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**THIS TRANSLATION IS UNOFFICIAL AND DOES NOT REPRESENT A LEGAL  
BINDING TENDER DOCUMENTATION**

## **TENDER DOCUMENTATION**

**CONSULTING SERVICES, SUPPORT AND REVISION FOR AWARDING RADIO  
FREQUENCIES IN THE 800 MHz, 900 MHz, 1800 MHz, 2100 MHz AND 2600 MHz  
FREQUENCY BANDS**

### **C O N T E N T**

**GENERAL PART:**

- INSTRUCTIONS TO TENDERERS FOR OFFER PREPARATION

**SPECIAL PART:**

- Offer (Form-1)
- Pro forma invoice (Form-2)
- Contract Sample (Form-3)
- Declaration of Suitability (Form 4)
- Authorization for the acquisition of personal data (Form 5)
  
- TECHNICAL SPECIFICATIONS



# INSTRUCTIONS TO TENDERERS FOR OFFER PREPARATION

## 1. GENERAL

### 1.1. Information about the Contracting Authority

Agencija za pošto in elektronske komunikacije Republike Slovenije, Stegne 7, 1000 Ljubljana, Slovenija.

### 1.2. Type of procedure

The Contracting Authority will conduct open procedure in accordance with the Article 25 of the Public Procurement Act (Official Gazette of the Republic of Slovenia, No. 12/2013 – UPB5; hereinafter: ZJN-2).

### 1.3. Subject of the Public Procurement

Subject of the Public Procurement are consultation services, support and revision for awarding radio frequencies in the 800 MHz, 900 MHz, 1800 MHz, 2100 MHz and 2600 MHz frequency bands. Public Procurement is devoted into three different sets:

- Set A
- Set B
- Set C

The subject of this procedure is described in detail in the Technical Specifications, which are part of this Tender Documentation.

### 1.4. The Right to participate

Tendere could be any legal or natural person who is registered for the activity that is the subject of this Public Procurement. Each Tenderer shall submit an offer for concrete consultant – criteria from chapter 2.15. in this Tender Documentation are related to the Consultant and not for the Tenderer.

Tenderes may submit onyl one bid that can contain different consultants for each set (criteria from chapter 2.15. in this Tender Documentation will be evaluated for each consultant separately). One consultant will be selected for each set.

#### 1.4.1. Foreign Tenderers

Tenderers located in a foreign country have to fulfil the same conditions as Tenderers based in the Republic of Slovenia.

Tenderers that are not established in Slovenia, shall submit proof of suitability referred to in chapter 2.12.3. of this Instructions.

Where the country in which the Tenderer is established does not issue documents required by chapters 2.12.1., 2.12.2. and 2.12.3. of this Instructions, the Contracting Authority may accept a declaration under oath by witnesses or a declaration under oath by the Tenderer's legal representative. Such declaration shall be made before a competent judicial or administrative authority, a notary or a competent professional or legal entity in the country where the Tenderer is established.

#### 1.4.2. Acting with Subcontractors

The Tenderer may itself carry out the public Procurement in full or performed by Subcontractors. In the case of the Contract with Subcontractors, **the Tenderer shall indicate all Subcontractors (name,**



**full address, registration number, VAT number and bank account) and part of the Contract, which will be performed by a single Subcontractor (item, quantity, value, location and time of execution of these works).** The above Information shall be provided by the Tenderer in their own form.

The Tenderer is aware that direct payments to Subcontractors by the Contracting Authority are in accordance with the seventh paragraph of Article 71 of the ZJN-2. For the implementation of direct payments the Tenderer shall attach to his invoice invoices or situations of Subcontractors, which had previously been approved by the Tenderer.

**The Tenderer shall in his Offer authorize the Contracting Authority to make direct payments to the Subcontractor on the basis of the invoice, while the Subcontractor is obliged to give his consent for direct payments.**

The Tenderer performing the Contract with one or more Subcontractors, shall have at the conclusion of the Contract with the Contracting Authority or during the implementation of the Contract, Contracts with Subcontractors. The Subcontractor shall provide the Contracting Authority a copy of the Contract he entered into with his customer (Tenderer), within five days of signing this Contract. The Contracting Authority shall immediately upon receipt of the copy of the Contract determine whether the Tenderer's authorization of the previous paragraph and the Subcontractor agreement in the previous paragraph has been submitted. If there is no authorization or consent, the Tenderer or Subcontractor shall be immediately invited to submit the document within five days of receipt of the notice.

If the Subcontractor is replaced after the conclusion of the Contract with the successful Tenderer, or if Tenderer enters into a Contract with a new Subcontractor, the selected Tenderer shall within 5 days after the change submit to the Contracting Authority:

- A statement that all undisputed obligations to the original Subcontractor have been settled, if the Subcontractor was replaced,
- Authorization for payment for the work undertaken or supplies directly to the new Subcontractor and
- Consent of the new Subcontractor for direct payment.

When a Tenderer intends to perform the Contract with the Subcontractor, the conditions referred to in point 12.1.3. of the Chapter 2. of this Instructions shall be fulfilled by the Subcontractor involved in the execution of the Contract.

### **1.4.3. Acting as a Joint Venture or a Consortium**

Joint Ventures or Consortiums are not allowed.

### **1.4.4. Capacities of other legal entities**

The Tenderer may, where appropriate and for a particular Contract, rely on the capacities of other legal entities, regardless of the legal nature of the links which it has with them. In this case it shall prove to the Contracting Authority that it will have at its disposal the resources necessary for performance of the Contract. An agreement to that effect signed between such entities may be considered as such proof. If the Tenderer fails to provide the required proof, the Contracting Authority may exclude his Offer.

### **1.5. Additional Information for Tenderers**

Information about the content of Tender documents can only be requested in writing through the Procurement portal<sup>1</sup>. Information will be submitted through the Procurement portal.

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<sup>1</sup> <http://www.enarocanje.si>



If the Tenderer in connection with the Tender documents, or in connection with the preparation of the Offer requests any further clarification, it shall apply up to and including on **10.05.2013**.

The Contracting Authority is obliged to provide additional explanations relating to the Tender documents through the Procurement portal no later than six days prior to the deadline for submission of Offers, provided that the request was issued on time.

#### **1.6. Amendments of Tender documents**

The Contracting Authority reserves the right to amend or supplement the Tender documents. In the event that the Contracting Authority shall modify or amend the Tender documents during the period for submission of Offers, this will be posted on the Procurement portal.

After the expiry of the time limit for the receipt of Offers the Contracting Authority may no longer amend the Tender documents.

In the event of the Contracting Authority shall modify or amend the Tender documents five or less days prior to the deadline for submission of Offers, the deadline for submission of Offers will be extended accordingly to the scope and content of changes.

With the postponement of the deadline for receipt of Offers, the rights and obligations of the Contracting Authority and the Tenderer bind to the new deadlines, which arise from the extended deadline for submission of offers.

#### **1.7. Confidentiality of data and process**

Data justifiably classified by Tenderer as confidential, will be used only for the purpose of the Public Procurement and will not be accessible to anyone outside the authorized persons of the Contracting Authority responsible for the implementation of the public Procurement procedure. The Tenderer may mark the documents that contain personal information, but are not included in any public register or otherwise publicly available and other business information in accordance with Paragraph 39 and 40 of the Companies Act-1 as confidential information. In spite of this Contracting Authority points to take account of the principle of transparency in Public Procurement that data affecting the choice cannot be treated as confidential.

Contracting Authority will treat as confidential those documents in Offer documentation which will have large letters "ZAUPNO" (meaning "too late") written in the upper right corner and under this sign the signature of the person signing the Offer. If only a certain piece of information in the document should be confidential this part should be underlined in red, in line along the right side should be written "ZAUPNO" (meaning "too late"). Contracting Authority is not responsible for the confidentiality of the data which will not be marked as stated above.

## **2. OFFER**

### **2.1. Language of the Offer**

The public Procurement procedure is conducted in the Slovene language.

The Offer shall be drafted in Slovene or English language.

All evidence of suitability shall be submitted in the Offer documentation with the original documents in its original language as well as its Slovene or English translation.

If the Contracting Authority, during the revision and evaluation of Offers, deems it necessary that the part of Offer documents, which is not submitted in the Slovene language, should be officially translated



into the Slovene language, it may require the Tenderer to do so and set an appropriate time limit. The translation costs shall be borne by the Tenderer.

