);
- counterfeiting money (Article 243 of the KZ-1);
- fabrication and use of counterfeit stamps of value or securities (Article 244 of the KZ-1);
- money laundering (Article 245 of the KZ-1);
- the abuse of non-cash means of payment (Article 246 of the KZ-1);
- the use of counterfeit non-cash means of payment (Article 247 of the KZ-1);
- the fabrication, acquisition and disposal of instruments of forgery (Article 248 of the KZ-1);
- tax evasion (Article 249 of the KZ-1);
- smuggling (Article 250 of the KZ-1);
- the abuse of an official position or official rights (Article 257 of the KZ-1);
- causing damage to public funds (Article 257a of the KZ-1);
- disclosure of classified information (Article 260 of the KZ-1);
- acceptance of bribes (Article 261 of the KZ-1);
- giving bribes (Article 262 of the KZ-1);
- accepting benefits for illegal intermediation (Article 263 of the KZ-1);
- giving gifts for illegal intermediation (Article 264 of the KZ-1);
- criminal association (Article 294 of the KZ-1).

Means of proof:

The economic operator must submit a signed STATEMENT 1 or a filled-in and signed ESPD, which includes a current own statement, saying that the economic operator or a person who is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control therein is not in one of the positions indicated in Paragraph 1 of Article 75 of the ZJN-3.

- (d) On the date of expiry of the time limit for the submission of tenders, the economic operator shall not be entered into the record of tenderers with negative references.

Means of proof:

The tenderer must submit a signed STATEMENT 1 or a filled-in and signed ESPD, which includes a current own statement, saying that the economic operator meets the condition.

- (e) In the three years preceding the expiry of the time limit for the submission of tenders, the economic operator was not fined twice, by way of a final decision of the competent authority of the Republic of Slovenia or another Member State or a third country, for a minor offence relating to remuneration for work.

Means of proof:

The economic operator must submit a signed STATEMENT 1 or a filled-in and signed ESPD, which includes a current own statement, saying that the economic operator is not in the positions indicated in Item b) of Paragraph 4 of Article 75 of the ZJN-3.

- (f) An economic operator that does not comply with its obligations relating to the payment of compulsory charges or other pecuniary non-tax liabilities under the law governing financial administration, collected by the tax authority in accordance with the regulations of the country in which it is established or with the regulations of the country of the Contracting Entity, where those unpaid overdue liabilities total EUR 50 or more as at the date for the submission of the tender, shall be excluded from participation in the procurement procedure. The economic operator shall also be considered not to be complying with its obligations as referred to in the preceding sentence if, by the date of the submission of the tender, it has

not submitted all the withholding tax returns for income from the employment relationship for the period of five years preceding the date of the submission of the tender.

Means of proof:

The economic operator proves the fulfilment of the condition referred to in the previous paragraph by submitting a signed STATEMENT 1 or a filled-in and signed ESPD, which includes a current own statement, saying that the economic operator is not in the positions indicated in Item 2. of Paragraph 4 of Article 75 of the ZJN-3.

(g) The economic operator is not in bankruptcy.

Means of proof:

The tenderer must submit a signed STATEMENT 1 or a filled-in and signed ESPD, which includes a current own statement, saying that the economic operator is not in bankruptcy.

(h) In the six months preceding the final date for the submission of the tender for the present public procurement, the economic operator has not had any of its accounts blocked for over 15 days (total days an account was blocked).

Means of proof:

To prove that it meets these conditions, the economic operator must sign STATEMENT 1 in Chapter 6.

(i) The economic operator is not a contractor or a subcontractor:

- under the Contract on the establishment and operation of a multi-lane electronic toll collection system in free-flow traffic on motorways and expressways, DARS No. 717/2016 dated 06/ 09/ 2016;
- under the contract "Implementation of engineering services in the establishment of an electronic toll collection system in free-flow traffic, Lot A: Implementation of engineering services in the technological segment of the project", DARS No. 722/2016 dated 02 09/ 2016;
- under the contract "Implementation of engineering services in the establishment of an electronic toll collection system in free-flow traffic, Lot B: Implementation of engineering services in the information segment of the project", DARS No. 734/2016 dated 08 09/ 2016.

Means of proof:

To prove that it meets these conditions, the economic operator must sign STATEMENT 1 in Chapter 6.
The Contracting Entity shall verify the fulfilment of the indicated condition using its own archive.

(j) The tenderer has in each of the past three years (2013, 2014 and 2015) generated an annual revenue from net sales of at least EUR 8,000,000.00. If the tenderer's company has been doing business for a shorter time, the requirement regarding revenue from net sales shall be reduced proportionately, according to the period the company has been active.

Means of proof:

The tenderer submits a completed and signed Form 5.1 (j) from Chapter 6 – Qualification – Report on the tenderer's financial status (for the past three years).

(k) The tenderer must provide **at least 1 reference** proving that the tenderer, as the main contractor or a partner in a joint venture or as a subcontractor, has implemented a quality supervision system for establishing the effectiveness and the achievement of the operational quality level of an electronic toll collection system in free-flow traffic, and that it has been successfully performing the supervision of the electronic toll collection system in free-flow traffic operation (effectiveness and achieving the quality level) for at least 1 year using a working system the tenderer had implemented, with the total value of the implementation of the quality supervision system and its 1-year successful operation being at least EUR 1,000,000.00 incl. VAT.

