

**PROCUREMENT DOCUMENTS FOR**

**SUPPLY OF GOODS AND SERVICES**

**FOR LONG TERM SERVICE AGREEMENT, OPERATIONAL PERFORMANCE**

**MODULES, DISTRIBUTED CONTROL SYSTEM MIGRATION AND ASSET**

**PERFORMANCE MANAGEMENT SOFTWARE FOR UNIT 6**

No.: 40 01-553/2020

Šoštanj, June 2020

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## 1. CONTRACTING AUTHORITY

This procurement shall be awarded by Termoelektrarna Šoštanj d.o.o., Cesta Lole Ribarja 18, 3325 Šoštanj (hereinafter: the Contracting Authority).

The Contracting Authority hereby invites all interested tenderers to submit their requests to participate/tenders in accordance with the requirements of the procurement documents.

## 2. CODE AND SUBJECT MATTER OF THE CONTRACT

Code of the procurement documents: 40 01-553/2020

Subject-matter: Supply of goods and services for long term service agreement, operational performance modules (OPM), distributed control system (DCS) migration and asset performance management (APM) software and implementation services for Unit 6

Detailed specification of the subject of the public procurement matter is provided in the technical part of the documents (Technical specification).

## 3. METHOD OF CONTRACT AWARD

Public bidding negotiation procedure with prior notification in accordance with Article 45 of the Public Procurement Act (Official Gazette of RS, No. 91/15 and 14/18; hereinafter referred to as: ZJN-3) shall be conducted to award the contract.

The tenderer shall submit a tender for the entire public contract.

1<sup>st</sup> stage of the procedure – Establishing the tenderer's capacity; whether the tenderer, considering the provided information to establish the capacities required by the Contracting Authority, satisfies the requirements set by the Contracting Authority.

2<sup>nd</sup> stage of the procedure – Submission of the tender price and performance guarantees, and negotiations with the tenderers.

In the procurement documents, the Contracting Authority will, in both stages of the procedure, use the term "tenderer" for the terms "applicant" and "tenderer" and "economic operator".

Course of the two-stage procedure:

- Submission of requests to participate in the 1<sup>st</sup> stage of the procedure;
- Opening of requests to participate in the 1<sup>st</sup> stage of the procedure;
- Review of requests to participate by the expert committee appointed by the Contracting Authority (establishing the capacity);
- Decision on the capacity of the tenderers and on their qualification to the 2<sup>nd</sup> stage of the procedure;
- Invitation to submit tenders in the 2<sup>nd</sup> stage of the procedure;
- Public opening of tenders in the 2<sup>nd</sup> stage of the procedure;
- Review and evaluation of the tenders by the expert committee appointed by the Contracting Authority;
- Negotiations;
- Re-evaluation of the tenders by the expert committee appointed by the Contracting Authority;
- Contract award decision;
- Conclusion of the Contract.

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Deadline for submission of the request to participate/the tender and public opening:

1st stage of the procedure

Requests to participate shall be deemed to have been submitted on time if the Contracting Authority receives them via the e-JN system <https://ejn.gov.si/eJN2> **by no later than 9 am (CET) on 20 August 2020**. A request to participate shall be deemed submitted if it is marked with the status "SUBMITTED" ("ODDANO") in the e-JN system. The request to participate must be drawn up in compliance with the instructions specified in these documents.

2nd stage of the procedure:

The deadline for submission of the tender will be specified in the invitation to tender used by the Contracting Authority to invite the tenderers, whose capacity for the supply of goods/provision of services will have been established in the 1st stage of the procedure, to submit their tenders for the 2nd stage of the procedure. A tender shall be deemed to have been submitted on time if it is submitted before the requested deadline.

The Contracting Authority will, based on the conditions and criteria set out in these documents, select the tenderer with whom it will conclude a contract.

#### **4. DEADLINE AND MANNER OF SUBMISSION OF THE REQUEST TO PARTICIPATE/THE TENDER**

Tenderers must submit their requests to participate/tenders to the e-JN information system at <https://ejn.gov.si/eJN2>, in accordance with Item 3 of the Instructions for using the e-JN system for use of the functionalities of electronic submission of tenders in the e-JN system: TENDERERS (hereinafter: Instruction for the Use of e-JN), which are part of these tender documents and published at <https://ejn.gov.si/eJN2>.

**Prior to submitting a request to participate/a tender, tenderers shall register at <https://ejn.gov.si/eJN2>, in accordance with the Instructions for the Use of e-JN.** Tenderers who are already registered in the e-JN information system should sign in into the application at the same address.

When signing in, the tenderer must provide in the application **an email address** to receive notifications via the e-JN information system.

The user on the part of the tenderer authorised for submitting tenders in the e-JN system shall submit the tender by clicking »Submit«. When the tender is submitted, the e-JN system records the user's identity and the time of submission. By submitting the tender, the user demonstrates and declares the will to submit a binding tender on behalf of the tenderer (Article 18 of the Code of Obligations<sup>1</sup>). When the tender is submitted, it shall be binding for the period specified in the tender, unless the user on the part of the tenderer withdraws or changes it before the submission deadline.

Requests to participate/tenders shall be deemed submitted if it is marked with the status "SUBMITTED" ("ODDANO") in the e-JN system.

A tenderer may withdraw or revise its request to participate/its tender until the deadline for the submission of request to participate/the tenders. If a tenderer withdraws its request to participate/its tender from the e-JN information system, the request to participate/the tender shall be regarded as having not been submitted and will not be visible to the Contracting Authority in the e-JN system. If a

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<sup>1</sup> [Code of Obligations](#) (Official Gazette of RS, No. 97/07 – official consolidated text, 64/16 – constitutional court decree and 20/18 – OROZ631)

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tenderer amends its request to participate/its tender in the e-JN system, the Contracting Authority will see the most recent submitted request to participate/tender.

Requests to participate/tenders may no longer be submitted after the deadline for submission has expired.

Access to the link for the submission of electronic requests to participate/tenders in this public procurement procedure shall be via <https://ejn.gov.si/>.

## **5. TIME AND PLACE OF OPENING OF REQUESTS TO PARTICIPATE/TENDERS**

Opening of requests to participate (1st stage of the procedure) will take place automatically within the e-JN information system on **20 August 2020, and will begin at 9:30 am (CET)** online at <https://ejn.gov.si/eJN2>. Opening of requests to participate in the 1st stage shall not be public.

For the 2nd stage of the procedure, the Contracting Authority will notify the tenderers of the exact date and time of public opening of tenders by sending them, via the e-JN information system, an invitation to submit a tender and thus inviting them to submit their tenders in the 2nd stage of the procedure.

The opening process shall take place by the e-JN information system automatically displaying the tenderer's information and the variants (if required or permitted) at the time set for the public opening of tenders, and enabling access to the .pdf document uploaded by the tenderer to the e-JN system under the "Pro-forma invoice" section. The public announcement procedure shall automatically conclude after two (2) days.

As it is a two-stage procedure, the tenderer will submit the completed form 'Pro-forma invoice' in the 2nd stage of the public procurement procedure **(in the 1st stage, the form shall remain empty)**.

## **6. NEGOTIATIONS**

The Contracting Authority will conduct negotiations with the tenderer(s) in accordance with Article 45 of ZJN-3 and taking into account the contents of these documents.

The tenderer will be notified of the negotiations via the e-JN information system, by means of an invitation to negotiate.

The Contracting Authority will conduct negotiations regarding the tender price, performance guarantees, payment structure, technical part of the documentation and contract (and not regarding award criteria and conditions for selection as set out in section 10. below).

After all tenders have been submitted, the Contracting Authority will decide how many rounds of negotiations would be reasonable to carry out, in view of all the circumstances. Before the final or the only round of negotiations, the Contracting Authority will notify the tenderers that it is the final/only round of negotiations. After completed negotiations and on the basis of the final tender prices and performance guarantees, the Contracting Authority will prepare the final ranking of the tenderers.

## **7. GROUND RULES FOR ACCESS, NOTIFICATIONS, AND CLARIFICATIONS RELATED TO THE PROCUREMENT DOCUMENTS**

### **7.1 ACCESS TO THE PROCUREMENT DOCUMENTS**

The procurement documents are available to the tenderers at the public procurement portal, on the TED portal (<http://ted.europa.eu/>), and on the Contracting Authority's website at <http://www.te-sostanj.si>.

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In order to protect particularly sensitive information, in accordance with the second paragraph of Article 61 of the ZJN-3, the Contracting Authority cannot publish all the documentation on the public procurement portal. Because it contains important information on operation of critical infrastructure, the documentation that must be examined in order to participate in the procurement procedure and to prepare the tender bid is considered to be confidential business secret of the Contracting Authority in accordance with the regulations governing business secrets.

The closed part of the documentation can be obtained upon prior announcement of the request to provide closed work available free of charge after signing a non-disclosure agreement with the Contracting Authority. Once the non-disclosure agreement is executed by both parties, the tenderer will be granted access to the closed part of procurement documents.

Only the Potential Tenderer that picks up the closed part of the documentation may attend the site visit.

Potential bidders can order the closed part by e-mail to [javna.narocila@te-sostanj.si](mailto:javna.narocila@te-sostanj.si) no later than **28 June 2020 by 10:00 hour (CET)**.

### **7.2 NOTIFICATIONS AND CLARIFICATIONS RELATED TO THE PROCUREMENT DOCUMENTS**

Any communication with the tenderers regarding questions relating to the contents of the contract and in relation to the preparation of the request to participate/the tender shall be done exclusively via the public procurement portal.