In the case of a dispute, the Offer or its official translation into the Slovene language shall apply and, where Tender documents, or a part thereof, are in a foreign language, the language concerned shall prevail.

## **2.2. Complete Offer**

A complete Offer is an Offer that is received on time, is formally complete, admissible, properly prepared and appropriate.

When preparing the Offer and filling out forms, the Tenderer shall follow the instructions listed on each form.

Where the Contracting Authority establishes that an Offer is formally incomplete, it must admit and enable the amendment of such Offer in accordance. Where the tenderer fails to make appropriate amendments within the time limit set by the Contracting Authority, the Contracting Authority must eliminate such Offer.

The Offer shall include all the documents listed below:

- filled-in and signed Form 1: Offer;
- filled-in and signed Form 2: Pro forma Invoice;
- filled-in and signed Form 3: Contract Sample;
- evidence in accordance with Chapter 2.12. of this Instructions;
- filled-in and signed Form 4: Declaration of Suitability;
- filled-in and signed Form 5: Authorization for the acquisition of personal data (in case the Tenderer is established in Slovenia);
- List of Subcontractors stating the particulars referred to Chapter 1.4.2. of this Instructions (in case the Tenderer will participate with Subcontractors);
- Authorization for payment for the work undertaken directly to the Subcontractor (in case the Tenderer will participate with Subcontractors, see Section Chapter 1.4.2. of this Instructions);
- Consent for direct payments (in case the Tenderer will participate with Subcontractors, see Chapter 1.4.2. of this Instructions);
- Proof in Chapter 1.4.4. of these Instructions (in the case of references to the capacity of another legal entity).

When preparing the Offer, the Tenderer shall take into account the prescribed order.

The Contracting Authority reserves the right to verify the correctness of all information. If the Contracting Authority will not be able to verify the data, they will not be taken into account.

## **2.3. For of the Offer**

The Offer must be submitted in one (1) original, one (1) copy and an electronic version on electronic media. In case of any discrepancies between the copies the original will prevail.

The Offer documentation must be typed or legibly written in indelible ink. Content of the forms, statements, papers and documents must not be changed.

All forms must be completed, signed and stamped.

The Offer documentation shall be signed by the Tenderer's legal representative or other person authorized to sign Offer of the estimated type, value and extent.

All sheets of the original Offer must be quilted with string, both ends of it at the last or first affixed with sealing wax or tape, attachment must be secured by rubber stamp or signature of the person signing



an Offer. Form of binding is reasonably adapted from the Article 35 of the Law on Notaries (Official Gazette of RS, No. 2/2007-UPB3, 33/2007-ZSReg-B, 45/2008). Overview must be possible, without damage to sealing wax or tape. Binding with string is only necessary for the original, while it is preferred that a copy is bind so that it is possible to make any further copying easier.

#### **2.4. Documents in the Offer**

Validation of the Offer documents shall not exceed the deadline as defined by the specific provisions of the Tender documents. In those cases where the validation of documents is not specified, they should reflect the legal status of the Tenderer relevant on the day fixed for the submission of Offers.

#### **2.5. Submission of Offers**

The original and a copy of the Offers shall be inserted in two envelopes marked "Original" and "Copy". Both envelopes shall be inserted into one outer envelope marked: » PONUDBA ZA SVETOVANJE, PODPORO IN REVIZIJO PRI PODELITVI RADIJSKIH FREKVENC V 800 MHZ, 900 MHZ, 1800 MHZ, 2100 MHZ IN 2600 MHZ FREKVENČNIH PASOVIH – NE ODPIRAJ « and shall be delivered to the following address: Agencija za pošto in elektronske komunikacije Republike Slovenije, Stegne 7, 1000 Ljubljana.

(Meaning: "OFFER FOR CONSULTATION SERVICES, SUPPORT AND REVISION FOR AWARDED RADIO FREQUENCIES IN THE 800 MHz, 900 MHz, 1800 MHz, 2100 MHz AND 2600 MHz FREQUENCY BANDS – DO NOT OPEN").

The Tenderer shall write his full address onto the outer envelope. Envelope should be closed or sealed in a way that it is evident that it was not opened before the public opening.

Tenderer can deliver the Offer to Contracting Authority by post or hand it over personally at the Contracting Authority's address.

#### **2.6. Deadline for submission of the Offers**

Deadline for the submission of the Offers is **20.05.2013 at 10:00 a.m. CET**. A timely Offer shall be an Offer that is received by the Contracting Authority before the specified Offer receipt date.

Where an Offer exceeds the time limit set for the receipt of Offers, such submissions shall be considered as too late. Such Offers shall be returned to tenderers after the completion of the opening procedure, unopened and marked as "too late".

The Offer which was delivered to the post office before the deadline for submission of Offers, but arrives to the Contracting Authority after the deadline, is not a timely Offer and will be after the completion of the opening procedure returned to Tenderer unopened and marked as "prepozna" (meaning: "too late").

#### **2.7. Modifications and withdrawal of the Offer**

The Tenderer may modify or withdraw his Offer by way of a written notice that shall be delivered to the above address prior to the deadline for the submission of Offers.

The Tenderer's notice of modification shall be prepared, sealed and submitted in the same manner as the Offer itself. It shall be marked as » SPREMEMBA PONUDBE ZA SVETOVANJE, PODPORO IN REVIZIJO PRI PODELITVI RADIJSKIH FREKVENC V 800 MHZ, 900 MHZ, 1800 MHZ, 2100 MHZ IN 2600 MHZ FREKVENČNIH PASOVIH – NE ODPIRAJ «, ponudnik pa jo mora poslati na naslov naročnika s priporočenim pismom ali osebno predložiti v vložišču naročnika (v prvem nadstropju).

(Meaning: "MODIFICATION OF THE OFFER FOR CONSULTATION SERVICES, SUPPORT AND REVISION FOR AWARDED RADIO FREQUENCIES IN THE 800 MHz, 900 MHz, 1800 MHz, 2100 MHz AND 2600 MHz FREQUENCY BANDS – DO NOT OPEN").



In the event that the Tenderer replaces its Offer with a new Offer, the previous Offer has to be withdrawn from the Procurement process. Withdrawal of Offer must reach the Contracting Authority before the deadline for submission of Offers and shall be given in writing. Written withdrawal of Offer shall be appropriately marked as » UMIK PONUDBE ZA SVETOVANJE, PODPORO IN REVIZIJO PRI PODELITVI RADIJSKIH FREKVENC V 800 MHZ, 900 MHZ, 1800 MHZ, 2100 MHZ IN 2600 MHZ FREKVENČNIH PASOVIH « and it must be sent to the address of the Contracting Authority by registered mail or personally submitted to the reception office of the Contracting Authority.

*(Meaning: "WITHDRAWAL OF THE OFFER FOR CONSULTATION SERVICES, SUPPORT AND REVISION FOR AWARDING RADIO FREQUENCIES IN THE 800 MHz, 900 MHz, 1800 MHz, 2100 MHz AND 2600 MHz FREQUENCY BANDS").*

Documentation relating to the change, supplement or replacement of the Offer must be prepared in accordance with point 2.5 of this Chapter and addressed to the address of the Contracting Authority.

In case of a withdrawal, the Offer will be returned to the Tenderer unopened.

## **2.8. Correction of errors**

The Offer shall contain no changes or additions other than those that are necessary to correct the Tenderer's mistakes. In this case, the corrections shall be initiated by the person or persons who are signers to the Tender.

## **2.9. Permissible amendments**

Where the Contracting Authority establishes, either by itself or upon the proposal of Tenderer, that an Offer is formally incomplete, it can enable the amendment of such Offer. Where the Tenderer fails to make appropriate amendments within the time limit set by the Contracting Authority the Contracting Authority must eliminate such Offer.

It is not allowed to change:

- Unit price, price of items, the total value of Offer and Offer in the context of criteria,
- Part of the Offer, which binds to the technical specifications of the subject of this public Procurement,
- Those elements of the Offer which affect or could affect the different classification of the Offer in relation to the rest of the Offers, which were submitted in the public Procurement procedure.