Means of proof:

The tenderer submits a completed and signed Form 5.1 (k) – List of References from Chapter 6 – Qualification. The tenderer must also enclose certificates from the clients included on the list. The Contracting Entity's certificates should be provided on the form from Chapter 6 – Qualification as ANNEX 1. If the certificates are not provided using the indicated form, the content of the enclosed certificate must contain all the details stipulated in ANNEX 1.

The Contracting Entity reserves the right to request additional certificates for a given reference.

- (I) The tenderer must provide a staff group comprising at least 3 and up to 5 key experts that will participate in the implementation of the works as specified in Article 3.3 Project assignment. Only one person can be appointed to an individual expert field, whereas one person can cover up to 2 expert fields. The experts must meet the following requirements:

Project Manager	must have 1 reference for acting as the project manager in the implementation of <u>a quality supervision system for establishing</u> the effectiveness and the achievement of the operational quality level of an electronic toll collection system in free-flow traffic, and to have been <u>successfully performing the supervision</u> of the electronic toll collection system in free-flow traffic operation (effectiveness and achieving the quality level) <u>for at least 1 year</u> using a working system he/she had implemented, with the total value of the implementation of the quality supervision system and its 1-year successful operation being at least EUR 1,000,000.00 incl. VAT.
QS-SLAMM Expert	must have 1 reference for having prepared and established a service level assessment methodology model for the service level of <u>a quality supervision system for establishing</u> the effectiveness and the achievement of the operational quality level of an electronic toll collection system in free-flow traffic, and to have been <u>participating in a successful supervision</u> of the electronic toll collection system in free-flow traffic operation (effectiveness and achieving the quality level) <u>for at least 1 year</u> using a working system for which he/she had implemented a service level assessment methodology model for the service level with the total value of the implementation of the quality supervision system and its 1-year successful operation being at least EUR 1,000,000.00 incl. VAT.
Data Analysis Expert	must have at least 3 references from the last 5 years before the date of this public procurement call for performing data analysis as a responsible person, including data acquisition and data verification. The value of each referential work (data analysis) must be valued at least EUR 50,000.00 incl. VAT and all contractual works must be concluded.
ETS expert	must have 1 reference for working as a responsible person for technical works in the FF ETS or in the implementation of <u>a quality supervision system for establishing</u> the effectiveness and the achievement of the operational quality level of an electronic toll collection system in free-flow traffic, and to have been <u>participating in ensuring successful operation or to have been successfully supervising</u> FF ETS operation (effectiveness and achieving the quality level) <u>for at least 1 year</u> in the implementation of which he/she has participated.

Statistics Expert	must have at least 3 references from the period of the last 5 years before the date of this public procurement call for performing statistical data processing as a responsible person. The value of each referential work (statistical data processing) must be valued at least EUR 50,000.00 incl. VAT and all contractual works must be concluded.
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During the execution of the Contract, the Contractor may also include other experts for which the Contractor must acquire the prior consent of the Contracting Entity. Experts who are subsequently chosen shall not be a part of the Contract.

To prove that the above staff conditions are met, the tenderer must complete List 5.1 (I) in Chapter 6 – Qualification. The tenderer must also enclose certificates from the clients listed on the list. The Contracting Entity's certificates should be provided on the form from Chapter 6 – Qualification as ANNEX 2 and 3. If the certificates are not provided using the indicated form, the content of the enclosed certificate must contain all the details stipulated in ANNEX 2 and 3.

The Contracting Entity reserves the right to request additional certificates for a staff member.

Pursuant to Article 81 of the ZJN-3, the tenderer may rely on the capacities of other entities regarding the fulfilment of the staff requirements regardless of the legal nature of the links it has with them. For such a case, the Contracting Entity shall be provided with the evidence that it will have at its disposal the personnel necessary for the performance of the contract. A written agreement between such entities concluded for such a purpose would be considered as evidence thereof. The Contracting Entity shall verify whether the entities on whose capacity the tenderer intends to rely fulfil the relevant selection criteria and whether there are grounds for exclusion.

- (m) The tenderer must provide in their tender a concept with the content as required in Chapter 2 – Terms of Reference. If the concept is not enclosed with the tender or if it does not include the minimum content requirements, the Contracting Entity will not summon the tenderer to supplement but will deem such a tender inadmissible and will reject it.

The concept will be evaluated by a special commission appointed by the Contracting Entity for the purpose of concept examination and evaluation as specified in sub-item 13.2 of these Instructions. If the concept is not awarded the minimum number of points, such a tender will be deemed inadmissible and the Contracting Entity will reject it.

The concept may not exceed 25 pages (DIN A4, font ARIAL ≥10pt or equivalent) including titles, content list, graphics etc.).

- (n) The tenderer must have a valid ISO 9001:2008 (2015) certificate.

Means of proof:

The tenderer must enclose a copy of a valid certificate with the tender.

- (o) The tenderer may subcontract part of the contract.

Where the tenderer intends to perform the contract using subcontractors, it shall indicate the following in its tender:

- all the subcontractors it intends to involve and the parts of the contract that it intends to subcontract (using Form 5.1 (o) in Chapter 5 – Qualification),
- contact details and legal representatives of the proposed subcontractors (using the form "SUBCONTRACTOR INFORMATION"),
- certificates on meeting the conditions from Points 5.1 (a) through 5.1 (i) and 5.1 (p) and 5.1 (r) for the proposed subcontractors (STATEMENT 2),

- the subcontractor's request for direct payment where the subcontractor so requires. If the subcontractor does not request direct payment, please appropriately mark this in the form "SUBCONTRACTOR INFORMATION".

