

Ref. No.: 285-42/2-2026
Date: 19. 1. 2026

**THIS DOCUMENT IS FOR INFORMATIONAL PURPOSES ONLY – LEGALLY BINDING
DECISION IS DOCUMENT IN SLOVENIAN LANGUAGE ENCLOSED TO THIS
DOCUMENT**

Contracting Authority, Slovenia Control, Slovenian Air Navigation Services, Limited, Zg. Brnik 130n, 4210 Brnik - aerodrome, Slovenia (hereinafter: Contracting Authority) in the public procurement procedure conducted under the open procedure "Purchase of a New PSR Mode-S Radar", procurement procedure No. 285-42, notice number on the Public Procurement Portal JN006970/2025-EUe17/0 and in the Official Journal of the European Union (TED) No. 170/2025; 580172-2025 (hereinafter: the Public Procurement), on the basis of Article 90 of the Public Procurement Act (Official Gazette of the Republic of Slovenia, No. 91/15, as amended; hereinafter: ZJN-3) and the provisions of the tender documentation, hereby adopts the following:

DECISION ON NON-AWARD OF THE PUBLIC CONTRACT

The public contract "Purchase of a New PSR Mode-S Radar", procurement procedure No. 285-42, shall not be awarded, and consequently both submitted tenders are rejected.

Explanation:

I.

On the basis of the Public Procurement Act (ZJN-3) and the Decision on the Commencement of the Public Procurement Procedure No. 285-42/2-2025 of 4 September 2025, the contracting authority initiated a public procurement procedure under the open procedure. In the tender documentation, the contracting authority laid down the conditions, technical requirements and evidence that tenderers are required to submit in order for their tenders to be considered admissible.

By the deadline for the submission of tenders, i.e. 4 November 2025 at 11:00, the contracting authority received the following tenders for the performance of the Public Procurement:

- **Indra Sistemas**, Avenida de Bruselas nº 35, 28108 Alcobendas, Spain (hereinafter: INDRA),
- **Thales LAS France**, 2 avenue Gay Lussac, 78990 Élancourt, France (hereinafter: THALES).

II.

After the expiry of the deadline for the submission of tenders and during the phase of examination and verification of tenders, the Contracting Authority established that circumstances had arisen which significantly affect the feasibility of performing the subject-matter of the public contract under the conditions as defined in the tender documentation.

III.

The main precondition for commencing the installation of the equipment which constitutes the subject-matter of the present public procurement is that all permits and consents for the installation of the equipment at either the primary or the secondary envisaged location are issued to the contracting authority. The contracting authority commenced the process of obtaining the permits and consents even prior to the initiation of the present public

procurement procedure and, in accordance with the envisaged timetable, intended to obtain all required permits and consents no later than during the course of the public procurement procedure or by the adoption of the decision on the award of the contract. However, as of the date of adoption of this decision, not all consents and/or permits required for the installation of the equipment have been issued. The acquisition of the said consents and/or permits does not fall within the exclusive sphere of the contracting authority, but depends on the decisions and procedures of the owner and/or operator of the locations envisaged for the installation of the equipment. Consequently, at this point in time the contracting authority cannot determine with certainty the timeframe within which all permits and consents will be obtained and the installation of the equipment will actually become possible.

In view of the above, the deadlines laid down in the tender documentation and in the Technical Specifications (document No. 285-42/4-2025 of 8 July 2025) are objectively unattainable, or the subject-matter of the contract cannot be performed under the conditions as set out in the tender documentation.

IV.

In the Technical Specifications and the requirements of the Contracting Authority (document No. 285-42/4-2025 of 8 July 2025), sub-point 2.6.9.1.1, requirement code ANSP-CON-SHA-06430, stipulates the final delivery deadline, pursuant to which the contractor must deliver the radar system and all of its components “no later than one year after signing the contract, but no later than in the beginning of September 2026.”

Furthermore, the said deadline (September 2026) is substantively and temporally directly linked to the fulfilment of a larger number of technical requirements laid down in the Technical Specifications, namely the requirements with the following codes:

ANSP-TEN-SHA-00990, ANSP-CON-SHA-01170, ANSP-CON-SHA-08150, EMS-C03-SYS-SHA-03510, EMS-C03-SYS-SHA-03560, EMS-C05-SYS-SHA-06250, EMS-C05-SYS-SHA-06360, EMS-C05-SYS-SHA-06520, EMS-C05-SYS-SHA-06530, EMS-C05-TEN-SHA-06600, EMS-C05-SYS-SHA-06770, EMS-C05-SYS-SHA-06850, EMS-C07-CON-SHA-07950, ANSP-SYS-SHA-00010, ANSP-CON-SHA-00730, ANSP-SYS-SHA-01370, ANSP-SYS-SHA-03420, ANSP-CON-SHA-04330, ANSP-CON-SHA-04830, ANSP-TEN-SHA-05040, ANSP-TEN-SHA-06600, ANSP-CON-SHA-07080, ANSP-CON-SHA-07940 and ANSP-CON-SHA-08210.