Despite of provisions of previous paragraph only the Contracting Authority can at the written consent of the Tenderer correct obvious calculation errors discovered during the review and evaluation of Offers. In doing so, the quantity and unit price must not be changed.

## **2.10. Indication of misleading information**

Contracting Authority will submit a proposal to the National Review Commission for the initiation of violation procedure:

- in the event that the Contracting Authority will have reasonable doubts that the Tenderer submitted false statements or evidences in the Offer,
- if the Tenderer or Subcontractor has not submitted to the Contracting Authority authorization or consent within the prescribed time in accordance with paragraph 9 of Article 71 of ZJN-2.

## **2.11. Offer Costs**

All costs associated with the preparation and submission of the Offer, including costs of materials brochures, catalogues, if requested by the Contracting Authority, shall be borne by the Tenderer. Contracting Authority shall in no event be liable for any damage that might result from these costs irrespective of the conduct of procedures in relation to the public Procurement and the final selection of the Tenderer.



## 2.12. Qualification conditions

The Tenderer must fulfil all conditions stated in this Tender documentation. In order to prove fulfilment of the conditions, the Tenderer shall submit evidences for each required condition. If the State in which the Tenderer has its headquarters does not issue such documents, the Tenderer may submit a declaration under oath by the witnesses or a declaration under oath by the Tenderer's legal representative. The declaration has to be submitted at competent judicial or administrative authority, notary or competent professional or legal entity in the country where the Tenderer is established.

All documents must be completed, signed by the Tenderer's legal representative or other person authorized to conclude Contracts and stamped. If the Tenderer would like to submit copies of documents and evidence, the copies must be certified by the notary. Documents must show the up to date status.

The Contracting Authority will consider the capability of providers based on the following conditions:

### 2.12.1. Tenderer's suitability

2.12.1.1. *The Tenderer or its legal representatives in the case of legal persons have never been the subject of a conviction by final judgement of crimes listed in The Criminal Code (Official Gazette of the Republic of Slovenia, No. 50/2012; hereinafter: KZ-1):*

- acceptance of bribe during the election (Article 157 of KZ-1);
- fraud (Article 211 of KZ-1);
- abuse of a position of monopoly (Article 225 of KZ-1);
- false bankruptcy (Article 226 of KZ-1);
- defrauding creditors (Article 227 of KZ-1);
- commercial fraud (Article 228 of KZ-1);
- fraud affecting the European Union (Article 229 of KZ-1);
- deception in obtaining loan or advantages (Article 230 of KZ-1);
- fraud in securities trading (Article 231 of KZ-1);
- deception of purchasers (Article 232 of KZ-1);
- unauthorised use of another's mark or model (Article 233 of KZ-1);
- unauthorised use of another's patent or topography (Article 234 of KZ-1);
- forgery or destruction of business documents (Article 235 of KZ-1);
- disclosure and unauthorised acquisition of trade secrets (Article 236 of KZ-1);
- abuse of information system (Article 237 of KZ-1);
- abuse of insider information (Article 238 of KZ-1);
- abuse of financial instruments market (Article 239 of KZ-1);
- abuse of position or trust in business activity (Article 240 of KZ-1);
- prohibited acceptance of gifts (Article 241 of KZ-1);
- prohibited giving of gifts (Article 242 of KZ-1);
- counterfeiting money (Article 243 of KZ-1);
- fabrication and use of counterfeit stamps of value or securities (Article 244 of KZ-1);
- money laundering (Article 245 of KZ-1);
- abuse of non-cash means of payment (Article 246 of KZ-1);
- use of counterfeit non-cash means of payment (Article 247 of KZ-1);
- fabrication, acquisition and disposal of instruments of forgery (Article 248 of KZ-1);
- tax evasion (Article 249 of KZ-1);
- smuggling (Article 250 of KZ-1);
- disclosure of classified information (Article 260 of KZ-1);
- acceptance of bribes (Article 261 of KZ-1);
- giving bribes (Article 262 of KZ-1);
- accepting benefits for illegal intermediation (Article 263 of KZ-1);



- giving of gifts for illegal intervention (Article 264 of KZ-1);
- criminal association (Article 294 of KZ-1).

**Evidence:**

- a) Tenderers established in the Republic of Slovenia: Declaration (Form 4) and Authorization for the acquisition of personal data (Form 5) or Proof of good conduct from the Criminal Records of natural or legal persons
- b) Foreign Tenderers: Evidence in accordance with section 4.1. of the Chapter 1. of this Instructions

2.12.1.2. *The Tenderer is not on the day of submission of Offers disqualified from being awarded public Contracts due to the inclusion in the record of Tenderers with negative references in accordance with Article 77a of ZJN-2.*

**Evidence:**

- a) Tenderers established in the Republic of Slovenia: Declaration (Form 4)
- b) Foreign Tenderers: Evidence in accordance with section 4.1. of the Chapter I of this Instructions

2.12.1.3. *The Tenderer has on the date of submission of the Offer, in accordance with the regulations of the country in which he is established or regulations of the Contracting Authority no outstanding, unpaid obligations relating to the payment of social security contributions or in connection with the payment of taxes in the amount of 50 euros or more.*

**Evidence:**

- a) Tenderers established in the Republic of Slovenia: Declaration (Form 4)
- b) Foreign Tenderers: Evidence in accordance with section 4.1. of the Chapter 1. of this Instructions

## **2.12.2. Tenderer's economic and financial suitability**

2.12.2.1. *The Tenderer shall not have any outstanding liabilities to Subcontractors in previous public Procurement procedures;*

**Evidence:**

- a) Tenderers established in the Republic of Slovenia: Declaration (Form 4)
- b) Foreign Tenderers: Evidence in accordance with section 4.1. of the Chapter 1. of this Instructions

## **2.12.3. Suitability to pursue professional activity**

2.12.3.1. *The Tenderer has a valid registration to do business, which is the subject of this procedure (consulting services in the field of mobile industries and /or regulatory affairs) pursuant to the regulations of the Member State of his establishment;*

**Evidence:**

- a) Tenderers established in the Republic of Slovenia: Declaration (Form 4)
- b) Foreign Tenderers: Evidence in accordance with section 4.1. of the Chapter 1. of this Instructions

#### **2.12.4. Technical and/or professional eligibility**

2.12.4.1. *The Tenderer's consultant has knowledge and experience in the field of radiofrequency spectrum regulation and regulation of the market of wireless communications;*

**Evidence:**

Consultant's CV from which his experience in the field of radiofrequency spectrum regulation and regulation of the market of wireless communications is evident.

(When in doubt, the Contracting Authority can check the proof by contacting the organisation ordering the services).

2.12.4.2. *The Tenderer's consultant has been involved in at least one (1) project of European regulator in field of public mobile communications in last five (5) years;*

**Evidence:**

Reference certificate that is signed by the organisation ordering the services.

Certificate must contain:

- project title;
- project budget;
- project duration (start date and end date of the project);
- contact person with his/her e-mail address and/or telephone number.

The Tenderer can submit several references.

(When in doubt, the Contracting Authority can check the proof by contacting the organisation ordering the services).

2.12.4.3. *The Tenderer and/or his consultant were not involved in year 2013 in any project of potential auction participant in the Republic of Slovenia for the award of frequencies in 800 MHz, 900 MHz, 1800 MHz, 2100 MHz and 2600 MHz frequency bands;*

**Evidence:**

Tenderer's statement.

#### **2.13. Exclusion of Offers**

Contracting Authority will eliminate:

- Offers that are not received on time;
- Offers which do not fulfil all the requirements of point Chapter 2.2. and 2.12. of this instructions;
- Offers from the Tenderer that will be selected in "Public Procurement for selection of tenderer to deliver professional consulting services and access to the software for the implementation of complex multiobject multiround electronic auction for awarding radio frequencies in the 800 MHz, 900 MHz, 1800 MHz, 2100 MHz AND 2600 MHz frequency bands<sup>2</sup>"

#### **2.14. Offer price**

The Tenderer shall indicate in the Offer the final price in EUR. Final price should include all costs, discounts and rebates. Offer price must have the level and value of VAT shown separately.

The price shall be fixed for the duration of the Contract.

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<sup>2</sup> <http://www.enarocanje.si/?podrocje=pregledobjave&lzpObrazec=273004>



## 2.15. Selection criteria

The criterion for selecting the best Offer is the most economically advantageous Offer.