Where direct payment is requested by the subcontractor, direct payment to that subcontractor shall be deemed mandatory in accordance with the ZJN-3 and the subcontractor shall enclose with the tenderer's tender their consent (using the draft provided in Chapter 6 – Qualification), on the basis of which the tenderer's obligations to the subcontractor shall be settled by the Contracting Entity instead.

- (p) An economic operator that has displayed significant or constant weaknesses in fulfilling key obligations in previous public procurement contracts concluded with the Contracting Entity, due to which the Contracting Entity withdrew from the public procurement contract, terminated the public procurement contract earlier, or terminated the joint operation of the public procurement order execution, and/or claimed damages, or other comparable sanctions took place regarding thereof, cannot participate in the present tender.

Any tender that was submitted by the economic operator whose public procurement contract was terminated early by the Contracting Entity or from which the Contracting Entity withdrew early, or terminated the joint operation of the public procurement order execution, and/or claimed damages, or other comparable sanctions took place regarding thereof, will be excluded from further proceedings.

Means of proof:

The tenderer must submit a signed STATEMENT 1 from Chapter 6 – Qualification.

The Contracting Entity shall verify the fulfilment of the indicated condition using its own archive.

- (q) An economic operator that provided seriously misleading explanations when providing information required for the purpose of establishing the grounds for exclusion or for fulfilling the relevant selection criteria, if they did not reveal such information, or if they cannot provide the certificates required by Article 79 of this law, cannot participate in the present tender.

Any tender found to have been submitted by an economic operator that has provided seriously misleading explanations when providing information required for the purpose of establishing the grounds for exclusion or for fulfilling the relevant selection criteria, if they did not reveal such information, or if they cannot provide the certificates required by Article 79 of this law, will be excluded from further proceedings.

Means of proof:

The tenderer must submit a signed STATEMENT 1 from Chapter 6 – Qualification.

The Contracting Entity shall verify the fulfilment of the indicated condition using its own archive.

5.2 Tenders submitted by a group of economic operators as partners in a joint tender must meet the following requirements:

- a) The tender must contain all the certificates stipulated in Points 5.1 (a) through 5.1 (i) and 5.1 (p) and 5.1 (r) for each partner separately.

The certificates required in Points 5.1 (j), 5.1 (k), 5.1 (l), 5.1 (m), and 5.1 (n) may be submitted by one of the partners if they show that they meet the indicated condition.

The certificates required in Point 5.1 (o) must be submitted by partners that nominate subcontractors.

- b) Groups of tenderers shall enclose with the tender an Agreement on the submission of a joint tender for the performance of the contract, which primarily stipulates each partner's responsibilities regarding the performance of the contract and the acceptance of the unlimited joint and several liability of all partners in the joint tender in relation to the Contracting Entity for the execution of contract work in accordance with the conditions of the contract.

Under the Agreement on the submission of a joint tender for the performance of the contract, one of the partners shall be appointed as the lead partner and authorised to sign and conclude the contract on the execution of work in the name and for the account of each of the partners in the joint tender. To this effect, each of the partners in the joint tender shall be obliged to sign an authorisation allowing the lead partner to sign and conclude the contract (annex in Chapter 4: "Draft authorisation for the lead partner to conclude the contract").

The lead partner must be authorised to accept and forward instructions in the name and for the account of an individual partner and for all partners in the joint tender.

- c) Furthermore, a group of economic operators who are partners in the Agreement on the submission of a joint tender for the performance of the contract shall agree on and appoint an authorised representative of the contractor using the contract form.
- d) The group of contractors whose tender is chosen as the most favourable shall submit to the Contracting Entity, no later than within 10 working days following receipt of the concluded contract, a binding legal act on the joint performance of the contract, whereby:
 - the contractors as partners shall precisely determine how the work that is the subject-matter of the procurement shall be distributed among them (according to content and value);
 - the contractors accept unlimited joint and several liability for the execution of the work that is the subject-matter of the contract.

5.3 In the case of a joint tender submitted by a group of economic operators as partners, the capacities of the individual partners shall be added together to determine the fulfilment of the conditions set out in Points 5.1 (j), 5.1 (k), 5.1 (l), 5.1 (m), and 5.1 (n) of these Instructions to Tenderers.

6. Proving the absence of infringement of competition rules and of the abuse of a dominant position in the present public procurement procedure.

In preparing its tender, the tenderer shall observe the provisions of the Prevention of Restriction of Competition Act. The tenderer must complete and sign STATEMENT 1 in Chapter 6 – Qualification. The Contracting Entity reserves the right to ask the tenderer to submit additional certificates to verify the (non-)existence of an infringement of the competition rules and of abuse of a dominant position.

If the Contracting Entity determines that the tenderer has infringed the competition rules and abused a dominant position with the submitted tender, the said tenderer's tender shall be excluded as inadmissible from further proceedings.

7. Tender preparation and submission costs

The tenderer shall bear all costs linked to tender preparation and submission.