In view of all the foregoing, under the given circumstances the contracting authority cannot determine the date on which it will be possible to commence the installation of the radar at the primary or secondary location and, consequently, cannot ensure a realistic delivery deadline under the conditions laid down in the tender documentation, in particular with regard to the requirement that the subject-matter of the contract must be delivered (installed) no later than the beginning of September 2026. Under the given circumstances, awarding the contract would lead to the conclusion of a contract whose performance under the conditions laid down in the tender documentation cannot be ensured.

The contracting authority further emphasises that, in accordance with the established practice of the National Review Commission (hereinafter: DKOM), a public contract must not be awarded if the contracting authority establishes that the tender conditions or technical specifications do not allow for a lawful and actually feasible implementation of the subject-matter of the contract. In its decisions, DKOM has repeatedly stressed that a contracting authority is obliged to suspend the procedure or refrain from awarding the contract where its award would be based on objectively unfeasible or unrealistic requirements, as this would constitute a breach of the fundamental principles of public procurement, in particular the principles of transparency, proportionality and economy.

V.

The final delivery deadline, i.e. the beginning of September 2026, is objectively unfeasible not only due to the currently unresolved consents and permits required for the installation of the equipment, but also even under the assumption that all procedures related to the acquisition of the consents and permits for the installation of the equipment at the primary or secondary location were completed within the shortest possible time. The said final delivery deadline does not take into account the actual scope and complexity of the delivery, integration, testing and commissioning of the radar system, as arising from the contracting authority's technical requirements, which are interrelated and time-dependent.

On the basis of all the above, the contracting authority assessed that awarding the public contract with the final delivery deadline of September 2026 would entail the assumption of obligations which, already at the tender evaluation stage, can reasonably and objectively be expected not to be capable of fulfilment. Such an award of the contract would also be contrary to the positions of the National Review Commission (DKOM), according to which a contracting authority must not insist on tender conditions which, in the course of the procedure, prove to be unrealistic or unfeasible, but must conclude the procedure without awarding the contract.

In view of the above, the contracting authority finds that the reasons for the non-award of the public contract are not merely temporary or remediable in nature, but stem from the substantive inadequacy of the stipulated delivery deadline in relation to the subject-matter of the contract. Therefore, the decision on the non-award of the public contract is based on objective, verifiable and documented reasons, in compliance with ZJN-3 and the established practice of the National Review Commission (DKOM).

VI.

The contracting authority specifically emphasises that the decision on the non-award of the public contract was not adopted arbitrarily, capriciously or without an objective basis, but on the basis of concrete factual findings. In the course of the procedure, the contracting authority did not amend the award criteria, technical specifications or conditions for participation, nor did it interfere with the equal treatment of tenderers, but established that the existing tender documentation does not allow for the feasible performance of the contract.

The decision on the non-award of the public contract was likewise not adopted with the intention of unjustifiably interfering with the legal position of tenderers or avoiding the award of the contract, but with the aim of preventing the conclusion of a contract which, already at the decision-making stage, can reasonably and justifiably be expected not to be capable of performance in accordance with the tender conditions. Such a decision is consistent with the principles of transparency, proportionality and economy laid down in ZJN-3 and with the positions of the National Review Commission (DKOM), according to which a contracting authority must not award a contract if it establishes that its performance would be objectively unfeasible or would lead to a legally and factually uncertain contractual relationship.

VII.

In several of its decisions, the National Review Commission (DKOM) has already stated that contracting authorities enjoy wide discretion when adopting a decision to terminate a public procurement procedure without selecting the most economically advantageous tender or when initiating a new procedure, and that public procurement law does not require that contracting authorities may adopt such a decision only in exceptional cases or on the basis of particularly justified reasons. A contracting authority may always discontinue a public procurement procedure and conclude it without selecting the most economically advantageous tender, even where the impossibility of selection arose due to an error on

the part of the contracting authority, provided that such a decision is adopted in compliance with the fundamental principles of EU public procurement law, in particular the principle of equal treatment.

On the basis of all the foregoing, in this reasoning the contracting authority finds that the circumstances in the present case justify the rejection of all tenders pursuant to the fifth paragraph of Article 90 of ZJN-3, on the grounds that performance of the contract under the conditions laid down in the tender documentation is no longer possible. The contracting authority will conduct a new public procurement procedure in which the deadlines for the performance of the contract will be defined in such a manner that the contract's performance within those deadlines will also be objectively feasible.

This decision is hereby fully reasoned.

Legal Notice:

According to the Legal Protection in Public Procurement Procedures Act (Official Gazette of RS, no. 43/11 et seq; hereinafter: ZPVPJN), it is possible to file a request for audit of the public procurement procedure against this contract award decision. A request for audit must contain all elements listed in paragraph 1, Article 15 of the ZPVPJN. A request for audit shall be filled within 8 (eight) working days after the receipt of this decision. The request for audit shall be submitted by using information system eRevizija.

A confirmation of payment of the stipulated fee in the amount of 1.000,00 EUR, shall be submitted together with the request for audit. This fee shall be remitted to the bank account number SI56 0110 0100 0358 802, open at the Bank of Slovenia, Slovenska 35, 1505 Ljubljana, Slovenija, SWIFT BS LJ SI 2X, reference no. 11 16110-7111290-00697025.

Slovenia Control, Slovenian Air Navigation Services, Limited
Rok Marolt
Chief Executive Officer

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Served:

- in accordance with the tenth paragraph of Article 90 of the Public Procurement Act