Offers will be evaluated by the number of points achieved based on the following criteria, for each consultant separately:

1. **Daily rate of consultant's day (without DDV);**
2. **References of Tenderer's consultants (for each set separately)**
3. **Project understanding.**

### 2.15.1. Daily rate of consultant's day

Points for this criterion will be allocated on a basis of level of price for consultant's day (without VAT). Daily rate should include traveling costs and accommodation costs. Consultant's day is considered as a day when the consultant is physically present at Contracting Authority's place.

#### 2.15.1.1. Calculation of valuation points for the Daily rate of consultant's day

Number of points for this criterion is calculated (in accordance with the formula below) as ratio between the lowest price offered and evaluated bid price. The Tenderer that offers the lowest price gets 10 points.

$$P = (P_L/P_X) \times 45$$

P = Number of points for criteria "Daily rate of consultant's day"

P<sub>L</sub> = Lowest price offered (compared with all Tenderers whose bids are evaluated)

P<sub>X</sub> = Price that is being evaluated

### 2.15.2. References provided by Tenderers's consultants

References provided by Tenderers will be divided into three sets: A, B and C. Each set is precisely described in the Technical Specifications, which are part of this Tender Documentation. Points for this criterion will be allocated on a basis of references that are defined bellow for each set separately:

#### 2.15.2.1. References for set A

Criteria	Documents to prove reference	Weight
Consultant was involved in last five (5) years in European regulator's project dealing with electronic communications service providers competition issues.	Reference certificate on successfully completed projects signed by the organisation ordering the services. Certificates must contain: <ul style="list-style-type: none"> <li>- project title;</li> <li>- project budget;</li> <li>- project duration (start date and end date of the project);</li> <li>- contact person with his/her e-mail address and/or telephone number.</li> </ul> <p>The Tenderer can submit several references.</p>	1
Consultant was involved in European regulator's or operator's project dealing with spectrum auction for public mobile services.	Reference certificate on successfully completed projects signed by the organisation ordering the services. Certificates must contain: <ul style="list-style-type: none"> <li>- project title;</li> <li>- project budget;</li> </ul>	1

	<ul style="list-style-type: none"> <li>- project duration (start date and end date of the project);</li> <li>- contact person with his/her e-mail address and/or telephone number.</li> </ul> <p>The Tenderer can submit several references.</p>	
<p>Consultant was involved in European Commission's project or project of any other institution of the European Union in field of public mobile services in last five (5) years.</p>	<p>Reference certificate on successfully completed projects signed by the organisation ordering the services. Certificates must contain:</p> <ul style="list-style-type: none"> <li>- project title;</li> <li>- project budget;</li> <li>- project duration (start date and end date of the project);</li> <li>- contact person with his/her e-mail address and/or telephone number.</li> </ul> <p>The Tenderer can submit several references.</p>	1

When in doubt, the Contracting Authority can check the proof by contacting the organisation ordering the services.

**2.15.2.2. References for set B**

Criteria	Documents to prove reference	Weight
<p>Consultant was involved in operator's project dealing with 4G mobile technologies.</p>	<p>Reference certificate on successfully completed projects signed by the organisation ordering the services. Certificates must contain:</p> <ul style="list-style-type: none"> <li>- project title;</li> <li>- project budget;</li> <li>- project duration (start date and end date of the project);</li> <li>- contact person with his/her e-mail address and/or telephone number.</li> </ul> <p>The Tenderer can submit several references.</p>	1
<p>Consultant was involved in operator's project dealing with frequency auction for public mobile services.</p>	<p>Reference certificate on successfully completed projects signed by the organisation ordering the services. Certificates must contain:</p> <ul style="list-style-type: none"> <li>- project title;</li> <li>- project budget;</li> <li>- project duration (start date and end date of the project);</li> <li>- contact person with his/her e-mail address and/or telephone number.</li> </ul> <p>The Tenderer can submit several references.</p>	1
<p>Consultant was involved in European operator's project dealing with 800 MHz spectrum auction for public mobile services.</p>	<p>Reference certificate on successfully completed projects signed by the organisation ordering the services. Certificates must contain:</p> <ul style="list-style-type: none"> <li>- project title;</li> </ul>	1



	<ul style="list-style-type: none"> <li>- project budget;</li> <li>- project duration (start date and end date of the project);</li> <li>- contact person with his/her e-mail address and/or telephone number.</li> </ul> <p>The Tenderer can submit several references.</p>	
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When in doubt, the Contracting Authority can check the proof by contacting the organisation ordering the services.

### 2.15.2.3. *References for set C*

Criteria	Documents to prove reference	Weight
Consultant was involved in project dealing with radio frequency auctions for 800 MHz band in Europe or was the leader in projects regarding preparation of the Strategy for Digital Dividend II (700 MHz).	<p>Reference certificate on successfully completed projects signed by the organisation ordering the services. Certificates must contain:</p> <ul style="list-style-type: none"> <li>- project title;</li> <li>- project budget;</li> <li>- project duration (start date and end date of the project);</li> <li>- contact person with his/her e-mail address and/or telephone number.</li> </ul> <p>The Tenderer can submit several references.</p>	1
Consultant was involved in project dealing with allocation of radio frequencies in 700 MHz and 800 MHz bands outside of Europe.	<p>Reference certificate on successfully completed projects signed by the organisation ordering the services. Certificates must contain:</p> <ul style="list-style-type: none"> <li>- project title;</li> <li>- project budget;</li> <li>- project duration (start date and end date of the project);</li> <li>- contact person with his/her e-mail address and/or telephone number.</li> </ul> <p>The Tenderer can submit several references.</p>	5
Consultant was involved in project dealing with radio frequency auction in 800 MHz band in Europe and also dealing with questions of refarming in 900 MHz band.	<p>Reference certificate on successfully completed projects signed by the organisation ordering the services. Certificates must contain:</p> <ul style="list-style-type: none"> <li>- project title;</li> <li>- project budget;</li> <li>- project duration (start date and end date of the project);</li> <li>- contact person with his/her e-mail address and/or telephone number.</li> </ul> <p>The Tenderer can submit several references.</p>	5

When in doubt, the Contracting Authority can check the proof by contacting the organisation ordering the services.

#### 2.15.2.4. Calculation of valuation points for the References provided by Tenderers

Number of points for this criterion is calculated (in accordance with the formula below) as ratio between evaluated references of Tenderer (sum of all references multiplied by Weight of reference) and the highest number of points for references achieved. The result will be multiplied with 45 and will be rounded to one decimal place. The Tenderer that achieve the highest value for references gets 45 points. Number of points is calculated for each set separately.

$$R = (R_x/R_{MAX}) \times 45$$

R = Number of points for criteria »References of bidders«

$R_x$  = Evaluated reference

$R_{MAX}$  = Highest number of points archived for references

References of applied consultants are divided into three different sets (A, B in C). Firstly will be evaluated all offers for set A (as most extensive and important set). Bidder with the highest number of points for set A, declared as winning Tenderer and will not participate in evaluation of sets B and C. .

#### 2.15.3. Project understanding

Each tenderer has to provide short document of project understanding with his view and his role in granting the licences for frequencies in 800 MHz, 900 MHz, 1800 MHz, 2100 MHz in 2600 MHz frequency bands.

**If candidate for set A provides the following documents, he gets the bellow mentioned amount of points:**

- Solutions with descriptions for some critical tasks:
  - Infrastructure sharing and coverage conditions with aim of achieving competitive market:
    - Proposal of maximum allowed sharing scenario and proposal of optimal coverage conditions = **2 points**,
    - Reasoning in relation with the above proposal (not less than 250 words) = **2 points**,
  - Relation between reserved price and spectrum caps with aim of achieving competitive market:
    - The relation between more or less relaxed spectrum caps and different values of reserved prices = **2 points**,
    - Reasoning in relation with the above statements (not less than 250 words) = **2 points**,
  - Short analysis of influence of the above mentioned parameters (sharing, coverage, reserved price and spectrum caps) on the competition in mobile communications market:
    - Analysis provided = **2 points**

**If candidate for set B provides the following documents, he gets the bellow mentioned amount of points:**

- Comparioson between LTE networks and previous generation mobile networks:
  - Technological differences (not less than 250 words) = **2 points**,
  - Evaluation of based station upgrade costs (not less than 250 words) = **2 points**,
  - Evaluation of backhaul upgrade costs (not less than 250 words) = **2 points**,
  - Evaluation of throughputs in relation with the number of based stations for LTE network for low, medium and high loaded cells (not less than 500 words) = **4 points**.