8. Acquisition of data

The tenderer is advised to obtain by itself and at its own responsibility all data that might be useful in preparing the tender. The tenderer alone bears all the costs and liabilities arising from acquiring and the accuracy of this data, as well as regarding their inspection.

B. CONTRACT DOCUMENTS

9. Contents of the contract documents

9.1 The contract documents shall include at least:

- Chapter 1 - Instructions to Tenderers on the Elaboration of the Tender
- Chapter 2 - Terms of Reference and the Pro-Forma Invoice
 - 1. SERVICE LEVEL AGREEMENT (SLA) – Portion of the charged toll (SLA 01)
 - 2. SERVICE LEVEL AGREEMENT (SLA) – Level of enforcement service (SLA 02)
 - 3. SERVICE LEVEL AGREEMENT (SLA) – Levels relating to the Charging Data Collection (SLA 03)
 - 4. SERVICE LEVEL AGREEMENT (SLA) – Levels relating to the Customer Service Network (SLA 04)
 - 5. SERVICE LEVEL AGREEMENT (SLA) – Levels relating to the Central System (SLA 05)

6. Clarification or the answer to questions 043/3 and 4 to the SLA01

- Chapter 3 – Tender Form,
- Chapter 4 – Draft contract and authorisation for the lead partner to conclude the contract (the authorisation must only be included with the tender when there is a group of tenderers and for each partner separately)
- Chapter 5 – Guarantee sample
- Chapter 6 – Forms and STATEMENTS for establishing the qualifications of tenderers pursuant to the requirements from Chapter 1
- ESPD form.

Integral parts of these documents include Clarifications issued pursuant to Point 10 hereof and Appendices issued pursuant to Point 11 hereof.

9.2 Contract documents for tenderers are available on the public procurement portal in Slovenian and English. In all cases of dispute, the contract documents in Slovenian shall be used.

9.3 The tenderer is obliged to carefully review all contract documents and to fulfil all the requirements contained therein upon submission of its tender. The tenderer shall submit its tender in printed form, which means that all the contract documents available on the public procurement portal must be printed and submitted according to the method described in Point 13.1 of these Instructions to Tenderers.

10. Clarifications of the contract documents

Potential tenderers that require clarifications of any contract documents should submit their requests for clarification or enquiries to the Contracting Entity using the public procurement portal in Slovenian or English. The Contracting Entity shall reply to all requests for clarification in Slovenian and English, under the condition that the request was submitted in due time. All requests that the Contracting Entity receives via the public procurement portal by the date and time set for the receipt of enquiries in the relevant contract notice shall be deemed timely.

Any Clarifications issued in this way shall become part of the contract documents pursuant to Point 9.1 of these Instructions to Tenderers.

11. Amendments to the contract documents

The Contracting Entity reserves the right to amend or supplement the contract documents at any time prior to, but no later than six days before the final tender submission date. Any such amendments and supplements shall be made in the form of Appendices, which the Contracting Entity will publish on the public procurement portal. Where these amendments refer to documents that are not available via the public procurement portal, the Appendix shall explain how potential tenderers may obtain the said documents.

11.2 Any Appendix issued in this way shall become part of contract documents pursuant to Point 9.1 of these Instructions to Tenderers.

If the Contracting Entity amends or supplements the contract documents six days or less prior to the final submission date, the Contracting Entity shall extend the deadline for the submission of tenders where necessary due to the extent and content of the amendments, notifying the tenderers about the extension of the deadline via the public procurement portal and publishing the amended deadline in the same manner as the contract notice.

C. PREPARING THE TENDER

12. Language of the tender

Tenders and other documents related thereto can be written in Slovenian or English but the Tender Form (Chapter 3 of the contract documents) must be in the Slovenian language.

The Contracting Entity reserves the right, upon review and assessment of the tenders and where deemed necessary to resolve issues of dispute, to ask the tenderer to provide an (official) translation of the documents into Slovenian, whereby the tenderer shall be required to deliver this translation within the deadline set by the Contracting Entity taking into account the amount of materials to be translated.

Foreign tenderers guarantee the accuracy of the tender's translation into Slovenian. The tenderer shall be solely responsible for any mistakes in translation. In all cases of dispute, the tender in Slovenian or its official translation into Slovenian shall be used.

13. Integral parts of the tender

13.1 The tenders must contain the following documents:

1. Signed Chapter 1 – Instructions to Tenderers;
2. Signed Chapter 2 – Terms of Reference and the Pro-Forma Invoice;
3. Tenderer's concept
4. Completed and signed Chapter 3 – Tender Form;
5. Tender guarantee (in line with the sample in Chapter 3)
6. Completed and signed Chapter 4 – Draft contract and authorisation for the lead partner to conclude the contract (the authorisation must only be included with the tender when there is a group of contractors and for each partner separately);
7. Completed and signed Chapter 6, including all the required certificates;
8. Filled-in and signed ESPD form (optional, next to STATEMENT 1)
9. Where a group of two or more contractors submit a joint tender as partners, the tender must include a copy of the agreement or contract between the partners in the group and copies of any other documents related to this agreement.

It is preferable that all the integral parts of the contract documents are arranged sequentially as shown in Point 13.1 hereof, equipped with cardboard dividers, tied with a string that is sufficiently long to allow the turning of pages, and sealed.