The Contracting Authority will consider any requests for explanation of the documents or any other questions regarding the procurement as having been made in due time if they are submitted up to and including six (6) days before the deadline for submission of requests to participate/tenders. The Contracting Authority will not respond to any requests for explanation or any other questions submitted after this deadline.

In accordance with Article 67 of ZJN-3, the Contracting Authority may amend or supplement the procurement documents. Any such amendments and supplements will be published by the Contracting Authority as annexes to the documents. Any annex shall become an integral part of the documents. Any questions and answers published on the public procurement portal shall also be considered a part of the procurement documentation.

Based on Article 36 of ZJN-3, the procurement procedure shall be conducted in the Slovene language.

### **7.3 MANDATORY VISIT TO THE SITE**

Visit to the site is mandatory for tenderer to participate in public procurement.

Due to the complexity of the subject matter, the Contracting Authority will organise an inspection of the facility and the plants where the subject matter of this public contract will take place. Estimated date of the inspection is **10 July 2020 (date) at 10:00 hours (CET)**. **If the tenderers are unable to attend the visit on 10 July 2020, the Contracting Authority will organize an additional date for the visit on 27 July 2020 (date) at 10:00 hours (CET). It will be necessary to register for the inspection at the email address: [javna.narocila@te-sostanj.si](mailto:javna.narocila@te-sostanj.si) no later than seven (7) days prior to the inspection. The inspection by the tenderers is mandatory.**

The Contracting Authority reserves the right to change the date of the visit to the site in case of any unforeseen circumstances.

The inspection is not intended to clarify any open questions, but to inform the tenderers about the area and facility where the successful tenderer will engage in providing goods and services. The procedure for clarifying the questions is described in the previous paragraph.

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If the tenderer fails to attend the inspection but nevertheless submits a tender, such tender will be excluded by the Contracting Authority.

## **8. QUALITATIVE SELECTION**

### **8.1 QUALITATIVE SELECTION – DETERMINATION OF CAPABILITY TO PARTICIPATE IN A PUBLIC PROCUREMENT PROCEDURE – AND MEANS OF PROOF**

The tenderer must meet all the conditions specified in this Item. The economic operator must fully agree with all provisions and conditions stated in the procurement documents, with all attachments and annexes to the procurement documents, and with all amendments to the procurement documents resulting from questions and answers published on the public procurement portal.

Before awarding the contract, the Contracting Authority will require the tenderer to which it has decided to award the contract (or other economic operators, if applicable) to submit means of proof (certificates, declarations) as evidence for the absence of exclusion grounds referred to in Item 8.1.1. of these documents and for the fulfilment of the selection criteria referred to in Items 8.1.2 to 8.1.4 of these documents, if the Contracting Authority has reason to suspect the truthfulness of the tenderer's statements.

The Contracting Authority may ask tenderers (or other economic operators, if applicable) at any time during the procedure to submit all or part of the supporting documents in relation to the indications provided in the ESPD where this is necessary to ensure the proper conduct of the procedure.

Means of proof for the absence of exclusion grounds referred to in Item 8.1.1 of these documents and for the fulfilment of the selection criteria referred to in Items 8.1.2 to 8.1.4 of these documents may also be submitted by the economic operators themselves. The Contracting Authority shall reserve the right to verify the submitted means of proof with their signatory.

If the tenderer is not established in the Republic of Slovenia and cannot obtain and submit the required documents, as the country in which the tenderer is established does not issue such documents, they may be replaced by a declaration on oath or, if in the country in which the tenderer is established, there is no provision for declarations on oath, by a declaration made by the person concerned before a competent judicial or administrative authority, a notary or a competent professional or trade organisation in the country of origin of this person or in the country where the tenderer is established.

For joint requests to participate/joint tenders and requests to participate/tenders with subcontractors, Items 10.3.1 (Joint request to participate/Joint tender) and 10.3.2 (Subcontracting) of these documents must be observed as well.

The non-existence of grounds for exclusion must be demonstrated by the following economic operators:

- the tenderer;
- all partners in a joint request to participate/a joint tender;
- all subcontractors.

Each of the listed economic operator must submit a separate ESPD form.

The Contracting Authority hereby points out that in accordance with Article 75 Item 6 of ZJN-3, it may also exclude an economic operator from participation in a procurement procedure in certain other cases, regardless of whether such exclusion was provided in the procurement documents.

#### **8.1.1 Exclusion grounds**

1. 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

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therein must not be the subject of a conviction by a final judgement containing elements of the criminal offences listed in Article 75 Paragraph 1 of ZJN-3.

The non-existence of ground for exclusion must be demonstrated by the following economic operators:

- the tenderer;
- all partners in a joint request to participate/a joint tender;
- all subcontractors.

2. On the day of submission of the tender, the economic operator must fulfil their statutory duties and other monetary non-tax obligations under the law governing the financial administration, collected by the tax authority in accordance with the regulations of the country of head office or regulations of the Contracting Authority's country, and on the day of submission of the tender, the amount of their unpaid outstanding obligations does not equal or exceed EUR 50. By the date of the submission of the tender, the economic operator must have 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.

The non-existence of ground for exclusion must be demonstrated by the by the following economic operators:

- the tenderer;
- all partners in a joint request to participate/a joint tender;
- all subcontractors.

3. In the last three years prior to the expiration of the deadline for submitting a tender, an economic operator may not be fined twice for a work-related offense by a competent authority of the Republic of Slovenia or another Member State or a third country by a final decision.

The non-existence of ground for exclusion must be demonstrated by the following economic operators:

- the tenderer;
- all partners in a joint request to participate/a joint tender;
- all subcontractors.

4. When the deadline for the submission of tenders expires, the economic operator shall not have been entered in the register of economic operators with negative references referred to in Article 75 Paragraph 4 Item a) of ZJN-3.

The non-existence of ground for exclusion must be demonstrated by the following economic operators:

- the tenderer;
- all partners in a joint request to participate/a joint tender;
- all subcontractors.

5. If the economic operator is the subject of insolvency or compulsory winding-up or liquidation proceedings, if their funds or operations are managed by the liquidator or the court, if their business activities have been suspended, if proceedings against them have been initiated in accordance with the regulations of another country or if a situation with the same legal consequences has arisen.

The non-existence of ground for exclusion must be demonstrated by the following economic operators:

- the tenderer;
- all partners in a joint request to participate/a joint tender;
- all subcontractors.

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**SUPPORTING DOCUMENT *(for the tenderer, co-tenderer, and subcontractor):***

- ESPD.
- Evidence to demonstrate that the tenderer/co-tenderer/subcontractor is not subject to the above-listed grounds for exclusion.

If ESPD does not contain information on free direct access to national databases (web address of the database, identification information, if required, and a consent for the Contracting Authority to obtain the evidence) where the Contracting Authority can obtain certificates and other necessary information, the tenderer shall be obliged to submit, upon the Contracting Authority's request, within the time period set by the Contracting Authority, supporting documents or other documentary evidence proving the fulfilment of the set conditions.

The tenderers (or other economic operators, if applicable) established in a foreign country must fulfil the same terms and conditions as the tenderers established in the Republic of Slovenia.

If the country in which the tenderer (or other economic operators, if applicable) is established does not issue the required means of proof as requested by the Contracting Authority, the tenderer (or other economic operators, if applicable) may submit a declaration on oath. If in the country in which the tenderer (or other economic operators, if applicable) is established, there is no provision for declarations on oath, the tenderer (or other economic operators, if applicable) may submit a declaration made by the person concerned before a competent judicial or administrative authority, a notary or a competent professional or trade organisation in the country of origin of this person or in the country where the tenderer (or other economic operators, if applicable) is established.

**8.1.2 *Selection criteria with regard to suitability to pursue the professional activity***

1. The tenderer must be registered in one of the professional or trade registers kept in the Member State of their establishment. The list of professional and trade registers in EU Member States is provided in Annex XI to Directive 2014/24/EU.

**SUPPORTING DOCUMENT:**

- ESPD.
- Signed form Statement of participation of natural and legal persons in the tenderer's ownership.

The Contracting Authority reserves the right to verify the existence and contents of statements in the request to participate/the tender, should any doubt arise regarding the truthfulness of the tenderer's statements. To this end, the statement must contain all necessary information for the Contracting Authority to verify the fulfilment of the respective condition in official records. If such verification is not possible, the Contracting Authority will request from the economic operator to submit a copy of an entry into one of the professional or trade registers.

**8.1.3 *Selection criteria with regard to technical and professional ability***

The tenderer must have the ability and qualifications to provide the goods/services specified in the procurement documents (the details of technical conditions are specified in the technical part of these documents) in compliance with the applicable standards, technical regulations, and legislation.

**SUPPORTING DOCUMENT *(for the tenderer and/or co-tenderer):***

- ESPD.
- Tenderer's statement.
- Other means of proof provided in the technical part of the procurement documents.

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## 9. SECURITY

### 9.1. TENDER BID GUARANTEE

Upon submission of the request to participate (first stage of the procedure), the Tenderer shall deliver to the Owner an original bank guarantee for the seriousness of the tender bid in the amount of EUR 2,500,000.00 (in words: two million five hundred thousand euro) with a validity term until 31 May 2021, and in any case at least until one day after the expiration of the deadline stipulated in first paragraph of section 9.2 below ("**Tender Security**"). The Owner reserves the right, and the tenderer undertakes to extend the validity of the Tender Security if requested by the Owner for the period of 60 days.

If the Tenderer fails to deliver the Tender Security upon submission of the request to participate, it will be excluded from the tender by the Owner.

The Tender Security shall be issued by a prominent bank, which has a registered office in the Republic of Slovenia and shall be in the form as set out in Appendix 11 or in other form approved in writing by the Owner. The Tender Security shall be unconditional, irrevocable and payable upon first demand.

The Owner will return the Tender Security no later than thirty (30) days after one of the following events takes place:

1. the Owner receives the Performance Security,
2. the Owner concludes no contract with any tenderer based on the provisions of ZJN-3;
3. the validity of the Tender Security expires.

The Owner shall not make a claim under the Tender Security except in the event:

1. that the selected tenderer withdraws its tender following the submission of the final tender or unacceptably alters its tender during the term of its validity;
2. that the selected tenderer refuses to sign the contract;
3. that the selected tenderer fails to deliver the Performance Security in accordance with the first paragraph of section 9.2 below;
4. or that the Tenderer has stated untrue or incorrect data in its request to participate or Tender.

### 9.2 CONTRACT PERFORMANCE SECURITY

Upon submission of the tender, the Tenderer shall undertake to deliver to the Owner, within 7 (seven) days following the conclusion of the contract, an original bank guarantee for proper performance of its obligations, amounting to 10 per cent of the total contract price, which will be set out in the contract, including VAT ("**Performance Security**").

If upon submission of the tender the Tenderer fails to undertake to deliver the Performance Security within 7 (seven) days following the conclusion of the contract, it will be excluded from the tender by the Owner.

The Performance Security shall be issued by a prominent bank, which has a registered office in the Republic of Slovenia, and shall be in the form as set out in Appendix 12 or in other form approved in writing by the Owner. The Performance Security shall be unconditional, irrevocable and payable upon first demand. The Contractor shall ensure that the Performance Security is valid and enforceable until the Contractor has executed and delivered all of its obligations under the contract in their entirety and remedied any defects, and in any case at least until the date which is 30 days after the expiration of the Term. If the Contractor is not able to deliver a Performance Security with the entire aforementioned validity period, the parties may agree that the Contractor shall deliver several Performance Securities

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with a shorter validity period, in which case the Contractor will be required to deliver, no later than 14 days before the expiration of a valid Performance Security a new Performance Security, so that ultimately, the final Performance Security so delivered will be valid and enforceable until the Contractor has executed and delivered all of its obligations under the contract in their entirety and remedied any defects, and in any case at least until the date which is 30 days after the expiration of the term of the contract. The Owner shall return each expired Performance Security to the Contractor within 30 days of the end of its validity.

The Owner shall not make a claim under a Performance Security, except for amounts to which the Owner is or will be entitled under the contract in the event of:

- i. failure by the Contractor to timely extend the validity of a Performance Security (or to deliver a new one replacing the previous one as described in the preceding paragraph) in accordance with the contract, in which case the Owner shall be entitled to claim the entire amount of the Performance Security;
- ii. failure by the Contractor to pay to the Owner any amount due under or in connection with the contract;
- iii. failure by the Contractor to remedy any default in the performance of its obligations under or in connection with the contract within 20 days after receiving the Owner's notice requiring the default to be remedied;
- iv. circumstances which entitle the Owner to the termination of the contract, regardless of whether a termination notice has been given.

If the Owner makes a claim under a Performance Security, the Contractor shall either (1.) hand over an annex to the existing Performance Security so as to provide the same 10 per cent ratio between the guarantee amount and the contract price or (2.) hand over a new performance security in the amount that was withdrawn under existing Performance Security so that the aggregate guarantee amount remains at the same 10 per cent ratio between the guarantee amount and the contract price.

If the contract price increases under the conditions set out in Section 6.2 (Escalation) of the Technical Documentation, the Contractor shall be obliged to either (1.) hand over to the Contracting Authority an annex to the existing Performance Security increasing the existing Performance Security guarantee amount to the amount equaling 10 per cent of the increased contract price, (2.) hand over a new Performance Security in the amount equaling 10 per cent of the increased contract price or (3.) hand over an additional Performance Security in the amount of 10% of the contract price increase. Other terms and wording of the security may only change if the Employer expressly agrees with it by giving a written consent. If a new security is submitted, the previous shall be returned.

The contract, subject to this public procurement tender will become valid under the condition that the selected tenderer delivers the Performance Security.

### **9.3 PERFORMANCE GUARANTEES SECURITY**

Upon submission of the tender, the Tenderer shall undertake to deliver to the Owner, within 7 (seven) days following the conclusion of the contract, an original bank guarantee for proper performance of (damages) payment obligations under the Section 5.5 of the Technical Documentation in the amount of EUR 4,000,000.00 (in words: four million euro) ("**Performance Guarantee Security**").

If upon submission of the tender the Tenderer fails to undertake to deliver the Performance Guarantee Security within 7 (seven) days following the conclusion of the contract, it will be excluded from the tender by the Owner.

The Performance Guarantee Security shall be issued by a prominent bank, which has a registered office in the Republic of Slovenia, and shall be in the form as set out in Appendix 13 or in other form approved in writing by the Owner. The Performance Guarantee Security shall be unconditional, irrevocable and payable upon first demand. The Contractor shall ensure that the Performance Security is valid and enforceable until 30 days after the day that falls on the 10th anniversary of signing of the contract. If the Contractor is not able to deliver a Performance Guarantee Security with the entire aforementioned validity period, the parties may agree that the Contractor shall deliver several Performance Guarantee Securities with a shorter validity period, in which case the Contractor will be required to deliver, no later than 14 days before the expiration of a valid Performance Guarantee Security a new Performance Guarantee Security, so that ultimately, the final Performance Guarantee Security so delivered will be valid and enforceable until 30 days after the day that falls on the 10th anniversary of signing of the Contract. The Owner shall return each expired Performance Guarantee Security to the Contractor within 30 days of the end of its validity.

The Owner shall not make a claim under a Performance Guarantee Security, except for amounts to which the Owner is or will be entitled under or in connection with the Section 5.5 of the Technical Documentation in the event of:

v) failure by the Contractor to timely extend the validity of a Performance Guarantee Security (or to deliver a new one replacing the previous one as described in the preceding paragraph) in accordance with the contract, in which case the Owner shall be entitled to claim the entire amount of the Performance Guarantee Security;

vi) failure by the Contractor to pay to the Owner any amount due under or in connection with the Section 5.5 of the Technical Documentation (i.e. damages payable to the Owner).

If the Owner makes a claim under a Performance Guarantee Security, the Contractor shall either (1.) hand over an annex to the existing Performance Guarantee Security increasing the guarantee amount so as to provide the amount of EUR 4,000,000.00 (in words: four million euro) (i.e. the Contractor will replace the withdrawn amount) or (2.) hand over a new performance guarantee security in the amount that was withdrawn under existing Performance Guarantee Security so that the aggregate guarantee amount remains EUR 4,000,000.00 (in words: four million euro).

## 10. AWARD CRITERIA

After opening the requests to participate/tenders, the Contracting Authority will review them and establish their compliance with the requirements from these documents. The Contracting Authority may request that a tenderer provides additional clarifications or means of proof regarding the request to participate/the tender, which they require for assistance in the review and evaluation of requests to participate/tenders.

The Contracting Authority shall award the public contract on the basis of the criteria as detailed in the technical part of documentation. The evaluation of proposals from the Tenderers will be conducted on both technical and commercial criteria. The basis of selection will be conducted in a two-stage process with technical and commercial evaluation.

The tender evaluation criteria for contract award:

### 1.1 Stage 1 – Part 1 Technical Evaluation – Proposal and Compliance to Requirements

#### Summary of Technical Evaluation Criteria

Number	Criteria	Value (Points)	Comment
1	LTSA	1560	In the Tenderer's proposal submission, the
2	OPM	230	

3	APM	365	Tenderer shall demonstrate competency, experience, and capacity to undertake the requested scope and compliance with the technical specifications.
4	Security	220	
5	DCS Migration	590	
<b>Total</b>		<b>2965</b>	

Proposals scoring less than 2,225 out of 2,965 points on the technical evaluation criteria will be considered technically unacceptable and the pricing submission will not be evaluated. A Tenderer must offer all required items (LTSA, OPM, APM, security and DCS Migration), whereas, additionally, their proposal in order not to be considered technically unacceptable shall score at least 65 % of value (points) under each package (i.e. LTSA, OPM, APM, security and DCS Migration).

### **1.2 Stage 1 – Part 2 Technical Evaluation – Proponent Presentation for APM**

In order to validate and confirm scoring for the APM solution proposed, the Owner shall request Tenderers to present and provide a demonstration of their software. The presentations and demos will be used to validate scoring or adjust scoring of the APM categories from the written response provided by the Tenderers. The presentation will occur prior to the Owner finalizing the scoring for Stage 1.

#### **Summary of Proponent Presentation**

<b>Number</b>	<b>Criteria</b>	<b>Comment</b>
1	Proponent Presentation	Agenda and any scripts required will be provided to Tenderers with a confirmation of the agreed upon time and venue scheduled for the presentation.
2	Hands-on Demo	Agenda and scenarios will be provided to Tenderers with a confirmation of the agreed upon time and venue scheduled for the presentation.

### **1.3 Stage 2 Commercial Evaluation**

Tenderers who have received at least the minimum technical score from Stage 1 and who will be granted the ability to perform the public procurement on the basis of the application for participation, after the decision on the recognition of competence has become final, will move onto the Stage 2 Commercial Evaluation and will be invited to submit tenders (in the second phase of the procedure). Moreover, only the tenders of the Tenderers delivering the Tender Security and explicitly undertaking to deliver both, the Performance Security as well as Performance Guarantee Security, all as required in the corresponding provisions of section 9., shall be allowed to continue with the tender process. If the Tenderer fails to deliver the Tender Security and to undertake to deliver both, the Performance Security as well as Performance Guarantee Security, all as required in the corresponding provisions of the General Part, it will be excluded from the public procurement process by the Owner. The invitation to submit tenders

will contain the Pro Forma Invoice, the Price breakdown and payment structure and a sample contract.

### Summary of Commercial Evaluation Criteria

Number	Criteria	Value (Points)	Comment
1	Price	300	The proponent with the lowest price will be awarded the maximum points and will be used as the baseline for scoring for other proponents.
2	Performance Guarantees	150	The proponent with the best performance commitments will be awarded the maximum points and will be used as the baseline for scoring for other proponents.
<b>Total</b>		<b>450</b>	

The selection shall be made based on the highest total points considering only Stage 2 after the commercial scoring for the qualified proponents.

The Tenderer shall complete the Pro Forma Invoice in Appendix 1 and the Price breakdown and payment structure in Appendix 2 in the 2nd stage of the public procurement procedure as part of Stage 2 Commercial Evaluation.

In the event that up to two or more tenders should have the same final price, the Contracting Authority will decide on the basis of a draw. The draw will take place after the negotiations have been completed. Tenderers will be notified in writing by the Contracting Authority of the draw by e-mail, which they have specified as a contact address in the e-JN system and allow them to attend the draw. The draw will be held at the Contracting Authority's premises. The draw will be performed by rolling the dice between the tenderers, the winner will be the tenderer who rolls the higher number. In the case of identical numbers, the draw between such tenderers shall be repeated until the final selection. To the tenderers for whom rolling the dices made but who will not be present at the draw, the Contracting authority will provide the draw record.

## 11. THE REQUEST TO PARTICIPATE/THE TENDER

### 11.1 TENDER DOCUMENTS

The tender documents shall be comprised of the documents listed in Item 15 of these documents and means of proof listed in Item 8 of these documents.

After reviewing the requests to participate/tenders, the Contracting Authority will, if it has reason to suspect the truthfulness of the tenderer's (or other economic operators, if applicable) statements, invite the most successful tenderer to submit the supporting documents as specified after each required condition or ground for exclusion.

At the time of submission of the request to participate/the tender, the Contracting Authority shall, in replacement of certificates issued by public authorities or third parties, accept as preliminary evidence the European Single Procurement Document - ESPD, which contains a self-declaration confirming that the relevant tenderer (or other economic operators, if applicable) is not in one of the situations in which they shall or may be excluded from participation in the procurement procedure, and that they meet the relevant selection criteria; at the same time, the document shall provide the relevant information requested by the Contracting Authority. The ESPD shall further identify the public authority or third party responsible for establishing the supporting documents and contain a formal statement to the

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effect that the tenderer (or other economic operators, if applicable) will be able, upon request and without delay, to provide such supporting documents.

All statements in the ESPD and/or documents of evidence submitted by the economic operator must be valid.

The economic operator shall import the Contracting Authority's ESPD form (XML file) on the website of the Public procurement portal/ESPD <http://www.enarocanje.si/ESPD/> and directly enter the required information.

A completed and signed ESPD form must be enclosed with the tender for all economic operators participating in the tender in any manner (tenderer, participating tenderers in the case of a joint tender, economic operators whose capacities are used by the tenderer and subcontractors).

The tenderer who submits the tender in the e-JN system shall upload their own ESPD under »ESPD – tenderer« and ESPD forms from other participants under »ESPD – other participants«. The tenderer who submits the tender in the e-JN system shall upload an electronically signed ESPD in .xml format or unsigned ESPD in .xml format, or signed ESPD in -pdf format whereby it is considered in the latter case as per the General terms and conditions of use of the e-JN information system that a legally binding document has been submitted, having the same validity as the signed document.

For other participants, the tenderer shall upload the signed ESPD forms in .pdf format or electronically signed in .xml files under »ESPD – other participants«.

If the tenderer (or other economic operators, if applicable) has previously used an ESPD in another procurement procedure, they may in this procedure reuse the ESPD which has already been used in a previous procurement procedure, provided that they confirm that the information contained therein continues to be correct, and if the ESPD used in the other procurement procedures is relevant as to the conditions set by the Contracting Authority for this procurement. The Contracting Authority will not assume any responsibility for the use of the ESPD that had already been used by the tenderer (or other economic operators, if applicable) in a previous procurement procedure.

The Contracting Authority may request from the tenderers at any time during the procedure to submit all or part of the supporting documents in relation to the indications provided in the ESPD and not officially available in public records.

The tenderer submitting the request to participate/ tender thereby guarantees, under criminal and material liability, that all information and documents stated in the request to participate/the tender are true. Otherwise, the tenderer will be held responsible to the Contracting Authority for all damages incurred by the Contracting Authority.

## **11.2 DRAWING UP THE REQUEST TO PARTICIPATE/THE TENDER**

### ***11.2.1 Evidence of compliance with technical requirements of the documents***

The subject matter of the request to participate/the tender must comply with technical requirements stated in the technical part of these documents.

### ***11.2.2 Form »Pro-forma invoice«***

In the Pro-forma invoice, the tenderer must offer all the positions, taking into account the technical requirements stated in these documents. *(the tenderer shall submit the information in the 2nd stage of the public procurement procedure)*

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The tender price in the pro-forma invoice must be rounded to two decimal places. The price rounded to two decimal places must be evident from the form »Pro-forma invoice« in a .pdf file and from the specification form in Excel format.

If the tenderer enters the price of EUR zero (0) for an item, it shall be deemed to be offering such item free of charge.

**The tenderer must not change the contents of the specification of goods/services. The tender price must be based on the parity DDP Šoštanj (Incoterms 2010), all discounts and costs (transport and all other potential costs, etc.).**

If, during the examination and evaluation of requests to participate/tenders, the Contracting Authority identifies any obvious calculation errors, it shall act in accordance with Article 89 Paragraph 7 of ZJN-3.

**In the e-JN system, the tenderer shall upload the pro-forma invoice in a .pdf file under the "Pro-forma invoice" section (*it shall be filled in and submitted in the 2nd stage of the public procurement procedure*).**

In case of discrepancy between the contents of the specification of goods/services and the contents of the pro-forma invoice, the contents of the specification of goods/services shall prevail.

### **11.3 OTHER PROVISIONS FOR DRAWING UP A REQUEST TO PARTICIPATE/A TENDER**

#### ***11.3.1 Joint request to participate/joint tender***

Pursuant to Article 10 Paragraph 3 of ZJN-3, groups of economic operators, including temporary associations, may participate in the procurement procedure. Groups of tenderers shall not be obligated to assume any legal form.

If a group of economic operators submits a joint request to participate/a joint tender, such group must, in the event they are selected in the open tender procedure, also submit a legal act on the joint accomplishment of the contract. The legal act on the joint accomplishment of the contract must precisely define the tasks and responsibilities of individual contractors for the accomplishment of the contract, clearly demonstrating the following:

- appointment of the managing entity in the accomplishment of the contract (leading partner),
- power of attorney for the managing entity to sign the request to participate/the tender and the contract,
- a statement that all tenderers in the joint request to participate/joint tender are familiar with the instructions to tenderers on the preparation of the request to participate/the tender, tender conditions, and the criteria for the award of a public contract, and are in full agreement with them,
- that they are familiar with the payment terms specified in the documents relating to the awarding of the public contract and that all payments by the Contracting Authority shall be made via the operator,
- an indication that they assume unlimited joint and several liability to the Employer,
- scope of business (precise indication of the type and scope of services/supply of goods performed by each individual tenderer and their responsibilities),
- manner of nomination of subcontractors (each joint applicant individually or all subcontractors nominated via the operator), and
- appointment of persons responsible for the accomplishment of the present contract.

In a joint request to participate/joint tender, the non-existence of exclusion grounds under ZJN-3 must be demonstrated by each tenderer themselves.

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If the request to participate/the tender is submitted by a group of tenderers, then the required information on joint request to participate/joint tender stated in the form »Information on the tenderer/co-tenderer« must be provided in the request to participate/the tender.

The form »Pro-forma invoice« is submitted jointly by all the tenderers participating in the joint request to participate/joint tender (one form signed by at least one of the tenderers participating in the joint request to participate/joint tender).

**In the second stage of the procedure, a tender may only be submitted by the same tenderer/the same group of tenderers who had submitted a request to participate in the first stage of the procedure. Changes of tenderers between the stages shall not be possible. If any such changes occur, the Contracting Authority will exclude such tender from the public procurement procedure as inadmissible.**

### ***11.3.2 Subcontracting***

A tenderer may submit the request to participate/the tender either individually or with subcontractors. A request to participate/a tender with subcontractors shall be a request to participate/a tender where the tenderer participates in the public contract as the lead tenderer with other entities (hereinafter referred to as: subcontractors). In accordance with Article 94 Paragraph 1 of ZJN-3, a subcontractor shall be any economic operator that is either a legal or natural person and supplies goods or provides services or construction directly associated with the subject-matter of the public contract for the Contracting Authority with whom the contractor has signed a contract on the execution of the public contract or a framework agreement pursuant to the said Act.

If the tenderer intends to conduct the public contract for construction or services with subcontractors, the tenderer shall in the request to participate/the tender:

- list all the subcontractors and each part of the public contract which it intends to subcontract,
- contact details and legal representatives of the proposed subcontractors,
- enclose completed ESPD forms for these subcontractors in accordance with the Article 79 of ZJN-3, and
- enclose the subcontractor's request for direct payment where the subcontractor so requires.

Only if a subcontractor demands direct payment, it shall be deemed that direct payment to such subcontractors is mandatory pursuant to this act and that the obligation thereof is binding for the Contracting Authority and the principal contractor. When a tenderer intends to accomplish a public contract with a subcontractor who demands direct payment, the following shall be required:

- the principal contractor must authorise the Contracting Authority in the contract/framework agreement to make direct payments to the subcontractors pursuant to an approved invoice or situation report,
- the subcontractor must submit a statement of giving consent to the Contracting Authority to settle the subcontractor's claim against the principal contractor instead of the principal contractor,
- the principal contractor must enclose to their invoice or situation the invoice or situation provided by the subcontractor and approved by the principal contractor.

In the process of reviewing the tender, the Contracting Authority reserves the right to verify, in the declared subcontractor, the existence or absence of the subcontractor's request for direct payment; the same also applies in the case of declaring of a new subcontractor during the implementation phase of the contract/framework agreement.

During the performance of the public contract, the principal contractor must, in accordance with Article 94 Paragraph 3 of ZJN-3, inform the Contracting Authority of any potential changes to the information regarding subcontractors and send information on new subcontractors which the main contractor intends to subsequently include in the performance of the public contract, no later than five (5) days after the contractor has engaged a new subcontractor. **If the contractor fails to do so, the**

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**Contracting Authority shall have the right to charge the contractor, for each established violation, a contractual penalty in the amount of EUR 5,000.00 for failure to inform about an individual subcontractor.**

Grounds for exclusion that apply to the principal contractor must also not be present for any of the declared subcontractors.

If, in respect of a subcontractor, there are grounds for exclusion or the subcontractor fails to fulfil the selection criteria set out in these documents, the contracting authority will reject such subcontractor and request its replacement.

If the tenderer intends to conduct the public contract with subcontractors, the tenderer shall submit in the request to participate/the tender:

- The list of subcontractors, together with an indication of the scope of works assumed by each subcontractor and estimated share of assumed scope of works in relation to the total scope of works.
- Subcontractor information.
- Consent or power of attorney from the contractor and subcontractor.

The Contracting Authority will file a motion to the National Review Commission to initiate a minor offence procedure:

- if the Contracting Authority has reasonable cause to suspect that, in the procurement procedure, a tenderer has submitted false statements or a forged or altered document as genuine in accordance with Article 89 Paragraph 11 of ZJN-3,
- if the principal contractor does not act in accordance with Article 94 of ZJN-3.

### ***11.3.3 Variant requests to participate/variants***

Variant requests to participate/variants are not admitted.

### ***11.3.4 Language of the request to participate/the tender***

The contract award procedure shall be conducted in the Slovene language. All documents relating to the request to participate/the tender must be in the Slovene and/or English language.

All correspondence between the tenderer and the Contracting Authority will be in the Slovene or English language. In case of doubt and dispute, the Slovene language shall prevail.

### ***11.3.5 Validity of the request to participate/the tender***

The request to participate/the tender must be valid 360 days from the date of expiry of the time limit for the submission of requests to participate/tenders.

In exceptional circumstances, the Contracting Authority may require from the tenderers to extend the period of validity of requests to participate/the tenders for a certain additional period.

### ***11.3.6 Costs of the request to participate/the tender***

All costs incurred in preparing and submitting the request to participate/the tender shall be borne by the tenderer.

### ***11.3.7 Anti-corruption clause and resolutive condition***

In the public contract procedure, the Contracting Authority and the tenderers shall not initiate or perform activities which may determine in advance the selection of a particular request to participate/a particular tender, or which would result in the contract not becoming valid or not being implemented.

Any lobbying activities in public procurement procedures shall be prohibited.

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The contract on the execution of the public contract shall be concluded under the resolutive condition that is met if one of the following circumstances occurs:

- the Contracting Authority becomes aware that a court, by way of a final decision, has established that the contractor or subcontractor is in breach of labour, environmental or social law provisions;
- the Contracting Authority becomes aware that the competent government authority established at least two violations made by the contractor or subcontractor during the execution of the contract and concerning:
  - remuneration for work,
  - working hours,
  - rests,
  - or performance of work under civil-law contracts despite the existence of elements of employment relationship or concerning illegal employment,

and for which the contractor or subcontractor have been fined for this offence by way of a final decision/final decisions, and if at least six months have passed between the date of taking notice of the violation and the expiry date of the contract and, when the contract involves a subcontractor, also when a violation is established, and the contractor fails to substitute or replace the subcontractor, in the manner stipulated in accordance with Article 94 of ZJN-3 and provisions of this contract within 30 days of the date of taking notice of the violation.

In the case that the circumstances and conditions referred to in the previous paragraph are satisfied, the contract shall be deemed to be terminated on the date of conclusion of a new contract for public procurement. The Contracting Authority will notify the tenderer of the date of conclusion of the new contract.

If the Contracting Authority fails to initiate a new contract award procedure within 30 days of the date of taking notice of the violation, the contract shall be deemed to be terminated on the thirtieth day from the date of taking notice of the violation.

## **12. NOTIFICATION ON CONTRACT AWARD DECISION**

The Contracting Authority will publish a signed decision of contract award on the public procurement portal and on the TED portal. The decision shall be deemed to be served on the date of its publication on the public procurement portal.

## **13. WITHDRAWAL FROM THE TENDER PROCESS**

Once the contract award decision has become final and until signing of the contract, the Contracting Authority may, based on Article 90 Paragraph 8 of ZJN-3, withdraw from the tender process on the grounds that it no longer needs, or has no funds for, the subject-matter of procurement, or that it has reasonable cause to suspect that the contents of the contract were or could be a result of a criminal offence, or that other extraordinary and unforeseeable circumstances beyond its control have arisen that have rendered the performance of the contract with the successful tenderer impossible. In such case, the Contracting Authority will notify the tenderers in writing of its decision and the reasons for withdrawing from the tender process.

## **14. CONTRACT**

After adopting the decision, the Contracting Authority will, after successfully completing all the procedures of the managing, control and owner bodies, if all the conditions from the regulations and acts governing the business of the contracting authorities are met, and the consent of the Contracting Authority owner's Supervisory Board be given, sign the contract for the entire public contract with the successful tenderer after the final completion of the procedure.

If not all above mentioned conditions are met, the Contracting Authority will not sign the contract. In such event the Tenderer is entitled to reimbursement of the actual costs incurred in preparing the tender.

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The Contracting Authority hereby informs the tenderers that the contract will be subject of negotiations in second stage of the procedure. It will be concluded in the content originating from the draft contract, in accordance with results of the negotiations and this documentation.

The contract shall be governed by and construed in accordance with the laws of Slovenia. Such choice of law shall refer only to substantive law and shall not include its conflict of law rules. All disputes arising out of or in connection with the contract shall be resolved in arbitration under the Rules of Arbitration of the International Chamber of Commerce (ICC), number of arbitrators shall be three appointed in accordance with the said Rules. The seat of arbitration shall be Vienna, Austria, and the language shall be English.

In accordance with Article 14, Paragraph 6 of the Integrity and Prevention of Corruption Act (Official Gazette of RS, No. 69/11-officially consolidated text; ZIntPK), the selected tenderer shall be obligated - at the request from the Contracting Authority, before signing the contract - to submit to the Contracting Authority a statement or information on the participation of natural and legal persons in the tenderer's ownership, including the participation of silent partners, limited partners or other owners, and information on the economic operators that are deemed to be associated with the tenderer according to the Slovenian Companies Act. If the tenderer submits a false declaration or provides inaccurate information regarding the stated facts, this will result in the contract being declared null and void.

Before signature, the contract will be subject to adjustment depending on whether the successful tenderer has submitted a joint request to participate/joint tender, declare cooperation of subcontractors, etc.

The Contracting Authority reserves the right to:

- increase the volume of contractual services/supply of goods (e.g. ordering of additional services/goods) according to the needs of the Contracting Authority during the contract,
- reduce the scope of contractual services/supply of goods if, during the contract, the Contracting Authority's needs for services are decreased.

In case of any unforeseen circumstances, the performance of services may be rescheduled or extended for the duration of circumstances, which, however, should not affect the change in the contractor's contractual obligations or the value of the contract. The Contracting Authority reserves the right to extend the deadline for completion of services if, due to a reason on the side of the Contracting Authority, there is a delay in the planned start of the provision of services, interruption of performance of services at the request of the Contracting Authority, if the Contracting Authority orders additional services or significant changes in performance affecting the critical paths in the provision of the services - for the period of time required for these services to be performed; if unexpected physical conditions occurred at the worksite, including physical conditions, unpredictable subterranean and hydrological conditions and physical obstacles encountered by the contractor while performing the services and affecting the critical paths in the performance of the services - for the period of time required for these services to be performed.

The Contracting Authority will make the above changes in accordance with Article 95 Paragraph 1 Item 1 of ZJN-3.

In second stage of the procedure the Contracting Authority requests the Tenderer to submit Time and Material Rates for Extra Work (including for Unplanned Maintenance) and applicable discounts, taking into account that Time and Material Rates for Extra Work (including for Unplanned Maintenance) are not a part of the Tender price.

The Contracting Authority reserves the right to order Extra Work (including for Unplanned Maintenance) at the prices set out in Time and Material Rates. The Contracting Authority shall make the order and the change in accordance with Article 95 Paragraph 1 Item 1 of the ZJN-3.

The Contracting Authority reserves the right in the event that the price from the Time and Material Rates for Extra Work (including for Unplanned Maintenance) exceeds the market prices at the time of

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the Contracting Authority's need during the execution of the Contract, the Contracting Authority shall award this order in a separate procedure. The Contracting Authority has full discretion to award Extra Work to the Contractor or any other party.

The successful tenderer must return the signed contract to the Contracting Authority within three (3) days after receiving the request to sign it; otherwise, the Contracting Authority may conclude that the tenderer has withdrawn from the signature of the contract. If the signing within this timeframe is not possible due to objective circumstances, the Contracting Authority may, at the tenderer's request, agree to a longer term. The contract is concluded upon its signature by all parties (or, in the event of joint request to participate/joint tender, by all partners).

## **15. LEGAL PROTECTION**

In accordance with the Legal Protection in Public Procurement Procedures Act (ZPVPJN; Official Gazette of the Republic of Slovenia, no. 43/2011, with amendments, hereinafter referred to as: ZPVPJN), a request for legal protection in public procurement procedures may be filed against any action of the Contracting Authority in the public procurement procedure, unless stipulated otherwise by the act regulating the public procurement or by ZPVPJN.

Before the submission of requests to participate/tenders, the deadline for filing a review claim relating to the contents of the publication, invitation to apply/tender or tender documents shall be 10 working days of the publication of contract notification or receipt of invitation to apply/tender. Whenever the Contracting Authority amends or supplements a statement in the publication, invitation to apply/tender or tender documents, a review claim that relates to the amended, supplemented or clarified content of the publication, invitation or tender documents or a statement directly connected thereto in the original publication, invitation to apply/tender or tender documents may be filed within 10 working days of the publication of the notice of supplementary information, information on pending procedure or correction if this is a notice to amend or supplement requirements or criteria for selecting the most advantageous tenderer.

The review claim must include explanation. The applicant must file the review claim in writing directly at the Contracting Authority's address or by registered mail with return receipt requested; or through the e-Revision portal, in accordance with the Legal Protection in Public Procurement Procedures Act (ZPVPJN).

In the review claim, the applicant must specify the following information: name and address of the person filing the review claim and the contact person, the Contracting Authority's name, the code of public contract or decision on the public contract award or recognition of capacity, the subject-matter of public contract, alleged violations, facts and evidence to demonstrate the violations, power of attorney if the applicant acts through a representative, and a certificate of payment of the fee to the Ministry's bank account.

The applicant must supplement the review claim with a certificate of payment of the fee under Article 71 of ZPVPJN in the amount of EUR 4,000.00. The fee shall be paid to bank account No. SI56 0110 0100 0358 802, held with Banka Slovenije, Slovenska cesta 35, 1505 Ljubljana, Slovenia, - Implementation of the Budget of the Republic of Slovenia, ref. no. 11 16110-7111290-XXXXXXLL. The last eight digits represent the number of the publication on the public procurement portal; the designation X represents the number of the notice publication, and the designation L is used for the year. If the number of the publication of the notice is less than six digits, zeros are entered in the missing places in the front.

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## 16. APPENDICES

- Appendix No. 1: Pro-forma invoice (*completed pro-forma invoice is submitted by the tenderer in the 2nd stage of the public procurement procedure*)
- Appendix No. 2: Price Breakdown and Payment structure (*completed Price Breakdown and Payment structure is submitted by the tenderer in the 2nd stage of the public procurement procedure*)
- Appendix No. 3: Tenderer's statement
- Appendix No. 4: Information on the tenderer/co-tenderer
- Appendix No. 5: Appointment of the person responsible for drawing up the request to participate/the tender
- Appendix No. 6: Statement of joint request to participate/joint tender
- Appendix No. 7: List of subcontractors
- Appendix No. 7a: Subcontractor information
- Appendix No. 8: Consent or authorisation of the contractor and subcontractor
- Appendix No. 9: Statement of participation of natural and legal persons in the tenderer's ownership
- Appendix No. 10: Certificate of Performed Mandatory Visit to the Site
- Appendix No. 11: Draft Tender Security
- Appendix No. 12: Draft Performance Security
- Appendix No. 13: Draft Performance Guarantee Security

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APPENDIX No. 1: PRO-FORMA INVOICE (completed pro-forma invoice is submitted by the tenderer in the 2nd stage of the public procurement procedure)

Ponudnik/Tenderer:.....  
(vpiše se naziv in naslov ponudnika/(enter the name and address of the provider))

Številka ponudbe/Tender No.:.....

### PREDRAČUN/TENDER PRO-FORMA INVOICE

Predmet: **Javno naročilo** ».....«  
Subject-matter of the request/tender: **Public contract** »For supply of goods and services for long term service agreement, operational performance modules, distribution control system migration and asset performance management software for Unit 6«

#### **ZAJAMČENO IZBOLJŠANJE RAZPOLOŽLJIVOSTI /**

**GUARANTEED AVAILABILITY IMPROVEMENT:** \_\_\_\_\_ur/hours

(Guaranteed availability improvement is offered in accordance with Section 5.5.1 of the Technical Documentation/Zajamčeno izboljšanje razpoložljivosti je ponujeno v skladu z Oddelkom 5.5.1 Tehnične Dokumentacije)

#### **ZAJAMČENO IZBOLJŠANJE IZKORISTKA /**

**GUARANTEED HEAT RATE IMPROVEMENT:** \_\_\_\_\_%

(Guaranteed heat rate improvement is offered in accordance with Section 5.5.4 of the Technical Documentation/Zajamčeno izboljšanje izkoristka je ponujeno v skladu z Oddelkom 5.5.4 Tehnične Dokumentacije)

#### **PONUDBNA CENA / LUMP-SUM**

\_\_\_\_\_EUR  
(brez DDV/without VAT)

V ceni so upoštevane vse zahteve in celotna vsebina tehničnega dela dokumentacije v zvezi z oddajo javnega naročila./ When setting the price, the tenderer has taken into consideration all requirements and the entire contents in the technical part of the procurement documents.

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APPENDIX No. 2: SPECIFIKACIJA CENE IN STRUKTURA PLAČIL / PRICE BREAKDOWN AND PAYMENT STRUCTURE (completed Price Breakdown and Payment structure is submitted by the tenderer in the 2nd stage of the public procurement procedure)

Ponudnik/Tenderer:.....  
(vpiše se naziv in naslov ponudnika/(enter the name and address of the provider))

Številka ponudbe/Tender  
No.:.....

**SPECIFIKACIJA CENE IN STRUKTURA PLAČIL / PRICE BREAKDOWN AND PAYMENT STRUCTURE**

Predmet: **Javno naročilo** ».....«  
Subject-matter of the request/tender: **Public contract** »For supply of goods and services for long term service agreement, operational performance modules, distribution control system migration and asset performance management software for Unit 6«

1: ..... /PACKAGE 1: Long Term Service Agreement (LTSA)  
..... EUR  
(brez DDV/without VAT)

2: ..... /PACKAGE 2: Operational Performance Modules (OPM)  
..... EUR  
(brez DDV/without VAT)

3: ..... /PACKAGE 3: Distribution Control System (DCS) Migration  
..... EUR  
(brez DDV/without VAT)

4: ..... /PACKAGE 4: Asset Performance Management (APM)  
..... EUR  
(brez DDV/without VAT)

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**SKUPAJ/TOTAL** ..... EUR  
(brez DDV/without VAT)

WHEREAS:

ZAJAMČENO IZBOLJŠANJE RAZPOLOŽLJIVOSTI /

GUARANTEED AVAILABILITY IMPROVEMENT: \_\_\_\_\_ur/hours

ZAJAMČENO IZBOLJŠANJE IZKORISTKA /

GUARANTEED HEAT RATE IMPROVEMENT: \_\_\_\_\_%

V ceni so upoštevane vse zahteve in celotna vsebina tehničnega dela dokumentacije v zvezi z oddajo javnega naročila glede na posamezni paket./ When setting the price, the tenderer has taken into consideration all requirements and the entire contents in the technical part of the procurement documents, according to each package.

Payment Structure													
	LTSA		OPM						APM			DCS Migration	
Year	Fixed Annual Fee	Mobilization Payment	Combustion Optimization	Sootblowing Optimization	Plant Efficiency Adisor	Fuel Management Advisor	Generator Health Monitoring	Valves and Actuator Health Monitoring	Initial upfront licensing fees	Implementation Cost	Annual licensing fee	Lump Sum	Total
1													
2													
3													
4													
5													
6													
7													
8													
9													
10													
11													
12													
13													
<b>Total</b>													€ -

Notes:

1) Pricing is in real values, nominal values will differ based upon the contractual escalation mechanism.

### TENDERER'S STATEMENT

1. We hereby confirm to fully agree with the provisions and conditions stated in the procurement documents for the Supply of goods and services for long term service agreement, operational performance modules (OPM), distributed control system (DCS) migration and asset performance management (APM) software and implementation services for Unit 6.
2. With this request to participate/this tender, our offer is fully in accordance with the procurement documents as referred to in the previous Item.
3. In the event of conclusion of a contract, we undertake to perform the supply of goods/services for the present public contract within agreed time limits stipulated in the Contracting Authority's terms and conditions.
4. Our request to participate/our tender shall be valid 360 days from the date of expiry of the time limit for the submission of requests to participate/tenders and shall remain binding and available to the Contracting Authority at any time prior to expiry of this period.
5. The request to participate/the tender has been submitted as a whole, together with the tender documents, other submitted information and declarations required in the procurement documents, and will, together with your decision on the selection of the most successful tenderer and with the potential subsequent documents regarding coordination of requests to participate/tenders, constitute a basis for the contract.
6. We carefully examined the procurement documents available to the Contracting Authority, we noted all restrictions and conditions of supply of goods/provision of service and took them into consideration when preparing the request to participate/the tender.
7. We hereby declare that all statements provided in the request to participate/the tender are true, authentic, and reflecting the actual situation. If, during the duration of the public procurement, any event affecting the reported actual situation should occur, we will immediately notify the Contracting Authority thereof.
8. We hereby declare that for the duration of the entire procedure, we meet all the requirements of the Slovenian legislation and acknowledge the jurisdiction of a Slovenian court in case of any disputes related to tender process.
9. We hereby declare that we have sufficient capacities for the supply of goods/provision of services for the present public contract. We also declare that our financial situation is suitable for the supply of goods/provision of services for the present public contract, and that we have the ability to provide the specified goods/services for the public contract.
10. We hereby declare that we fully agree with the text of the draft contract enclosed to these procurement documents.

Place and date: .....

The tenderer confirms the above statements by submitting an ESPD form.

**INFORMATION ON THE TENDERER/CO-TENDERER**

TENDERER

Full company name:	
Abbreviated company name:	
Head office:	
Legal representative:	
Authorised officer:	
Number of employees:	
Identification/tax number:	
Company identification number:	
Current account No.:	
Phone:	
Fax:	
Contact person responsible for drawing up and coordination of the request to participate/the tender:	
E-mail:	
Authorised person to negotiate and sign the contract:	

CO-TENDERER

Co-tenderer's full name:	
Co-tenderer's abbreviated name:	
Head office:	
Legal representative:	
Authorised officer:	

*THE REQUEST TO PARTICIPATE/THE TENDER*

Request to participate/Tender No.	
Time validity of the request to participate/the tender:	

Place and date: .....

The tenderer confirms the above statements by submitting an ESPD form.

**APPOINTMENT OF THE PERSON RESPONSIBLE FOR DRAWING UP THE REQUEST TO PARTICIPATE/THE TENDER**

The tenderer .....

shall hereby appoint:

<b>Name and surname</b>	
<b>Education</b>	
<b>Company position</b>	
<b>Address</b>	
<b>Telephone</b>	
<b>E-mail</b>	

as the person responsible for drawing up the request to participate/the tender in accordance with the procurement documents and authorised to represent us in all matters relating to the request to participate/the tender until signing the contract.

Place and date: .....

The tenderer confirms the above statements by submitting an ESPD form.

COMPANY  
COMPANY  
COMPANY

**STATEMENT OF JOINT REQUEST TO PARTICIPATE/JOINT TENDER**

In relation with the request to participate/the tender for the present public contract, we hereby declare the following:

- we act jointly in the request to participate/the tender and execution of this contract,
- with this statement, we authorise ..... (name, company) to act as the leading company/to represent us against the Contracting Authority, and
- we are jointly and severally liable to the Contracting Authority for the execution of the present public contract.

Leading company ..... legal representative

Member ..... legal representative

Member ..... legal representative

Member ..... legal representative

**In the event of a joint request to participate/joint tender, a legal act on the joint performance of the contract must be enclosed.**

Place and date: .....

The economic operator authorising the leading partner confirms the above statements by submitting an ESPD form.

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APPENDIX No. 7  
(the tenderer shall circle as appropriate)

**LIST OF SUBCONTRACTORS**

We, the tenderer, hereby declare (circle a) or b) as appropriate)

a) to perform the present public contract with the following subcontractors:

Subcontractor's name	Address	Type of works	Value of works* (excl. VAT)	Implementation deadline	Share in the tendered value of works

*\* The tenderer shall submit this form when submitting the request to participate (1st stage of the procedure); in the column "Value of works"; the tenderer shall enter the share of works/services (in %) to be performed by the declared subcontractor. The tenderer shall also submit this form when submitting the tender (2nd stage of the procedure); in the column "Value of works"; the value of works/services must be entered.*

We hereby declare the following:

- during the performance of the public contract, we will inform the Contracting Authority of any potential changes to the information referred to in Item a) and send information on new subcontractors which the main contractor intends to subsequently include in the performance of the public contract no later than five days after the change has occurred.

Place and date: .....

The tenderer confirms the above statements by submitting an ESPD form.

b) We hereby declare not to act with any subcontractor.

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We are acquainted with the fact and agree that if the tenderer fails to declare all subcontractors, the Contracting Authority for this reason has the right to cancel the concluded contract on grounds of default if it subsequently finds that the tenderer acts with subcontractors, or with subcontractors who were not declared, although a subcontracting relationship was already established at the time of the submission of the request to participate/the tender.

Place and date: .....

The tenderer confirms the above statements by submitting an ESPD form.

*APPENDIX No. 7a:*

*(to be filled in and submitted only in the event of joint operation with subcontractors).*

### **SUBCONTRACTOR INFORMATION**

Contracting Authority: Termoelektrarna Šoštanj d.o.o., Cesta Lole Ribarja 18, 3325 Šoštanj

Subject-matter of the request to participate/the tender: \_\_\_\_\_

#### **SUBCONTRACTOR**

Full company name:	
Abbreviated company name:	
Head office:	
Legal representative:	
Authorised officer:	
Number of employees:	
Identification/tax number:	
Company identification number:	
Bank account No.:	
Telephone:	
Fax:	
Contact person responsible for drawing up and coordination of the request to participate/the tender:	
E-mail:	
Authorised person to negotiate and sign the contract:	

Place and date: .....

The tenderer confirms the above statements by submitting an ESPD form.

*In the case of multiple subcontractors, the information must be submitted separately for each subcontractor.*

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*APPENDIX No. 8*

*(to be filled in and enclosed only in the case of an enclosed subcontractor's request for direct payment)*

Contractor: \_\_\_\_\_ (*name and address of the contractor*)

Subcontractor: \_\_\_\_\_ (*name and address of the subcontractor*)

**CONSENT OR AUTHORISATION OF THE CONTRACTOR AND SUBCONTRACTOR**

For the subject-matter of the public contract » \_\_\_\_\_ «  
**the contractor hereby authorises the Contracting Authority and declares the following:**

- the contractor authorises the Contracting Authority that in the event that the contractor is selected as the most advantageous tenderer, the Contracting Authority will, based on a confirmed invoice or situation report, effect payments for the work rendered by subcontractors directly to subcontractors,
- the contractor declares that in the event of being selected in the public procurement procedure, the contractor will assume full responsibility for the works of subcontractors listed in Annex No. 6,
- the contractor declares to enclose to its invoice or situation report the invoices or situation reports issued by its subcontractors and previously confirmed by the contractor.

**We, the subcontractor, hereby consent that:**

- the Contracting Authority shall pay our claims on the contractor (the tenderer for whom we will act as subcontractor) arising from works carried out in performing the subject-matter of the contract, directly to our bank account and on the basis of submitted situation reports previously confirmed by the contractor and enclosed to the invoices issued by the contractor to the Contracting Authority.

Place and date:

Signature of the contractor's legal representative:

Place and date:

Signature of the subcontractor's legal representative or authorised person:

*In the case of multiple subcontractors, the information must be submitted separately for each subcontractor.*

**STATEMENT OF PARTICIPATION OF NATURAL AND LEGAL PERSONS  
IN THE TENDERER'S OWNERSHIP**

In relation to the public contract » \_\_\_\_\_ «  
published on the public procurement portal on \_\_\_\_\_, publication No.  
\_\_\_\_\_, and in accordance with Article 14 Paragraph 6 of the Integrity and  
Prevention of Corruption Act (ZintPK) of Republic of Slovenia, we hereby provide

**STATEMENT OF PARTICIPATION OF NATURAL AND LEGAL PERSONS IN THE OWNERSHIP  
OF THE ECONOMIC OPERATOR**

The undersigned legal representative of the economic operator (title/name of the economic operator,  
company identification number, address): \_\_\_\_\_

Direct and indirect participation in the ownership of the economic operator:

1) Participation of **natural persons**

name and surname	address	ownership share

2) Participation of **legal persons**<sup>2</sup>

company name	registered office	company identification number	ownership share	owners of the business interests/ shares of the company

3) Participation **of silent partners in the economic operator and in the economic operator's owners**

company name/name and surname	registered office/address	company identification number	ownership share

<sup>2</sup> For a public limited company, only those shareholders shall be listed who indirectly or directly hold more than 5% of shares or have more than 5% level of participation in the founders' rights, management or capital of the public limited company.

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4) **Participation of economic operators associated with the economic operator or the economic operator's owners – associated companies in the economic operator or the economic operator's owners**<sup>3</sup>

company name	registered office	company identification number	ownership share

We, the economic operator, agree that the Contracting Authority may upon request submit this Statement and the information contained herein to the Commission for the Prevention of Corruption in accordance with Article 14 Paragraph 6 of ZintPK. The Contracting Authority shall be obligated to protect the Statement in accordance with the Personal Data Protection Act.

The economic operator guarantees that the information provided in this statement are up-to-date, correct and accurate. If the economic operator submits a false declaration or provides false information regarding the above facts, this shall result in the contract/framework agreement being declared null and void.

The economic operator shall explicitly guarantee to have listed in the statement all the natural persons participating, either directly or indirectly, in the ownership of the economic operator.

Name and surname: \_\_\_\_\_

Company function: \_\_\_\_\_

Signature: \_\_\_\_\_

On \_\_\_\_\_

<sup>3</sup> For definition of associated companies, see Article 527 of the Companies Act (Official Gazette of RS, No. 65/2009-ZGD-1-UPB1 with amendments).

**POTRDILO  
O OPRAVLJENEM OGLEDU**

**(Certificate of Performed Mandatory Visit to the Site)**

Naročnik Termoelektrarna Šoštanj d.o.o. (TEŠ) potrjuje, da je podjetje/ponudnik \_\_\_\_\_  
dne \_\_\_\_\_ ob \_\_\_\_\_ uri opravil ogled objekta in naprav, za dobavo blaga in izvedbo storitev,  
ki so predmet javnega naročila » \_\_\_\_\_«.

*(Contracting Authority Šoštanj Thermal Power Plant d.o.o. (TEŠ) confirms that the company/tenderer  
\_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_ visited the facility and the plants where  
supply of goods and services will be carried out, which are the subject of the public contract  
" \_\_\_\_\_ ".)*

Podpisi udeležencev ogleda za naročnika TEŠ:  
*(Participants signatures of the visit to the site/inspection of the facility and the plants for Contracting  
Authority):*

Ime in Priimek <i>(Name and Surname)</i>	Datum <i>(Date)</i>	Podpis <i>(Signature)</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Podpisi udeležencev ogleda podjetja/ponudnika \_\_\_\_\_:  
*(Participants signatures of the visit to the site/inspection of the facility and the plants for the  
company/tenderer \_\_\_\_\_):*

Ime in Priimek <i>(Name and Surname)</i>	Datum <i>(Date)</i>	Podpis <i>(Signature)</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____

## Draft Tender Security

[Guarantor Letterhead (bank) or SWIFT code]

**To:** TERMOELEKTRARNA ŠOŠTANJ d.o.o., Cesta Lole Ribarja 18, 3325 Šoštanj, ID number: 5040388000

**Date:** [date]

**Number:** [guarantee number]

**Guarantor:** [name and address of the bank at the place of issuance]

**Applicant:** [name and address of the entity procuring the guarantee, i.e tenderer in the public procurement procedure]

**Beneficiary:** TERMOELEKTRARNA ŠOŠTANJ d.o.o., Cesta Lole Ribarja 18, 3325 Šoštanj, ID number: 5040388000

### Underlying Relationship:

Tenderer's tender submitted in the public procurement procedure published at the Public Procurement Portal of the Republic of Slovenia on [●] under no. [●] and in the Appendix to the Official Journal of the European Union dated [●] under no. [●] (internal label of the public procurement procedure [●]).

**Guarantee Amount and currency:** EUR [●] (in words [●] euro).

**Any documents required in support of demand for payment, apart from the supporting statement explicitly required in the text below:** None.

**Language of any so required documents:** Slovenian.

**Form of Presentation:** In paper form (hard copy) by registered mail (or any other form of express delivery) or in electronic form using the SWIFT system to the address [SWIFT address of the Guarantor].

**Place for Presentation:** [the Guarantor to enter the address of the branch where the paper presentation is to be made or, in the case of an electronic presentation, an electronic address such as the Guarantor's SWIFT address]

Notwithstanding the above, the submission of paper documents (hard copies) may be executed at any branch of the Guarantor on the territory of the Republic of Slovenia.

**Date of Validity:** [date]

**The party liable for the payment of any charges:** [Tenderer]

The [Guarantor] hereby irrevocably and unconditionally undertakes to pay the Beneficiary any amount up to the Guarantee Amount (i.e. EUR [●]) upon presentation of the Beneficiary's first written demand within five (5) business days from its receipt.

The Beneficiary's demand shall be in the Form of Presentation indicated above and, if in paper form, signed by an authorised signatory. The demand shall be supported by the Beneficiary's statement (either within the demand itself or in a separate document accompanying or referring to the demand) that the [Tenderer] has withdrawn its tender following the submission of the final tender within the period of its validity or that the [Tenderer] has unacceptably altered its tender during the term of its validity or that the [Tenderer], having been notified of the acceptance of his Tender within the period of Tender validity, has failed or refused to sign the Contract or that the [Tenderer] has failed or refused to furnish the

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performance securities in accordance with the Tender documents or that the [Tenderer] has stated untrue or incorrect data in his request to participate or Tender.

Any demand under this Guarantee must be received on or before the Date of Validity at the Place of Presentation.

Any disputes relating to this Guarantee shall be resolved by the competent court in Ljubljana, Slovenia, under the Slovenian law, without recourse to its conflict of law rules.

This Guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 revision, ICC publication No. 758.

Guarantor

[stamp and signature]

**Draft Performance Security**

[Guarantor Letterhead (bank) or SWIFT code]

**To:** TERMOELEKTRARNA ŠOŠTANJ d.o.o., Cesta Lole Ribarja 18, 3325 Šoštanj, ID number: 5040388000

**Date:** [date]

**Number:** [guarantee number]

**Guarantor:** [name and address of the bank at the place of issuance]

**Applicant:** [name and address of the entity procuring the guarantee, i.e the Contractor]

**Beneficiary:** TERMOELEKTRARNA ŠOŠTANJ d.o.o., Cesta Lole Ribarja 18, 3325 Šoštanj, ID number: 5040388000

**Underlying Relationship:** [Contractor]'s obligations arising out of [final title of the Contract].

**Guarantee Amount and currency:** EUR [•] (in words [•] euro).

**Any documents required in support of demand for payment, apart from the supporting statement explicitly required in the text below:** None.

**Language of any so required documents:** Slovenian.

**Form of Presentation:** In paper form (hard copy) by registered mail (or any other form of express delivery) or in electronic form using the SWIFT system to the address [SWIFT address of the Guarantor].

**Place for Presentation:** [the Guarantor to enter the address of the branch where the paper presentation is to be made or, in the case of an electronic presentation, an electronic address such as the Guarantor's SWIFT address]

Notwithstanding the above, the submission of paper documents (hard copies) may be executed at any branch of the Guarantor on the territory of the Republic of Slovenia.

**Date of Validity:** [15 years from signing of the Contract + 30 days ]

**The party liable for the payment of any charges:** [Contractor]

The [Guarantor] hereby irrevocably and unconditionally undertakes to pay the Beneficiary any amount up to the Guarantee Amount (i.e. EUR [•]) upon presentation of the Beneficiary's first written demand within five (5) business days from its receipt. The Beneficiary's demand shall be in the Form of Presentation indicated above and, if in paper form, signed by an authorised signatory. The demand shall be supported by the Beneficiary's statement (either within the demand itself or in a separate document accompanying or referring to the demand) that the [Contractor] has failed to fulfil the terms and conditions of the [Contract], specifying the [Contractor]'s breach

Any demand under this Guarantee must be received on or before the Date of Validity at the Place of Presentation.

Any disputes relating to this Guarantee shall be resolved by the competent court in Ljubljana, Slovenia, under the Slovenian law, without recourse to its conflict of law rules.

This Guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 revision, ICC publication No. 758.

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Guarantor

[stamp and signature]

### **Draft Performance Guarantee Security**

[*Guarantor Letterhead (bank) or SWIFT code*]

**To:** TERMOELEKTRARNA ŠOŠTANJ d.o.o., Cesta Lole Ribarja 18, 3325 Šoštanj, ID number: 5040388000

**Date:** [date]

**Number:** [guarantee number]

**Guarantor:** [name and address of the bank at the place of issuance]

**Applicant:** [name and address of the entity procuring the guarantee, i.e the Contractor]

**Beneficiary:** TERMOELEKTRARNA ŠOŠTANJ d.o.o., Cesta Lole Ribarja 18, 3325 Šoštanj, ID number: 5040388000

**Underlying Relationship:** [Contractor]'s damages payment (or related) obligations arising out of [relevant sections of the Contract].

**Guarantee Amount and currency:** EUR 4,000,000.00 (in words: four million euro).

**Any documents required in support of demand for payment, apart from the supporting statement explicitly required in the text below:** None.

**Language of any so required documents:** Slovenian.

**Form of Presentation:** In paper form (hard copy) by registered mail (or any other form of express delivery) or in electronic form using the SWIFT system to the address [SWIFT address of the Guarantor].

**Place for Presentation:** [the Guarantor to enter the address of the branch where the paper presentation is to be made or, in the case of an electronic presentation, an electronic address such as the Guarantor's SWIFT address]

Notwithstanding the above, the submission of paper documents (hard copies) may be executed at any branch of the Guarantor on the territory of the Republic of Slovenia.

**Date of Validity:** [10 years from signing of the Contract + 30 days]

**The party liable for the payment of any charges:** [Contractor]

The [Guarantor] hereby irrevocably and unconditionally undertakes to pay the Beneficiary any amount up to the Guarantee Amount (i.e. EUR 4 million) upon presentation of the Beneficiary's first written demand within five (5) business days from its receipt. The Beneficiary's demand shall be in the Form of Presentation indicated above and, if in paper form, signed by an authorised signatory. The demand shall be supported by the Beneficiary's statement (either within the demand itself or in a separate document accompanying or referring to the demand) that the [Contractor] has failed to fulfil its damages payment obligation (or related obligation) under or in connection with [relevant sections of the Contract].

Any demand under this Guarantee must be received on or before the Date of Validity at the Place of Presentation.

Any disputes relating to this Guarantee shall be resolved by the competent court in Ljubljana, Slovenia, under the Slovenian law, without recourse to its conflict of law rules.

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This Guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 revision, ICC publication No. 758.

Guarantor

[stamp and signature]