**If candidate for set C provides the following documents, he gets the bellow mentioned amount of points:**

- Possible issues that could arise during the auction process = 2 points,

- Possible solutions with descriptions of critical issues;
  - Special coverage obligations for 800 MHz frequency band related to Digital Agenda goals:
    - Options of coverage obligation = 2 points,
    - Reasoning of each coverage obligation option (not less than 250 words) = 2 points
  - Compatibility and sharing issues of 800 MHz electronic communications services versus other services (not less than 500 words) = 3 points,
  - Compatibility and sharing issues of 900 MHz electronic communications services versus other services (not less than 100 words) = 1 point.

#### 2.15.4. Determination of the Winning Tenderer

References provided by Tenderer's consultants will be devoted into three sets (A, B and C). First we will evaluate all offers for set A (as the most extensive and the most important set). The Tenderer who will get the highest number of points for set A, will be selected for implementation of his services in this set and will not participate for sets B and C.

All relevant Tenderers will participate for selection of consultant for sets B and C, except the Tenderer who will be selected for set A. Tenderer who will get the highest number of points for each set will be selected for implementation of his services in this set. In case that the same Tenderer will get the highest number of points in both sets, he will be selected for implementation of his services in both sets.

In case that only one relevant Tenderer will apply for this Public Procurement, he will be selected either for set A or for sets B and C together, but in no case for all three sets. Tenderer will be selected for each set only in case, if the Tenderer's consultant has at least one reference for this set.

$$T_A = P + R_A + O_A$$

$$T_B = P + R_B + O_B$$

$$T_C = P + R_C + O_C$$

$T_A$  = Total amount of points for set A

$T_B$  = Total amount of points for set B

$T_C$  = Total amount of points for set C

P = Number of points for criteria "Daily rate of consultant's day"

$R_A$  = Number of points for criteria »References provided by Tenderer's consultants« for set A

$R_B$  = Number of points for criteria »References provided by Tenderer's consultants « for set B

$R_C$  = Number of points for criteria »References provided by Tenderer's consultants « for set C

$O_A$  = Number of points for criteria »Project understanding« for set A

$O_B$  = Number of points for criteria »Project understanding« for set B

$O_C$  = Number of points for criteria »Project understanding« for set C

**In case that two or more Offers reach the same total number of points (for each set separately), the Offers will be sorted in accordance with the following criteria:**

- A. APEK will select the Offer with the highest number of points in the category »References provided by Tenderer's consultants«.
- B. In case that two or more respective Offers have the same number of points in the category »References provided by Tenderer's consultants«, APEK will chose the Offer with the highest number of points in the category »Daily rate of consultant's days«.
- C. In case that two or more respective Offers have still the same number of points «, APEK will chose the Offer with the highest number of points in the category »Project understanding«.





- D. In case that two or more respective Offers have still the same number of points the winner will be chosen with the lottery.

#### **2.16. Abnormally low Offer**

**If the Contracting Authority considers an Offer for a given Contract to be abnormally low or it is doubtful that the Contract could be executed, it shall verify if it is abnormally low.**

**The Contracting Authority will verify if an Offer is abnormally low, even if the value of the Offer is by more than 50% lower than the average value of timely Offers and for more than 20% lower than the following listed Offer, but only if he received at least four timely Offers.**

**Where the Contracting Authority verifies the completeness of all Offers, it verifies in accordance with the preceding sentence if the Offer is abnormally low in relation to the complete Offers. Before rejecting such Offer, the Contracting Authority shall in accordance with the Article 49 of ZJN-2 request in writing the details of the predetermined constituent elements of the Offer which it considers relevant to the execution of the Contract or to the classification of Offers.**

#### **2.17. Submission of owner structure data**

The Tenderer to whom the Contract is awarded shall, at the Contracting Authority's request submit the data stated below in the process of awarding the public Procurement procedure or executing the Contract:

- Information regarding the Tenderer's founders, partners, including silent partners, shareholders, limited partners or other owners and information about the shares of such persons;
- Information on entities, which are according to the provisions of the law governing companies are considered to be associated with the Tenderer.

#### **2.18. Offer validity**

The Offer must remain valid for a period of 180 days after the deadline for submission of Offers.

In exceptional circumstances the Contracting Authority may require the Tenderer to extend the period of validity of the Offer for a further period. The request and response of the Tenderer must be given in writing or by fax. Tenderer may refuse the request. The Tenderer, who agrees to that request will not be required or permitted to change the Offer otherwise.

#### **2.19. Variant Offers**

Variant Offers will not be taken into consideration.

#### **2.20. Rejection of all Offers**

**The Contracting Authority may reject all Offers. Where the Contracting authority has rejected all Offers, it must immediately send written notification to tenderers of its decision and provide the reasons for having rejected all Offers, or of its decision to initiate a new procedure, and notify its supervisory authority.**

### **3. PUBLIC OPENING OF OFFERS**

The public opening of all timely received and properly marked Offers will be led by a designated impartial Commission (hereinafter: Commission). The opening will take place at the Post and Electronic Communications Agency of the Republic of Slovenia, Stegne 7, 1000 Ljubljana, Slovenia, in the conference room on **20th May 2013 at 10:15 a.m. CET.**



At the public opening of Offers only legal representative of the Tenderer or his representative, who is obliged to give the Commission a written Power of Attorney to represent the Tenderer, may participate. The authorized representatives of Tenderers who do not submit to the Commission the power to engage the public opening of Offers and other present cannot give comments

At the public opening the Commission reads the name of Tenderer and the Offer price and possible discounts.

Minutes of the Offer opening session shall be taken. Offers shall be opened in order of receipt.

At the end of the public opening the minutes will be signed by the President and members of the Commission and legal representatives or authorized representatives of Tenderers. By signing the legal representative or authorized representative of the Tenderer certifies that he agrees with the method of the opening session. If anyone of the above does not want to sign, this is entered in the record as well as reasons for refusing to sign.

Minutes of the Offer opening will be sent to all Tenderers who have submitted Offers within three working days after the public opening of Offers.

#### **4. EVALUATION OF OFFERS**

The Contracting Authority will prior to the awarding of the Contract at the latest, examine the existence and content of data provided in the Offer.

Every Offer which is correct in accordance with the Point 2 of Chapter II of those Instructions and meets all deadline, conditions and specifications set out in the Tender documents is considered complete. If the Offer is not complete or substantially correct it will be rejected. The regularity of Offer do not affect non-essential typographical errors. Every Offer that in any way, and contrary to the Tender documents significantly alter any rights and obligations of the Tenderer is considered incorrect.

#### **5. THE CONTRACT**

The Contracting Authority will sign with the successful Tenderer a Contract in accordance with the provisions of the model Contract of Form 3.

The Contract must be signed within 10 days of receipt of Contracting Authority's call to the signing of the Contract.

#### **6. REVIEW PROCEDURE**

Legal protection of Tenderers in the public Procurement procedure is provided in accordance with the provisions of the Law on legal protection in public Procurement procedures (Official Gazette of the Republic of Slovenia, No. 43/11; hereinafter: ZPVPJN), following the procedure and in the manner provided by law.

Request for legal protection in public Procurement procedures may be filed at any stage of the Procurement process against any act of Contracting Authority, unless ZJN-2 or ZPVPJN provides otherwise. Request for legal protection may be filed by legitimized active person, as defined by the Article 14 of ZPVPJN.

The request for review must include:

1. Name and address of the applicant (hereinafter referred to as applicant) and the contact person,
2. Name of the Contracting Authority,
3. Code of the public Procurement,



4. Object of the public Procurement,
5. Alleged violation,
6. Facts and evidence to prove the violation,
7. Power of Attorney for pre-audit and review process, if the applicant performs with the Agent,
8. An indication of whether the specific Procurement procedure is co-financed from European funds and from which Fund.

The applicant must submit to the request for review proof of payment of fees in the amount of € 1,500.00.