13.2 Tender assessment criterion

The contract award criterion is the most economically advantageous tender. The most economically advantageous tender shall be chosen using scoring according to the following criteria:

Scale			Greatest amount of points	%
Price			22,500	75
Quality	Professional personnel references (3 at most)	4,500	7,500	25
	Concept adequacy	3,000		
Total			30,000	100

Tender price evaluation

The tender price evaluation is based on the total offered price excl. VAT from the “Tender” form.

The number of points for the tender price – S_{PR} is calculated for each tender as follows and the result is mathematically rounded (without decimal numbers):

$$S_{PR} [\text{points}] = 18.000 \times \frac{\text{lowest tender price [EUR]}}{\text{evaluated tender price [EUR]}}$$

Formula 1: Tender price evaluation

The evaluation of the experts’ references

Tenders that include the Project Manager, QS-SLMM expert, and ETS expert, nominated by the tenderer for meeting the conditions of point 5.1 (I) hereof, will only be awarded additional points if additional references are enclosed for these experts, which must meet the following conditions:

Expert	Reference	Number of points
Project Manager	must have 1 reference for acting as the project manager in the implementation of <u>a quality supervision system for establishing</u> the effectiveness and the achievement of the operational quality level of an electronic toll collection system in free-flow traffic, and to have been <u>successfully performing the supervision</u> of the electronic toll collection system in free-flow traffic operation (effectiveness and achieving the quality level) <u>for at least 1 year</u> using a working system he/she had implemented, with the total value of the implementation of the quality supervision system and its 1-year successful operation being at least EUR 1,000,000.00 incl. VAT.	1,500
QS-SLMM expert	must have 1 reference for having prepared and established a service level assessment methodology model for the service level of <u>a quality supervision system for establishing</u> the effectiveness and the achievement of the operational quality level of an electronic toll collection system in free-flow traffic,	1,500

Expert	Reference	Number of points
	and to have been <u>participating in a successful supervision</u> of the electronic toll collection system in free-flow traffic operation (effectiveness and achieving the quality level) <u>for at least 1 year</u> using a working system for which he/she had implemented a service level assessment methodology model for the service level with the total value of the implementation of the quality supervision system and its 1-year successful operation being at least EUR 1,000,000.00 incl. VAT.	
ETS expert	must have 1 reference for working as a responsible person for technical works in the FF ETS or in the implementation of <u>a quality supervision system for establishing</u> the effectiveness and the achievement of the operational quality level of an electronic toll collection system in free-flow traffic, and to have been <u>participating in ensuring successful operation or to have been successfully supervising</u> FF ETS operation (effectiveness and achieving the quality level) <u>for at least 1 year</u> in the implementation of which he/she has participated.	1,500
Greatest amount of points S_{REF} for a reference		1,500
Greatest amount of points S_{REF} for all 3 references		4,500

The tenderer must enclose with the tender the requested number of references for the experts to fulfil all the conditions laid down in point 5.1 (I), otherwise the tender shall be deemed inadmissible by the Contracting Entity.

Additional references that exceed the number of references needed to fulfil the condition from Point 5.1 (I) hereof and that meet the prescribed requirements shall be scored within the framework of this criterion and for each nominated individual separately, however the Contracting Entity will only consider up to 1 additional reference disregarding whether nominated for one or two experts. The references from Point 5.1 (I) hereof shall not be scored within the framework of the criteria but shall be included in the total of the submitted references (of which the Contracting Entity will consider up to 1 additional reference for an individual).

The tenderer shall enter its additional references in the form “13.2 Criteria – INDICATION OF ADDITIONAL REFERENCES PURSUANT TO THE REQUIREMENT UNDER SUB-CLAUSE 13.2 OF THE INSTRUCTIONS (CRITERION)” in Chapter 6 – Qualification.

For the verification of additional references for the offered experts, the tenderer must also enclose certificates from the clients listed on the list. The Contracting Entity's certificates should be provided on the form from Chapter 6 – Qualification as ANNEX 2. If the certificates are not provided using the indicated form, the content of the enclosed certificate must contain all the details stipulated in ANNEX 2.

The Contracting Entity reserves the right to request additional certificates for a staff member.

Tender concept evaluation

As required by item 5.1 (m) thereof, the tenderer must provide in their tender a concept with the content required in Chapter 2 – Terms of Reference: Document #400 – Specifications. The concept will be evaluated by a special commission appointed for the purpose of concept examination.

The commission will be composed of an odd number of members. The commission members that will be nominated to examine and evaluate the concept shall examine the received concepts and give their evaluation for each concept. The commission shall not call on the tenderers to amend or explain their concepts. The commission evaluation will be based only on the tender concept.

For evaluating concept adequacy, the following criteria apply:

- Inadequate: the concept does not meet the ToR requirements in terms of extent and content.
- Adequate: the concept meets all the ToR requirements in terms of extent and content.

Tender concept evaluation		Number of points
The adequacy of the proposed work approach reactions to the ToR requests.	Meeting the requirements set in Chapter 2 – Terms of Reference: Document #400 – Specifications, Chapter 2.2.2	0 – 1,000
	inadequate 0 points	
	adequate 1,000 points	
	Detailed calculation (evaluation) of the SLA/KPIs, which are defined in Chapter 2 – Terms of Reference: Document #400 – Specifications, chapter 2.3	0 – 1,000
	inadequate 0 points	
	adequate 1,000 points	
	Detailed description of the design, use, and optimisation of the QS-SLAMM, which is described in Chapter 2 – Terms of Reference: Document #400 – Specifications, chapter 2.4	0 - 500
	inadequate 0 points	
	adequate 500 points	
	Implementation of the organisation set-up, which is described in Chapter 2 – Terms of Reference: Document #400 – Specifications, chapter 3	0 - 500
	inadequate 0 points	
	adequate 500 points	
Maximum number of points S_{SP}		3,000

Any tender with a concept that is awarded:

- less than 500 points in total and/or
- is evaluated as “inadequate” (0 points) in one or more criterion as defined in the above spreadsheet

will be evaluated as an inadmissible and will be excluded from further proceedings.

Calculation of the total number of points

The total number of points – S_T is calculated as a sum of the points for each individual criterion.

$$S_T = S_{PR} + S_{REF} + S_{CV} + S_{SP}$$

Formula 2: Calculation of the total number of points

The tenderer that receives the highest number of points S_T shall be considered the most economically advantageous. If two tenderers receive the same highest number of points, the one that offered the lowest tender price shall be chosen.

If two or more tenderers offer the same lowest tender price, the tenderer will be selected that is awarded the most points under the concept adequacy criterion. If two or more tenderers are also awarded the same points under the concept adequacy criterion, the most favourable tender will be decided by a draw. The draw shall be conducted by the Contracting Entity's expert commission in the presence of the tenderers that submitted the tender in due time and who respond to the Contracting Entity's invitation to participate in the draw.

14. Asking price

14.1 The tender price shall include all the costs for the tenderer's equipment, workers, management staff, assignment of copyright, knowledge transfer, the training of the Contracting Entity's staff for independent quality supervision, guarantees, taxes and duties and any other costs that may be required for the implementation of work, including all the general risks, liabilities and obligations indicated in the Terms of Reference.

The hourly value (hourly rate) is for one expert (person – hour) and includes all costs including transport costs to and from the location of works (mileage reimbursement, road toll etc.) including the time on the road, an interpreter for the Slovenian language and note taking.

On this pro-forma invoice, the tenderer must also include the costs of its own premises that will be used to execute this contract in agreement with the Contracting Entity. The tenderer's premises will be used solely for coordination meetings, organisation and similar. The Contracting Entity shall not charge the tenderer for the performance of these activities on its premises.

14.2 The tenderer shall submit a tender for all the works indicated in Chapter 2 – Terms of Reference and the Pro-Forma Invoice.

14.3 The rate shall include all the costs of other workers that the tenderer will need to deliver the relevant services (administration, etc.).

14.4 The value added tax (VAT) for the tender price must be shown separately.

14.5 The contract value of the works is fixed.

14.6 The tenderer shall fill in the prices of all work items described on the pro-forma invoice. Except for Item 3.6 of the pro-forma invoice, none of the unit prices may equal 0. If so, the tender shall be deemed inadmissible. The price may equal 0 for Item 3.6 only if the tenderer offered a solution for which they paid no annual licence fee, which should be apparent from the tenderer's concept.

The tender's quantities in items 2.7, 3.8, 4.5 and from 5.1 to 5.6 of the tender pro-forma invoice are per unit and indicative. The Agreement follows the actually ordered, performed quantities confirmed by the Contracting Entity. The Contracting Entity is not required to order the implementation of the entire quantity scope. The Contracting Entity reserves the right not to order certain items and/or change the quantity of items listed in the pro-forma invoice depending on their needs.

The quantities in pro-forma invoice items 1.1, from and including 2.1 to 2.6 and from and including 2.8 to 2.10 are in the form of a package. The items from and including 3.1 to 3.5, item 3.7 and the items from and including 4.1 to 4.4 are per unit and are paid in a monthly instalment. Items 1.2, 3.6 and 4.1 are per unit and are paid in a yearly instalment.

14.7 Discounts on the tender price are not permitted. If the tenderer wants to change its tender price, it shall do so in the manner prescribed under Point 24 hereof.

14.8 Handling charges agreed between the partners are not subject to invoices issued to the Contracting Entity by each partner in the joint venture.

15. Currency of the tender and payments

The tender prices shall be denominated entirely and exclusively in the currency that is the legal tender in the Republic of Slovenia.

16. Validity of the tender

16.1 Tenders without any changes to the tender prices shall remain valid until 15 January 2018.

16.2 The Contracting Entity may invite tenderers to extend the time limit of the tender for a fixed period. The request and any replies thereto shall be conducted in a written form or via fax. The tenderer may refuse this request. If the tenderer does not extend the time limit of its tender, the Contracting Entity shall exclude its tender from further proceedings.

17. Tender guarantee

17.1 As an integral part of the tender, the tenderer must submit a Tender guarantee in the amount of EUR 90,000.00.

17.2 The Tender guarantee must be issued by:

- a) a bank situated in country of the Contracting Entity or
- b) an insurance company situated in the country of the Contracting Entity.

The Tender guarantee must be valid until and including 15 January 2018.

The content of the guarantee must comply with the draft from Chapter 3 of the contract documents under this contract.