Fee has to be paid to the sub-account opened at the Bank of Slovenia for the purpose of the fees for pre-audit and audit process Number 01100-1000358802 - enforcement budget. In doing so, the applicant must sign in the order for payment the following information: 11 16110-7111290-XXXXXXLL (X means publication Number of a Contract notice and L means an indication year).

The request for review shall be filed in writing directly to the Contracting Authority by registered mail or recommended as a receipt. The applicant must send a copy for review at the same time to the Ministry responsible for finance.

Application for review relating to the content of the publication, invitation to Tender or Tender documents, except in the case of the fourth paragraph of Article 25 of ZPVPJN, must be filed within eight working days from the day of:

- Publication of the Contract notice or
- Notification of additional information, information on incomplete procedure or adjustment, if that notice to amend or supplement the requirements or criteria for selecting the best Tenderer in the Tender documents or previously published a Contract notice, or
- Receipt of the invitation to Tender.

If the Contracting Authority finds that the application for review was not timely filed or not filed by legitimized active person from the Article 14 of ZPVPJN, that the applicant in accordance with the second paragraph of Article 15 of ZPVPJN did not provide proof of payment of fee or that has not been paid the appropriate fee, the application will be in no later than three working days of receipt rejected.



FORM-1

TENDERER

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**OFFER for SET.....**

<b>1. Subject of the Public Contract: CONSULTATION SERVICES, SUPPORT AND REVISION FOR AWARDING RADIO FREQUENCIES IN THE 800 MHz, 900 MHz, 1800 MHz, 2100 MHz AND 2600 MHz FREQUENCY BANDS</b>
2.1 Offer price in EUR without VAT:  _____
2.2 Offer price in EUR including VAT:  _____
3. Offer validity until .....
4. Tenderer's Data
4.1 Company name:
4.2 Legal representative:
4.3 VAT ID:
4.4 Registration Number:
4.5 International bank account Number:
4.6 Address:
4.7 Telephone Number:
4.8 Fax Number:
4.9 Contact person:
4.10 E-mail:
4.11 Person responsible for signing the Contract:

Date: \_\_\_\_\_

Stamp and signature  
\_\_\_\_\_



TENDERER

FORM 2

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**PRO FORMA INVOICE for SET A**

**PREDMET JAVNEGA NAROČILA: CONSULTATION SERVICES, SUPPORT AND REVISION FOR AWARDING RADIO FREQUENCIES IN THE 800 MHz, 900 MHz, 1800 MHz, 2100 MHz AND 2600 MHz FREQUENCY BANDS**

No.	Description of supply/service	Unit	Quantity	Price per Unit without VAT:	VAT (%)	Price without VAT:
1.	Svetovalne storitve svetovalca za sklop A	dan	60			
				<i>Total price without VAT :</i>		
				<i>The amount of VAT:</i>		
				<b><i>Total price in EUR including VAT:</i></b>		

Date: \_\_\_\_\_

Stamp and signature  
\_\_\_\_\_



**APEK**

TENDERER

FORM 2

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**PRO FORMA INVOICE for SET B**

**PREDMET JAVNEGA NAROČILA: CONSULTATION SERVICES, SUPPORT AND REVISION FOR AWARDING RADIO FREQUENCIES IN THE 800 MHz, 900 MHz, 1800 MHz, 2100 MHz AND 2600 MHz FREQUENCY BANDS**

No.	Description of supply/service	Unit	Quantity	Price per Unit without VAT:	VAT (%)	Price without VAT:
1.	Svetovalne storitve svetovalca za sklop A	dan	20			
				<i>Total price without VAT :</i>		
				<i>The amount of VAT:</i>		
				<b><i>Total price in EUR including VAT:</i></b>		

Date: \_\_\_\_\_

Stamp and signature  
\_\_\_\_\_



TENDERER

FORM 2

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**PRO FORMA INVOICE for SET C**

**PREDMET JAVNEGA NAROČILA: CONSULTATION SERVICES, SUPPORT AND REVISION FOR AWARDING RADIO FREQUENCIES IN THE 800 MHz, 900 MHz, 1800 MHz, 2100 MHz AND 2600 MHz FREQUENCY BANDS**

No.	Description of supply/service	Unit	Quantity	Price per Unit without VAT:	VAT (%)	Price without VAT:
1.	Svetovalne storitve svetovalca za sklop A	dan	20			
				<i>Total price without VAT :</i>		
				<i>The amount of VAT:</i>		
				<b><i>Total price in EUR including VAT:</i></b>		

Date: \_\_\_\_\_

Stamp and signature  
\_\_\_\_\_





**DRAFT CONTRACT**

Post and Electronic Communication Agency of the Republic of Slovenia, Stegne 7, 1000 Ljubljana, Registration No. 1332899, Tax ID SI10482369, represented by the director Franc Dolenc(hereinafter: "the Contracting authority")

and

....., Company Registration No. ...., Tax ID ....., represented by ..... (hereinafter: "the Provider"),

hereby enter into

**CONTRACT No.:** \_\_\_\_\_

**INTRODUCTORY PROVISIONS**

Article 1

(1) The Contracting authority and the Provider establish that:

- the Contracting authority carried out the procedure to award a public contract for "*Consulting services, support and revision for the purpose of awarding radio frequencies in the 800 MHz, 900 MHz, 1800 MHz, 2100 MHz and 2600 MHz frequency bandwidths*" on the Public Procurement Portal under publication No. .... on ..... and in the EU Official Journal under publication No. .... on .... pursuant to Article 25 of the Public Procurement Act (Official Gazette of the Republic of Slovenia No. 12/2013 – UPB5; hereinafter: ZJN-2);
- based on the public procurement referred to in the first paragraph and the tenders received, the Contracting authority selected the Provider as the most favourable tenderer for the award of the contract referred to in the first paragraph under Public Contract Award Notice No. .... dated \_\_\_\_\_,
- the Provider has the necessary professional and technical competences for providing the Service as defined by this contract.

(2) The subject of this Contract shall be financed based on the provisional twelfths of the Contracting Authority's approved Financial Plan for year 2012 or based on the Financial Plan of Contracting Authority for the relevant year that forms the basis for the implementation of activities. The funds have been allocated to account No. 4020.

Article 2

Under this Contract the Parties shall define the general and specific conditions of the provision of the Service.

**SUBJECT OF THE CONTRACT**

Article 3



(1) The subject of this Contract shall be the Consulting services, support and revision for the purpose of awarding radio frequencies in the 800 MHz, 900 MHz, 1800 MHz, 2100 MHz and 2600 MHz frequency bandwidths.

(2) The tender and complete contract documents shall form an integral part of this Contract.

#### Article 4

(1) The Contracting authority may, under this Contract, order additional services to the Provider that were not included in the initial contract award but have become necessary for the provision of the Service due to unforeseeable circumstances, or when such activities cannot be technically or economically separated from the main Service without causing difficulties to the Contracting authority, or in the event of services which the Contracting authority could award separately from the initial contract award but has decided not to do so due to their critical role in the subsequent phases of the implementation of this Contract and the successful provision of the Service defined by this Contract.

(2) In cases stated above, the Contracting authority shall implement a negotiated procedure without prior publication of a contract notice and add an Annex to this Contract or sign a new Contract with the Provider pursuant to Item 1 of the fifth paragraph of Article 29 of the ZJN-2.

### **OBLIGATIONS OF THE CONTRACTING AUTHORITY AND THE PROVIDER**

#### Article 5

The Contracting authority undertakes to:

- make available to the Provider all necessary information, data and documents available to the Contracting authority and related to the provision of the Service under this Contract,
- cooperate with the Provider's authorised representative,
- submit its requests to the Provider in due time to enable the normal implementation of contractual services,
- ensure the human, informational and financing resources required for the implementation of services,
- give the Provider all the support necessary for the provision of services according to the requirements of this Contract,
- inform the Provider of any and all changes and new conditions that could affect the provision of the contractual services,
- pay for services within the agreed deadlines.

#### Article 6

The Provider confirms that it has familiarised itself with the subject of this Contract as defined in the technical specifications that are an integral part of this Contract before submitting its tender and signing this Contract and undertakes to:

- perform the services in compliance with all the applicable regulations of the Republic of Slovenia and the European Union governing the subject of this Contract and according to professional standards,
- perform the services under this Contract in a professional and perfectly manner, at a high level of quality and in accordance with good business practices,
- ensure the highest quality of services regardless of the time and location of their implementation,
- perform the services in the most economical manner within the Contracting Authority's specifications,
- use advanced information technologies and methods in the implementation of the services,



- cooperate with the Contracting authority's staff and other advisors employed by the Contracting authority,
- provide assistance in support and related services connected to the subject of this Contract
- fulfil all foreseen obligations in due time and in the required manner,
- notify the Contracting authority in written form of any circumstances that could make the correct and high-quality provision of the services difficult or impossible,
- notify the Contracting authority in written form of any new circumstances that could affect the substance or time aspects of the provision of the services,
- observe and implement the Contracting authority's requests as defined in the tender documentation pursuant to Article 1 of this Contract, comply with its tender dated \_\_\_\_\_, on the basis of which the Provider was selected, and act in accordance with the provisions of this Contract for its entire duration,
- draw up a report with specifications of completed tasks according to the technical requirements of the tender documentation after each completed phase,
- issue invoices for the services performed in accordance with the prices stated in its tender following the completion of such services and upon the Contracting authority 's approval of its report.

The Provider undertake that in time of validity of this contract he will not cooperate with potential tenderers in public tender procedures of awarding radio frequencies in the 800 MHz, 900 MHz, 1800 MHz, 2100 MHz and 2600 MHz frequency bandwidths.

#### Article 7

(1) If the Contracting authority orders a service that in the Provider's opinion would be in contravention of regulations or cause disproportionate damage to the Contracting authority or a third party, the Provider may decline to perform such a service, without infringing the terms of this Contract, if the Provider submits valid argumentation for such a refusal and prove the existence and present facts in support of its refusal. If the request does not allow for the professionally optimal provision of services or requires solutions contrary to professional rules, the Provider shall notify the Contracting authority of this fact and propose a more suitable solution; however, if the Contracting authority insists on its request, the Provider shall be obligated to fulfil its task according to the Contracting authority's request.

(2) The Provider's unsubstantiated refusal to perform a requested task or a deviation from the requested method of implementation shall be deemed a breach of obligations assumed under this Contract, due to which the Contracting authority may terminate this Contract, provided that the Contracting authority has previously notified the Provider of the infringements in writing.

#### Article 8

The Contracting authority's requests and specifications shall be subject to change, amendment and supplementation by mutual arrangement during the term of the Contract, in which case the Provider shall not in any way be entitled to a reimbursement of any costs that modified requests may cause.

### COMPETENT AUTHORITIES

#### Article 9

(1) The administrator of the Contract for the Contracting Authority shall be Željko Smiljanić.

(2) The administrator of the Contract for the Provider \_\_\_\_\_, who shall also be responsible for the provision of services under this Contract.

### CONTRACT VALUE



#### Article 10

(1) The Provider shall charge the following prices for the services defined in Article 1 of this Contract:

1. Price of a counselling day of: EUR \_\_\_\_\_,  
based on the Provider's tender No. \_\_\_\_\_.
2. Maximal number of counselling days is 60/20/20.

(2) The Parties agree that this price shall include all of the Provider's costs. The price referred to in the previous paragraph shall include all duties, taxes and costs. The stated prices are DDP Client (Incoterms 2010).

(3) The price shall be fixed for the entire duration of this Contract.

### TERMS OF PAYMENT

#### Article 11

(1) The Contracting Authority and the Provider agree that the payment will be conducted according to worked hours/days, but not less than 70% of the predicted amount, based on technical specifications, which are part of contract documents.

(2) The Provider will issue invoices for services performed under this Contract to the Contracting Authority after every tenth day of consulting based on a report approved by the Contracting Authority and in accordance with the tender price.

#### Article 12

(1) The Contracting Authority shall pay each issued invoice previously confirmed by the Contracting Authority's Contract Administrator within 30 days of the official date of receipt of the invoice into the following bank account of the Provider: IBAN \_\_\_\_\_ held at (name and BIC of the bank) \_\_\_\_\_.

(2) If the deadline for payment is a non-working day, it is considered that the deadline for payment is the first subsequent working day.

#### Article 13

In the event the Contracting Authority fails to pay the invoice in due time, the Provider shall be entitled to charge penalty interest for late payment from the due date to the date of payment of the invoice.

### PROVIDER'S GUARANTEES AND WARRANTY OBLIGATIONS

#### Article 14

(1) The Provider guarantees to provide high quality services in accordance with applicable regulations and standards and the requests specified by the Contracting authority.

(2) In the event the Provider fails to provide a specific service under this Contract, the Contracting authority may order such services from other providers at the Provider's expense.

### FORCE MAJEURE



#### Article 15

- (1) Force majeure shall mean any unforeseen and unexpected event arising independently from the Parties' intentions that could not have been foreseen on the day of the conclusion of this Contract and which in any way affects the fulfilment of contract obligations.
- (2) The Provider undertakes to inform the Contracting authority of any case of force majeure within three days of such an event.
- (3) Neither of the Parties shall be held responsible for failure to fulfil any of their obligations due to reasons beyond their control.

### **BUSINESS SECRET**

#### Article 16

- (1) The Parties agree that all data received through the implementation of this Contract shall constitute a business secret and undertake to duly protect such data and use it exclusively for the implementation of this Contract.
- (2) The Contracting authority also undertakes to protect all of the Provider's business information received under this Contract.
- (3) The Provider undertakes not to publish or use in any manner the Contracting authority's business secrets or confidential information to which the Provider was allowed access during or after the term of this Contract if such materials are designated as confidential or for internal use only, without obtaining prior explicit written approval from the Contracting authority.
- (4) The Contracting authority shall be entitled to hold the Provider responsible for the full sum of all damages incurred by the publication or use of the Contracting authority's business secrets or confidential information.

### **CONTRACTUAL PENALTY**

#### Article 17

- (1) In the event that the provider fails to meet the time limit for the implementation of services for reasons that are not caused by the Contracting authority and which cannot be reasonably justified, the Provider shall be obligated to pay 20% of the contractual sum for one counselling day, up to a maximum of 20% of the sum total of all counselling days.
- (2) If a delay or error during the implementation hinders the purpose of this contractual relationship, the Contracting authority shall be entitled to terminate this Contract and request damages.

### **ANTI-CORRUPTION CLAUSE**

#### Article 18

If it is determined that during the course of the public tender on the basis of which this Contract was signed or during the implementation of this Contract anyone acting in the name or for the benefit of the one of the Parties offered, promised or awarded any undue advantage to a representative, authorised person or agent of the Contracting authority or another public sector body or organisation in order to be awarded the contract, receive special conditions or omit due supervision over the contractual obligations, or any other action or omission incurring damage to any public sector body or organisation, or allowing undue benefits to any representative or agent of a public sector body or



organisation, the other Party or its representative, authorised person or agent, this Contract shall be deemed null and void.

## **DISPUTE RESOLUTION**

### Article 19

(1) In case of any dispute relating this Contract, the Contracting Parties shall seek a consensual solution.

(2) If such solution is not found, the dispute shall be resolved by the competent court in Ljubljana.

## **FINAL PROVISIONS**

### Article 20

(1) This Contract shall enter into force on the date it is signed by the last of the two Parties.

(2) The Contract may be changed or amended with a written annex agreed upon and signed by both Parties. If any of the provisions of this Contract is held to be invalid or later becomes so, the remaining provisions of this Contract shall not in any way be affected. An invalid provision shall be replaced with a valid provision that fulfils the intent of the provision rendered invalid as closely as possible.

### Article 21

(1) Either of the Parties may withdraw from this Contract due to a breach of contractual obligations by the other Party if the breach continues after a written notice. In the event of withdrawal, the parties shall settle all mutual obligations under this Contract and any damages incurred.

(2) Either Party may withdraw from the Contract provided that the Party chooses an appropriate time to withdraw in consideration of the other Party and in view of the reasons for the withdrawal, and settles all costs incurred by such withdrawal.

### Article 22

Mutual rights and obligations not explicitly defined by this Contract shall be governed by the provisions of the law regulating obligational relationships and other applicable provisions regulating mutual obligations under this Contract.

### Article 23

(1) This Contract shall be entered into force for the period starting from the date it is signed until the date of the issuing of decisions on awarding the relevant radio frequencies, or 1 June 2014, at the latest.

(2) This Contract has been drawn up in four (4) identical copies, of which two (2) copies shall be handed to the Client and two (2) to the Provider.

PROVIDER:

CLIENT

Date:

Date:

\_\_\_\_\_

APEK



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Franc Dolenc  
Director

Annexes:

- Tender, dated ....., including a preliminary cost estimate,
- Contract documents No. .... dated .....





TENDERER

FORM-4

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### DECLARATION

**This Declaration is an evidence of compliance with those conditions set out in point 12 of the Chapter II of this Instructions, for which the Contracting Authority has indicated that submission of this Declaration is sufficient.**

Tenderer shall circle as appropriate if he meets the condition or not.

No.	Under criminal and material responsibility we declare that:	Circle as appropriate	
		YES	NO
1.	The Tenderer or its legal representatives in the case of legal persons have never been the subject of a conviction by final judgement of crimes listed in the first paragraph of Article 42 of the ZJN-2: acceptance of bribe during the election; fraud; abuse of a position of monopoly; false bankruptcy; defrauding creditors; commercial fraud; fraud affecting the European Union; deception in obtaining loan or advantages; fraud in securities trading; deception of purchasers; unauthorised use of another's mark or model; unauthorised use of another's patent or topography; forgery or destruction of business documents; disclosure and unauthorised acquisition of trade secrets; abuse of information system; abuse of insider information; abuse of financial instruments market; abuse of position or trust in business activity; prohibited acceptance of gifts; prohibited giving of gifts; counterfeiting money; fabrication and use of counterfeit stamps of value or securities; money laundering; abuse of non-cash means of payment; use of counterfeit non-cash means of payment; fabrication, acquisition and disposal of instruments of forgery; tax evasion; smuggling; disclosure of classified information; acceptance of bribes; giving bribes; accepting benefits for illegal intermediation; giving of gifts for illegal intervention; criminal association.	YES	NO
2.	The Tenderer is not on the day of submission of Offer disqualified from being awarded public Contracts due to the inclusion in the record of Tenderers with negative references in accordance with Article 77.a of ZJN-2.	YES	NO
3.	The Tenderer has on the date of submission of the Offer, in accordance with the regulations of the country in which he is established or regulations of the Contracting Authority no outstanding, unpaid obligations relating to the payment of social security contributions or in connection with the payment of taxes in the amount of 50 euros or more.	YES	NO
4.	The Tenderer has no any outstanding liabilities to Subcontractors in previous public Procurement procedures.	YES	NO
5.	The Tenderer has a valid registration to do business, which is the subject of this procedure (consulting services in the field of mobile industries and /or regulatory affairs) pursuant to the regulations of the Member State of his establishment.	YES	NO
6.	The Tenderer accepts all the conditions of this Tender Documentation.	YES	NO
7.	The information given in this Offer is accurate and not misleading.	YES	NO



Tenderer shall complete:

A. The activity can be done on the basis of entry in the Court or Business Register, under entry number \_\_\_\_\_ or based on the entry in the Tax Office of the Republic of Slovenia unit in \_\_\_\_\_, number \_\_\_\_\_ or an entry in the register \_\_\_\_\_ number \_\_\_\_\_ in accordance with the law of the country.

B. To carry out activities covered by this Contract, we have on the basis of \_\_\_\_\_ (law) obtain an authorization, number \_\_\_\_\_ issued at \_\_\_\_\_ on \_\_\_\_\_.

We are members of the following organizations:

\_\_\_\_\_ (write only if the legal entity must conduct its business for the member of a particular organization, chambers of commerce, associations, etc. ..).

C. To carry out activities covered by this Contract we do not need special permission and can perform activity on the basis of entry in the Court or Business Register or based on the entry in the Tax Office of the Republic of Slovenia.

Under criminal and material responsibility we declare that all the above information is true and accurate.

This Declaration is an integral part of the Offer, which we are applying for a Public Contract "SELECTION OF TENDERER TO DELIVER PROFESSIONAL CONSULTING SERVICES AND ACCESS TO THE SOFTWARE FOR THE IMPLEMENTATION OF COMPLEX MULTIOBJECT MULTIROUND ELECTRONIC AUCTION FOR AWARDED RADIO FREQUENCIES IN THE 800 MHz, 900 MHz, 1800 MHz, 2100MHz AND 2600 MHz FREQUENCY BANDS".

Public Contract was published on the Procurement portal, publication date ....., publication number ..... and in the Official Journal of the EU, publication date ....., publication number .....

Date: \_\_\_\_\_

Stamp and signature

\_\_\_\_\_



FORM 5

Authorization for the acquisition of personal data (must be submitted only in case the Tenderer is established in Slovenia) and is therefore not translated.

## TECHNICAL SPECIFICATIONS

### 1. Subject of the Tender

The purpose of this Invitation to Tender is to enable APEK to procure independent and expert Consultancy Services for complex multiband multiround electronic auction for awarding radio frequencies in the 800 MHz, 900 MHz, 1800 MHz, 2100 MHz and 2600 MHz frequency bands. Public procurement is divided into three different sets:

#### 1.1. Set A

- Professional cooperation with Contracting Authority and the Tenderer who will be selected to deliver professional consulting services and access to the software for the implementation of complex multiobject electronic auction for awarding radio frequencies in the 800 MHz, 900 MHz, 1800 MHz, 2100 MHz and 2600 MHz frequency bands (hereinafter: external consultants);
  - consulting and support in relation with selection of auction format (SMRA or CCA);
  - consulting, support and revision with decisions in relation with preparation of Information Memorandum;
  - consulting and support with public consultation in relation with Information Memorandum and other relevant documents;
  - consulting, support and revision with preparation and definition of auction rules;
  - consulting with and revision of documentation that will be prepared by external consultants;
  - consulting and support with auction implementation.
- General consulting and support with all three phases of auction (pre-auction, during the auction and post-auction).
- Estimated quantity = **60** consultant days.

#### 1.2. Set B

- Cooperation with Contracting Authority and the Tenderer who will be selected to deliver professional consulting services and access to the software for the implementation of complex multiobject electronic auction for awarding radio frequencies in the 800 MHz, 900 MHz, 1800 MHz, 2100 MHz and 2600 MHz frequency bands;
- Specific consulting and support with decisions in relation with all phases of preparation of documentation for auction – focus on consulting in relation with questions that will have influence on market position of operators:
  - coverage obligations;
  - monitoring of coverage obligations fulfilment (methods of measurement, parameters, etc.);
  - cost evaluation of building next generation broadband mobile networks (in relation with White spots coverage);
  - spectrum caps and other competition issues;
  - technologic requirements;



- special issues in relation with building of next generation broadband mobile networks (e.g. LTE networks) – regarding on previous technologies, etc.
- Specific consulting and support in relation with implementation of public consulting regarding Information Memorandum, auction rules and other relevant documents regarding with market position of operators;
- Consulting and support regarding preparation of auction rules with focus on protection of competition, effective implementation of new technologies and maximizing coverage of White spots.
- Estimated quantity = **20** consultant days.

### 1.3. Set C

- Cooperation with the Tenderer who will be selected to deliver professional consulting services and access to the software for the implementation of complex multiobject electronic auction for awarding radio frequencies in the 800 MHz, 900 MHz, 1800 MHz, 2100 MHz and 2600 MHz frequency bands.
- Specific cooperation and support with decisions in relation with all phases of preparation of different auction documentation – focus on different specifics of 800 MHz auctions in other European countries or “Big Bang” auctions including 800 MHz frequency band and consulting to Contracting Authority. Consulting shall include:
  - review of 800 MHz auctions (infrastructure sharing, coverage obligations, Digital Agenda objectives, protection of other services, competition issues, etc.) in other European countries;
  - review of refarming of 900 MHz frequency band in relation with 800 MHz auctions (spectral caps, protection of other services, other measures);
  - evaluation of auctions from previous bullet point with the aim of reaching efficient and successful goals determined in different countries strategies;
- Preparation of document which will include:
  - 800 MHz auctions specifics;
  - review of refarming of 900 MHz frequency band;
  - evaluation of auctions including 800 MHz frequency band
- Estimated quantity = **20** consultant days.