17.3 The tender guarantee will be returned to tenderers that are not selected after the finality of the Contracting Entity's decision about the present public tender. The tender guarantee shall be returned to the selected tenderer after the conclusion of the Agreement with the Contracting Entity and after the tenderer provides the performance guarantee to meet the suspensive condition of the Agreement. If the Contracting Entity does not decide on the tender, all the tender guarantees shall be returned to the tenderers after the finality of the Contracting Entity's decision on the present public tender.

17.4 The tender guarantee is payable if the tenderer:

- a) withdraws or changes the tender after the deadline for submitting the tender;
- b) during the tender validity and after the Contracting Entity has informed the tenderer about the receipt of the tender:
 - does not return the signed Agreement within 8 days of its receipt or
 - does not submit the performance guarantee within 10 business days after the receipt of the concluded Agreement.

18. Preparation of variants

18.1 Variants are not acceptable for the present public contract. The tenderer shall submit its tender in accordance with the contract documents and without any deviations whatsoever.

19. Meetings prior to the submission of the tender

19.1 The Contracting Entity shall not hold a meeting prior to the submission of the tender. To clarify any essential issues concerning the contract documents and the award procedure, the instructions under Point 10 hereof shall be used.

20. The form and signing of the tender

20.1 The tenderer shall draw up the tender in one copy and in the manner prescribed under Point 13.1 hereof.

20.2 The tenderer may not amend or supplement the contract documents in any way.

D. SUBMITTING THE TENDER

21. Sealing and labelling the tender

21.1 The tenderer shall seal or close its tender in an envelope so that it will be possible to verify at the time of opening that the envelope has not been previously opened. The envelope shall be submitted to the following address: Družba za avtoceste v Republiki Sloveniji, DARS d.d., Ulica XIV. divizije 4, Celje, izpostava Ljubljana, Dunajska 7.

The tenderer shall submit the tender to the address and within the time limit indicated under Point 22.1 hereof.

21.2 The envelope must contain the following information:

TENDER

FOR

Quality Supervision During the ETS Operation Phase

DO NOT OPEN BEFORE 25 AUGUST 2017 AT 11:00

The sender must also be indicated on the envelope, allowing any unopened tenders that may be deemed "late" in accordance with Point 23 hereof to be sent back.

If the envelope is not sealed or properly closed and labelled as prescribed above, the Contracting Entity shall not be responsible if the envelope is misplaced or opened early.

22. Final date for receipt of the tender

22.1 The tender shall be submitted to the address **DARS d.d., Dunajska 7, 1000 Ljubljana, main office (1st floor, room 107), by 09:00, 25 AUGUST 2017**. Such tenders shall be considered timely.

22.2 The Contracting Entity may extend the final date for receipt of the tender pursuant to Point 11 hereof. The Contracting Entity shall publish any extension of the time limit in the same manner as the contract notice.

23. Late tenders

Any tender received by the Contracting Entity after the expiry of the time limit for the receipt of tenders from Point 22 hereof shall be deemed late and returned unopened to the sender with the indication that it is late.

24. Amendments, supplements and withdrawal of the tender prior to the expiry of the tender submission deadline

24.1 The tenderer may amend, supplement or withdraw its tender after submitting it under the condition that it submits this amendment, supplement or withdrawal to the Contracting Entity before the final date for receipt of the tender.

24.2 The tenderer's amendment or supplement of the tender must either supplement or amend and replace an already submitted part of the tender with a new one.

If a tender amendment also includes an amendment to the tender price, the tenderer shall submit with the tender amendment a new Chapter 3 – Tender, a completed Draft contract (Chapter 4) and the corresponding changes of the information on subcontractors.

24.3 The tenderer is required to submit any amendments, supplements or withdrawals of the tender pursuant to the provisions of Points 20 and 21 hereof and furthermore to appropriately mark them with "AMENDMENT", "SUPPLEMENT" or "WITHDRAWAL". If an amendment and/or supplement to the tender has been submitted, the Technical Commission shall, during the public opening of tenders, open and read them before opening the main tender.

24.4 The tenderer may withdraw its tender during the public procurement procedure. If the tenderer does so after the deadline for submitting the tender, the Contracting Entity must call upon the tenderer's tender guarantee. The Contracting Entity shall also put into force the tenderer's tender guarantee if the tenderer does not conclude the public procurement agreement even after the Contracting Entity's request.

E. OPENING, EXAMINING AND EVALUATING TENDERS

25. Public opening of the tenders

25.1 The Technical Commission shall open tenders in the presence of tenderers' representatives who request to be there, at **Ljubljana, Dunajska 7, conference room 301, on 25 AUGUST 2017 at 11:00**. To actively participate in the public opening, the tenderers' representatives who are present must submit to the Commission an authorisation for representing the respective tenderer and sign the registry confirming their attendance.

The Contracting Entity shall not return the tenders to the tenderers.

25.2 If a notice of withdrawal is received for a given tender, that tender shall be returned unopened to the tenderer pursuant to Point 24 hereof.

25.3 The Contracting Entity shall announce the names of the tenderers, the tender prices, the submission or non-submission of a tender guarantee and all other details considered appropriate at the opening. Any tenders (and amendments or supplements submitted pursuant to Point 24 hereof) that are not opened or read at the opening shall not be taken into account in the tender evaluation procedure regardless of the circumstances.

25.4 The Technical Commission shall take minutes of the tender opening session and the present members of the Commission and the present tenderers' authorised representatives shall sign it.

26. Examination and evaluation of the tenders

The expert commission will examine the received tenders after opening and will evaluate and check whether they are admissible. The expert commission can check and evaluate all the tenders, not only the first-placed regarding the criteria.

27. Confidentiality of the procedure

The Contracting Entity shall ensure the protection of data that is considered personal data, confidential data or business secrets according to the provisions of the act regulating the protection of personal data, confidential data or corporate entities.

Notwithstanding the preceding paragraph, public information shall include specifications of the tendered services, quantities in the specifications, price per unit, value per item and the total value of the tender. In the case of the most economically advantageous tender criterion, public information shall include the data that impacted the ranking of the tender within the framework of other criteria.

28. Admissible amendments, corrections, modifications or clarifications of the tender

28.1 If the Contracting Entity discovers that the information or documents to be submitted by economic operators are incomplete or incorrect, or if certain documents are missing, it may ask the economic operator to submit the missing documents within a suitable deadline or to supplement, correct or clarify the relevant information or documents, but only in cases where it is unable to verify a certain fact by itself.

The submission of a missing document or a supplement, correction or clarification of an item of information or document may apply exclusively to the elements of the tender whose existence can be objectively verified prior to the expiration of the deadline set for the tender submission.

If the economic operator does not submit the missing document or supplement, or correct/clarify relevant information or documents within the deadline set by the Contracting Entity in its request, the Contracting Entity shall exclude the economic operator.

If the information or documentation that the tenderer must enclose in order to meet the conditions from item 5.1 (m) Concept instructions, from item 13.2 for the set criteria, or regarding the expert staff references for the criteria under item 13.2 are incorrect or if the requested documentation is not enclosed at all, the Contracting Entity shall not ask the tenderer to correct and/or change the information and/or documentation or to submit the documentation but will exclude the tender.

The same applies if the information on the tender form is inaccurate or not given, or if the tender form is not enclosed with the tender at all.

28.2 Calculation errors

The Contracting Entity shall check the tenders for any obvious calculation errors. Only the Contracting Entity may, with the written consent of the tenderer, correct obvious calculation errors discovered when examining and evaluating tenders. The quantity and the price per unit (VAT excluded) may not be changed. The tenderer is required to deliver the requested consent within the deadline set in the written request by the Contracting Entity.

When examining and evaluating the tenders, if it is found that the calculation error is the result of an incorrect mathematical operation predefined by the Contracting Entity, the latter may, with the written consent of the tenderer, correct the calculation error by calculating the value of the tender using the correct mathematical operation while taking into account the prices per unit (VAT excluded) and the quantities offered by the tenderer.

The Contracting Entity may, with the written consent of the tenderer, correct any incorrect VAT rate to the correct amount.

28.3 The amount listed on the tender form, which the Contracting Entity corrects with the consent of the tenderer, shall be binding on the tenderer. Tenders from tenderers that do not agree with the corrected tender price within the deadline set in the written request by the Contracting Entity shall be excluded.

F. AWARDING PROCEDURE

29. Awarding the contract

The Contracting Entity shall make the contract award decision after the examination and evaluation. It shall explain its decision, stating the findings and the reasons therefor.

30. Pursuant to Article 90 of the ZJN-3, the Contracting Entity reserves the right to not award the public contract.

31. Contract award decision

Pursuant to Paragraph 10 of Article 90 of the ZJN-3, the contract award decision shall be published on the public procurement portal. The decision shall be deemed served on the date it is published on the public procurement portal.

The tenderer may lodge a review request pursuant to the provisions of the ZPVPJN with reference to the ZJN-3.

The selected tenderer shall provide the following information within 8 days of the receipt of the Contracting Entity's call:

- its founders, partners, dormant partners, shareholders, limited partners or other owners and their equity interests;
- economic operators, which are considered to be its associated companies in accordance with the provisions of the law governing companies.

32. Conclusion of the contract

32.1 The contract shall be drawn up pursuant to the Draft contract, in the manner set out in Chapter 4 of the contract documents.

32.2 When the contract award decision becomes final, the Contracting Entity shall notify the successful tenderer that its tender has been accepted with a "Notice of finality of the contract award decision". Together with the "Notice of finality of the contract award decision", the Contracting Entity shall submit a contract to the tenderer for signing having the same contents as prescribed in the contract documents.

32.3 The successful tenderer shall sign the contract and return it to the Contracting Entity no later than within 8 days of receipt of the contract. If the tenderer does not respond to the invitation to sign the contract within the time limit laid down, it may be deemed to have withdrawn from the tender. In this case, the Contracting Entity can put into force the tender guarantee.

33. Performance guarantee

33.1 The selected tenderer shall provide to the Contracting Entity a performance guarantee in the amount of 10 % of the contractual value incl. VAT within 10 business days of the receipt of the concluded agreement on the execution of works. The guarantee shall be used in the way defined in Chapter 5 of the contract documentation.

33.2 The performance guarantee provided by the successful tenderer must be issued by:

- a) a bank situated in country of the Contracting Entity or
- b) an insurance company situated in the country of the Contracting Entity.

33.3 If the selected tenderer does not fulfil its obligations under items 32 or 33 hereof, this represents sufficient grounds for putting into force the tender guarantee.

DARS, d.d.

We hereby state that we are familiar with all the provisions of these Instructions to tenderers, that we have understood them and that we agree that they are an integral part of the contract.

Date:

Signature: