



**PROCUREMENT PROCEDURE FOR LOW-VALUE CONTRACT FOR  
PURCHASE AND MAINTENANCE OF MATLAB  
SOFTWARE**

**referenced 2.09.3.1.01-4/2020**

**PROCUREMENT DOCUMENTS**

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## GENERAL PART

### INVITATION TO TENDER

Pursuant to the second paragraph of Article 39 of the Public Procurement Act (Official Gazette of the Republic of Slovenia, Nos. 91/15 and 14/18; hereinafter: the **ZJN-3**)

**The contracting authority, the BANK OF SLOVENIA**  
**Slovenska cesta 35, 1505 LJUBLJANA**  
Tel: +386 1 4719000  
Fax: +386 1 2515516  
registration number: 5023912  
VAT identification number: SI92582087  
settlement account: SI56 0100 0000 0100 090

hereby invites tenderers, in a low-value public procurement procedure referred to in Article 47 of the ZJN-3, in accordance with these procurement documents, to submit a tender for the

### **PURCHASE AND MAINTENANCE OF MATLAB SOFTWARE**

The following tenderers may apply for the public contract:

- ✓ those who meet the conditions set out by these procurement documents,
- ✓ those whose tender meets the requirements and conditions set out by these procurement documents.

The public contract is not divided into lots.

Variant tenders are not acceptable, and shall not be taken into consideration by the contracting authority.

The public contract is published on the Public Procurement Portal in accordance with the first paragraph of Article 22 of the ZJN-3.

ref: 2.09.3.1.01-4/2020  
date: 23 March 2020

For the contracting authority:

Andraž Južnič  
Secretary-General

## **INSTRUCTIONS TO TENDERERS FOR COMPILING TENDER**

(hereinafter: **instructions**)

### **1. LEGAL BASIS**

The public contract is performed on the basis of the ZJN-3 and secondary legislation governing public contracts and the area of public finances. All costs incurred in the process of preparing and submitting the tender are borne by the tenderers themselves. In no case shall the contracting authority be liable for any damage incurred as a result of such costs, irrespective of the progress of the procedures in connection with the public contract and of the final selection of the tenderer.

### **2. LANGUAGE USED IN PROCEDURE**

The contracting authority shall use Slovene and English in this contract award procedure. The tender and other documentation relating thereto must be submitted in Slovene or English. All queries in connection with the procurement documents must be submitted in Slovene. The procurement documents are published on the Bank of Slovenia website and on the Public Procurement Portal in Slovene.

If tender documents are not written in Slovene or English, at the request of the contracting authority the tenderer must provide a free-of-charge translation into Slovene or English by an independent translator.

In the event of any contradiction between the Slovene and English versions of these procurement documents, the Slovene version shall take precedence.

### **3. ADMISSIBILITY OF TENDER**

In the assessment of tenders, the contracting authority shall only consider admissible tenders, i.e. tenders in connection with which the following apply:

- a) there are no grounds for the exclusion of the tenderer or tenderers,
- b) the tenderer or tenderers meet the selection criteria,
- c) the tender satisfies the contracting authority's needs and requirements set out in the technical specifications and in the procurement documents,
- d) the tender was submitted on time,
- e) there is no evidence of collusion or corruption in relation to the tender,
- f) the contracting authority did not assess the tender as abnormally low,
- g) the tendered price does not exceed the contracting authority's funding.

Tenders submitted electronically via the e-JN information system shall be deemed to have been dated and signed<sup>1</sup> by the tenderer's responsible person, unless explicitly stipulated otherwise in an individual case for an individual form or piece of evidence (e.g. authorisation to obtain data from criminal records, declaration of joint tenderers, specimen contract). All documents submitted electronically must meet the requirements and adhere to the instructions of the procurement documents.

Tenders submitted electronically via the e-JN information system and specially initialled and/or signed documents within those tenders shall be binding on the tenderer in relation to the contracting authority.

The tenderer's responsible person is the person who is entitled to sign and complete the documents referred to in this documentation on behalf of and for the account of the tenderer (except those that are explicitly required to be signed by the statutory representative). Consequently, electronically submitted and signed documents shall be binding on the tenderer in relation to the contracting authority, for the entire time of the contract award procedure until the signing of the contract.

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<sup>1</sup> Stamping is not mandatory, unless explicitly stipulated otherwise.

An individual form that for technical reasons has been compiled or completed differently from the specimen must substantively comply in full with the contracting authority's requirements in the procurement documents. All tender documents must be typed or written legibly in ink that is indelible without special means of erasure. The content of forms, declarations, certificates and documents may not be modified.

The age of documents may not exceed that stipulated by the individual provisions of these procurement documents. In cases where the age of documents is indeterminate, the documents must prove the legally relevant status of the tenderer as at the day stipulated for the submission of tenders.

In accordance with the second paragraph of Article 89 of the ZJN-3, the contracting authority reserves the right:

- to verify all the assertions and statements of an individual tender at the official addresses at which they are officially verifiable according to the information in the tender (hereinafter: **official address**),
- to examine the original documentation referred to by the tender or its appendices.

The tender of a tenderer that does not allow verification or examination, or that fails to prove the accuracy of its assertions and statements by the deadline stipulated in writing by the contracting authority, having regard for the circumstances, shall be excluded by the contracting authority.

The contracting authority shall forward a proposal to initiate misdemeanours proceedings to the National Review Commission:

- should there arise a reasonable suspicion at the contracting authority that in the public procurement procedure the tenderer has submitted a false declaration or a forged or modified document purporting to be genuine in accordance with the eleventh paragraph of Article 89 of the ZJN-3;
- should there arise a reasonable suspicion that the main tenderer is failing to act in accordance with Article 94 of the ZJN-3.

#### **4. PUBLICITY AND CONFIDENTIALITY**

The tenderer shall label any appendices or documents that it believes to be confidential as either a trade secret or as personal data and classified information (hereinafter: **confidential information**) with the designations "POSLOVNA SKRIVNOST" (TRADE SECRET) and/or "TAJNI PODATKI" (CLASSIFIED) and/or "OSEBNI PODATKI" (PERSONAL DATA), initialling the designations as appropriate. When only certain information in a tender, appendix or document is confidential, the confidential part should be underlined in red, with the designation "TRADE SECRET" and/or "CLASSIFIED" and/or "PERSONAL DATA" placed on the side on the same line with the initials of the tender signatory. Documents containing confidential information shall be enclosed in the tender with the appropriate initialling, and in the form of scans when submitting tenders electronically.

The contracting authority shall ensure that information designated a trade secret by an economic operator, having regard for the Trade Secrets Act (Official Gazette of the Republic of Slovenia, No. 22/19) and the ZJN-3, is not disclosed to an unauthorised person, a competitor or similar during the contract award procedure. The contracting authority shall ensure the safeguarding of information that is considered personal data or classified information according to the law governing the protection of personal data and the law governing the protection of classified information.

Notwithstanding the provisions of the first paragraph of Article 35 of the ZJN-3 and the previous paragraph of these instructions on data protection and confidentiality, the following information is always public: specifications of the tendered goods, services or works and quantities in the specification, price per unit, the value of an individual item and the total value of the tender, and all information that has an effect on the ranking of the tender according to other criteria.

Appendices and documents that the tenderer justifiably designates as confidential or that are defined as such by the contracting authority shall be accessible and usable solely for the purposes of this public service contract (i) by the contracting authority's personnel involved in this contract award procedure, (ii) by the National Review Commission in the event of a request for the review of contract award procedures (hereinafter: **National Review Commission**), and/or (iii) at the request of competent national authorities or the court.

## **5. SUBCONTRACTORS / JOINT TENDER**

### Tender with subcontractors:

The tenderer may subcontract a part of the public contract. For the purposes of this public service contract, a subcontractor is an economic operator that is a legal entity or private individual that supplies goods or provides services or works directly related to the subject of this public service contract for a tenderer with whom the contracting authority has concluded a contract or a framework agreement under the ZJN-3.

There may be no grounds for the exclusion of a subcontractor, i.e. each subcontractor must meet all the criteria set out by the forms of the procurement documents.

A tenderer that is appearing in the tender with a subcontractor shall:

- list all the subcontractors and every part of the public contract that it intends to subcontract,
- list the contact data and statutory representatives of the proposed subcontractors,
- enclose a completed Form 4 and provide evidence as necessary of the use of the capacities of other entities,
- enclose the subcontractor's request for direct payment, if so required by the subcontractor.

The inclusion of subcontractors in the performance of contractual obligations or the replacement of subcontractors during the performance of contractual obligations is only possible following a written proposal by the tenderer that contains information in accordance with the third paragraph of Article 94 of the ZJN-3. The contracting authority shall reject the proposed subcontractor if the grounds referred to in the fourth paragraph of Article 94 of the ZJN-3 are present.

In the case of a tender that includes a subcontractor, upon the conclusion of the contract and during the performance of the contract the tenderer must have a written contract in place with the subcontractor, for the purposes of this public contract, that at least contains information about the subcontractor (business name, full address, registration number, VAT identification number and current account number), a detailed description of the works or goods (the subject), the quantity, the value, and the place and deadline for performance.

A copy of the contract with the subcontractor referred to in the previous paragraph shall be submitted to the contracting authority by the selected tenderer when the public contract is signed, otherwise the public contract shall not be deemed to have been concluded, or in the event of a change in subcontractor during the performance of the public contract, within three business days of the signing of the contract with the subcontractor. In so doing, the contracting authority shall verify whether the conditions set out in the previous paragraph have been met; if not, the tenderer and the subcontractor must revise the contract, otherwise the public contract shall be deemed not to have been concluded.

The tenderer and the subcontractor may not amend their contract without the contracting authority's prior written permission.

In the case of a tender with a subcontractor that requires direct payment,<sup>2</sup> in the public contract the tenderer shall authorise the contracting authority to make payment directly to the subcontractor on the basis of an approved invoice or statement, while the subcontractor must submit a letter of consent on the basis of which the contracting authority settles the subcontractor's claims against the main contractor in place of the main contractor (assignment). The subcontractor's consent to direct payments is a part of *Form 1: Tender*, which is also a part of the public contract. The deadlines for payment to the main contractor and its subcontractors are identical.

When working with one or more subcontractors, the tenderer shall bear full liability for the performance of the public contract.

Joint tender:

A tender may also be submitted by a group of tenderers as a joint tender. Such tenderers shall have unlimited joint and several liability to the contracting authority. Their replacement is only allowed during the performance phase and with their own and the contracting authority's prior written consent.

In the case of a joint tender, the signatories are not required to enclose *Form 3: Declaration of acceptance of tender conditions*, as its content is included in *Form 2: Declaration of joint tenderers*. Each signatory shall enclose on its own behalf the completed *Form 4: Declaration of compliance with conditions for performance of public contract*. The other terms and conditions relating to the recognition of qualifications shall be defined for all the tenderers together.

There may be no grounds for the exclusion of an individual joint tenderer, i.e. the joint tenderers must meet all the conditions set out in the forms of the procurement documents.

In a joint tender, the tenderers shall authorise a lead tenderer (hereinafter: the **lead tenderer**) to serve in a management function on their behalf. In such a tender, their written contract concluded for the purpose of the joint performance of this public contract, which must contain information on the tenderers (name, full address, registration number, VAT identification number and current account number), a detailed description of their works or goods, the quantity, the value, the place and the deadline for performance, shall be enclosed in *Form 1: Tender*. The contracting authority shall verify whether the conditions set out in this paragraph have been met; if not, the joint tenderers must revise the contract, otherwise the tender shall be rejected. The joint tenderers may not amend their contract without the contracting authority's prior written permission.

All provisions relating to the tenderer shall apply *mutatis mutandis* to the lead tenderer in a joint tender, unless explicitly stipulated otherwise in the procurement documents. The contracting authority shall deem the lead tenderer to be the authorised recipient pursuant to Article 89 of the General Administrative Proceedings Act (Official Gazette of the Republic of Slovenia, No. 24/06 [official consolidated version], with amendments; hereinafter: the **ZUP**).

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<sup>2</sup> Only if a subcontractor requires direct payment is direct payment to the subcontractor deemed mandatory, whereby the obligation is binding on both the contracting authority and the main contractor. When the tenderer intends to perform the public contract with a subcontractor requiring direct payment:

- in the contract the main contractor shall authorise the contracting authority to pay the subcontractor directly on the basis of an invoice or statement approved by the main contractor,
- the subcontractor shall provide a letter of consent, on the basis of which the contracting authority settles the subcontractor's claims against the tenderer,
- the main contractor shall enclose in its invoice or statement an invoice or statement issued by the subcontractor that it has previously approved.

For nominated subcontractors that will not require direct payments, the contracting authority shall request that the main contractor send it the following within 60 days of the payment of the final invoice or statement: its own written declaration and the written declaration of the subcontractor that the subcontractor has received payment for the works executed. Should the contractor fail to act in accordance with this provision, the contracting authority shall submit a proposal to the National Review Commission to initiate the misdemeanours proceedings referred to in point 2 of the first paragraph of Article 112 of the ZJN-3.

## **6. CAPACITIES OF OTHER ENTITIES**

The tenderer may, where appropriate and permitted in accordance with the ZJN-3, refer to the capacities of other economic operators for an individual contract, irrespective of the legal nature of its relationship with them. The contracting authority shall deem a written document proving the intent of the two entities (all relevant entities) to provide resources for the performance of this public contract as appropriate evidence.

A tenderer that wishes to utilise the capacities of other entities shall submit proof to the contracting authority that it has the necessary resources at its disposal to perform the contract. Should the entities whose capacities the tenderer intends to utilise fail to meet the relevant selection criteria set out in these procurement documents and/or should there be grounds for exclusion, the contracting authority shall require the replacement of the entity that fails to meet the criteria, if the law so allows. Should the replacement not be successful or not be allowed, the contracting authority shall reject the tender.

## **7. CONTENT OF TENDER**

The content of the tender shall encompass the forms completed in accordance with the instructions for each form, and any required appendices to the individual forms:

1. Tender (Form 1)
2. Declaration of joint tenderers (Form 2)
3. Declaration of acceptance of tender conditions (Form 3)
4. Declaration of compliance with conditions for performance of public contract (Form 4)
5. Declaration of participation of legal and natural persons in tenderer (Form 5)
6. Declaration of professional, personnel and technical qualifications (Form 6)
7. Specimen contract (Form 7)
8. Quote (Form 8)

The tender must contain completed appendices for all points of the previous paragraph, with the exception of *Form 2* when a joint tender is not being submitted.

## **8. RECTIFICATION OF ERRORS**

If the information or documentation that must be submitted by the tenderer is, or seems to the contracting authority to be, incomplete (information or an entire document is missing) or erroneous, the contracting authority may request that the tenderer submit the missing documents or supplement, correct or clarify the information or documentation by an appropriate deadline, provided that such a request is in complete accordance with the principles of equal treatment and transparency. The contracting authority shall only request an economic operator to supplement, correct, revise or clarify its tender if the contracting authority is unable to verify a specific fact by itself.

The submission of a missing document or the supplementation, correction or clarification of information or documentation may relate solely to those elements of the tender whose existence before the passing of the deadline stipulated for the submission of a request to participate or tender can be objectively verified. Should the economic operator fail to submit the missing document, or fail to supplement, correct or clarify the information or documentation, the contracting authority shall reject/exclude the tender.

Except in the case of the correction or supplementation of an obvious error, if the correction or supplementing does not entail the *de facto* submission of a new tender, the tenderer may not supplement or correct:

- its prices per unit (net of VAT), the values of items (net of VAT), the total value of the tender (net of VAT), except when the total value is being changed in accordance with the seventh paragraph of Article 89 of the ZJN-3, and the tender in terms of its criteria,
- that part of the tender tied to the technical specifications of the subject of the public contract,

- those elements of the tender that have the effect or could have the effect of changing the ranking of its tender relative to other tenders received by the contracting authority in the public procurement procedure.

Notwithstanding the previous paragraph, only the contracting authority may, with the written consent of the tenderer, correct errors in calculations identified during the examination and evaluation of the tenders. Such corrections may not include changes to the quantity and price per unit net of VAT. If it is established during the examination and evaluation of tenders that a calculation error has occurred on account of an incorrectly predetermined mathematical operation in the inventory of works by the contracting authority, the contracting authority may, with the tenderer's written consent, correct the calculation error by applying the correct mathematical operation to calculate the value of the tender, taking prices per unit (net of VAT) and quantities offered by the tenderer into account. Notwithstanding the previous paragraph, the contracting authority may correct an erroneously listed VAT rate, with the tenderer's written consent.

## **9. ACCESS TO PROCUREMENT DOCUMENTS**

The procurement documents are published on the contracting authority's website at <https://www.bsi.si/razpisi/javna-narocila>, while the contract notice is published on the Public Procurement Portal.

## **10. CLARIFICATION OF TENDER DOCUMENTATION**

Clarifications in connection with the public contract shall be provided by the contracting authority in response to written queries. Queries shall be published on the Public Procurement Portal, without citation of the source, together with the responses. All responses and information published there shall be deemed a clarification, supplement or amendment to the procurement documents; their content shall become an integral part thereof and shall be binding upon tenderers and the contracting authority. In the event of the amendment of the procurement documents, the contracting authority may extend the deadline for submission of tenders should it judge this necessary.

Interested parties may submit queries via the Public Procurement Portal by no later than **10 am on 6 April 2020**. The contracting authority will not provide further clarification if the request for further clarification is not received by the date stated above.

There will be no meeting with tenderers.

## **11. SUBMISSION OF TENDER**

Tenderers shall submit their tenders to the e-JN (electronic public procurement) information system at <https://ejn.gov.si/eJN2>, in accordance with point 3 of the Instructions for the use of the information system for the use of the function for the electronic submission of e-JN tenders: TENDERERS (hereinafter: Instructions for the Use of e-JN), which are part of this tender documentation and are published on <https://ejn.gov.si/eJN2>.

Prior to submitting 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 log into the application at the same address.

The user of a tenderer authorised to submit tenders in the e-JN information system submits the tender by clicking on the "Oddaj" (Submit) button. Upon submission of tenders, the e-JN information system logs the user's identity and the time of submission of tender. By submitting a tender, the user demonstrates and declares his/her intention to submit a binding tender on behalf of the tenderer (Article 18 of the Code of Obligations).<sup>3</sup> Upon the submission of a tender, that tender

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<sup>3</sup> [Code of Obligations](#) (Official Gazette of the Republic of Slovenia, Nos. 97/07 [official consolidated version], 64/16 [constitutional court ruling] and 20/18 [OROZ631])

is binding for the time stated in the tender, unless the tenderer's user withdraws or amends the tender before the deadline for submission.

Tenders 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 10 am on 14 April 2020**. A tender is deemed to have been submitted if it is designated as "ODDANO" (SUBMITTED) in the e-JN information system.

Access to the link for the submission of an electronic tender in this public procurement procedure is provided via the following link:

[https://ejn.gov.si/ponudba/pages/aktualno/aktualno\\_javno\\_narocilo\\_podrobno.xhtml?zadevaId=17195](https://ejn.gov.si/ponudba/pages/aktualno/aktualno_javno_narocilo_podrobno.xhtml?zadevaId=17195)

## **12. WITHDRAWAL, REVISION OR SUPPLEMENTATION OF TENDER**

The tenderer may withdraw or revise its tender up until the deadline for the submission of tenders. If the tenderer withdraws its tender from the e-JN information system, the tender shall be regarded as having not been submitted and the contracting authority shall not be able to see it in the e-JN system. If the tenderer revises its tender in the e-JN information system, the last submitted tender shall be available to the contracting authority in the system.

After the deadline for submission passes, tenders may no longer be withdrawn, revised or supplemented.

## **13. OPENING OF TENDERS**

The opening of tenders shall take place automatically within the e-JN information system on **14 April 2020** and shall begin at **10.01 am** online at <https://ejn.gov.si/eJN2>.

The opening process shall take place with the e-JN information system displaying the tenderer's details and the variants (if required or permitted) automatically at the time set for the public opening of tenders, and enabling access to the pdf document that the tenderer uploads to the e-JN system under the "Quote" section. The public announcement procedure shall automatically conclude after two days. Tenderers that have submitted tenders shall have these details available to them in the "Records on the opening of tenders" section of the e-JN information system.

## **14. PARTIAL TENDERS / VARIANT TENDERS**

Tenderers offering to provide only a part of the tender set out in the procurement documents shall be excluded from the subsequent procedure, and their tenders shall be deemed inadmissible.

Tenders may only be submitted for the entire public contract, and not in variants.

## **15. NEGOTIATIONS**

The contracting authority will not conduct negotiations with tenderers pursuant to the second paragraph of Article 47 of the ZJN-3.

## **16. TENDER SELECTION CRITERIA**

The contracting authority shall select the tenderer on the basis of the criterion of the most economically advantageous tender, viz. the lowest total value in the quote net of VAT (*Form 8*), whereby the tenderer must satisfy all the conditions set out by the procurement documents.

In the event that the prices net of VAT of the two most advantageous admissible tenders are equal, the most advantageous admissible tender that is recorded first in the tender submission system shall be selected. In the event of supplementation/revision of a tender, the tender shall be deemed to have been submitted when the final supplementation/revision of the tender was recorded.

## **17. TENDER VALUE**

The value of the tender must be evident in the quote (*Form 8*), and must take account of all elements affecting its calculation, including VAT; it must be expressed in euros.

At the public opening of tenders, the document that the tenderer uploads in the “Quote” section of the e-JN system will be displayed.

## **18. VALIDITY OF TENDERS**

Tenders must be valid for six months inclusive after the deadline for submission of tenders. Should the validity of the tender be shorter, the tender shall be rejected/excluded from the contract award procedure.

The contracting authority may require tenderers to extend the validity of tenders for a specific additional period. Should the tenderer fail to comply with the request, the tender shall be deemed to have been withdrawn.

If a bid bond was required in the procurement documents, the validity of the bid bond shall also be extended with the extension of the validity of the tender; otherwise the tenderer shall be deemed to have withdrawn the tender, and the contracting authority shall redeem the valid bid bond delivered.

## **19. DECISIONS IN PUBLIC PROCUREMENT PROCEDURES**

The contracting authority reserves the right to make use of all decision options set out in Article 90 of the ZJN-3 without any liability for damages.

The contracting authority shall inform tenderers and candidates of all decisions in accordance with Article 90 of the ZJN-3 by publishing the signed decision referred to in this article on the Public Procurement Portal. The decision shall be deemed to have been delivered on the day of its publication on the Public Procurement Portal. If in the publication of the decision on the Public Procurement Portal it is not possible to refer to a published invitation to participate, the contracting authority shall deliver the decision in accordance with the law governing administrative proceedings, and on the day that it is sent to the tenderer or the candidate shall also publish a voluntary notice for prior transparency on the Public Procurement Portal, and, if appropriate with regard to the value, also in the Official Journal of the European Union.

## **20. PROCEDURES AFTER ISSUE OF CONTRACT AWARD NOTICE**

The contracting authority shall inform all those who submitted tenders of the selection of the tenderer, via a resolution, in the manner set out in the previous point. The resolution shall contain the contracting authority’s findings and the grounds for the decision taken.

The selected tenderer shall sign a contract immediately or within 48 days of the decision to award a public contract becoming final; otherwise it shall be deemed to have withdrawn from the tender.

## **21. ANTI-CORRUPTION CLAUSE**

During the contract award procedure, the contracting authority and the tenderer or a third party may not initiate or undertake actions that could predetermine the selection of a specific tender.

In the period between the selection of the tender and the entry into force of the contract, the contracting authority and the tenderer may not initiate actions that could prevent the contract from entering into force or from being performed. Should the procedure be terminated, neither party may initiate or undertake procedures that could hinder the cancellation or amendment of the selection decision, or that could affect the impartiality of the contracting authority and/or the National Review Commission.

## **22. LEGAL REMEDY**

**Legal basis, deadlines and right to request review**

Judicial relief against breaches of public procurement procedures is guaranteed by the Legal Protection in Public Procurement Procedures Act (Official Gazette of the Republic of Slovenia, Nos. 43/11, 60/11 [ZTP-D], 63/13, 90/14 [ZDU-1I], 60/17 and 72/19; hereinafter: the **ZPVPJN**):

- in the pre-review procedure before the contracting authority,
- in the review procedure before the National Review Commission, and
- in judicial proceedings before the district court in the first instance.

The following shall have the right of action in pre-review and review procedures:

- any person who has or had an interest in the award of a public contract, the conclusion of a framework agreement or inclusion in a dynamic purchasing system or a qualitative selection system, and who has or could have suffered damage as a result of the alleged breach,
- a public interest advocate (the Ministry of Finance, the Court of Audit of the Republic of Slovenia, the Competition Protection Agency, the Commission for the Prevention of Corruption).

If the deadline for submission of requests to participate or tenders has already passed, an interest in the award of a public contract shall be considered to have been demonstrated by any person who has submitted a timely request to participate or tender. In the case of competitive dialogue, a competitive procedure with negotiation or a negotiated procedure with or without prior publication of a contract notice that, having regard for the law governing public procurement, the contracting authority is conducting because of a previous unsuccessful procedure, interest in the award of a public contract shall also be recognised in respect of a candidate or tenderer who submitted a request to participate or tender in due time in the previous unsuccessful procedure and was not invited to submit a tender in the procedure but who, pursuant to the law governing public procurement, should have been so invited. When a joint tender has been submitted in a public contract award procedure, a request for review may be filed by any of the persons that submitted the joint tender.

The request for review must contain:

- the name and address of the request applicant and the contact person,
- the name of the contracting authority,
- the reference of the public contract or the decision to award a public contract or on the recognition of qualifications,
- the subject of the public contract,
- the alleged breaches,
- the facts and evidence that prove a breach to have occurred,
- authorisation to act in the pre-review and review procedure, if a representative is acting on behalf of the applicant,
- an indication of whether the public procurement procedure in question involves co-financing from European funds and, if so, which fund,
- confirmation of payment of the fee referred to in the first, second, third or fourth paragraphs of Article 71 of the ZPVPJN.

The deadline for filing a request for review in relation to the content of the contract notice, the invitation to tender or the procurement documents is ten business days from the date of:

- the publication of the public contract notice, or
- the publication of a notice of supplementary information, information on an incomplete procedure or a corrigendum, if this notice has the effect of changing or supplementing the requirements or the selection criteria,
- the receipt of an invitation to submit a tender.

The previous paragraph notwithstanding, a request for review may not be filed after the deadline for the submission of tenders, unless in the public procurement procedure the contracting authority stipulates a deadline for the submission of tenders that falls in less than ten business days. In this

event a request for review may be filed within ten business days of the publication of the contract notice.

A public interest advocate may file a request for review in any phase of the procedure to award a public contract within 45 business days of the date on which the advocate learned of the breach, but no later than 12 months after the start of performance of the contract or the individual contract awarded on the basis of a framework agreement or in a dynamic purchasing system.

In the request for review, the applicant must enclose confirmation of payment of the fee<sup>4</sup> set out in accordance with Article 71 of the ZPVPJN in the amount of EUR 2,000 when the request for review relates to the content of the contract notice or the procurement documents.

The applicant must pay the fee into a subsidiary account open for the purpose of the payment of fees for pre-review and review procedures:

- current account: SI56 0110 0100 0358 802 at the Bank of Slovenia (budget implementation),
- SWIFT: BS LJ SI 2X
- IBAN: SI56011001000358802
- reference: 11 16110-7111290-XXXXXXLL

The reference consists of three parts, P1-P2-P3. The first two parts of the reference, P1 and P2, are always the same, and are linked by a hyphen.

P1: 16110

P2: 7111290

P3: the third part of the reference is the number of the contract notice, or in exceptional cases the reference number of the order, and thus differs for each public procurement procedure. In the case of a fee for a review procedure before the National Review Commission, which is paid on the basis of its resolution, P3 is taken from the number of the resolution. P3 consists of eight figures, of which the last two represent the year from the contract notice number or from the reference number.

ref:2.09.3.1.01-4/2020

date: 23 March 2020

For the contracting authority:

Andraž Južnič  
Secretary-General

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<sup>4</sup> Public interest advocates are exempt from the payment of the fee as the applicant.

**Form 1: TENDER**

Tenderer or lead tenderer:

\_\_\_\_\_

\_\_\_\_\_

for the contracting authority:  
Bank of Slovenia  
Slovenska cesta 35  
1505 Ljubljana

On the basis of the procedure to award a public contract for the “Purchase and maintenance of Matlab software”, which is being conducted under the low-value public procurement procedure, as announced on the Public Procurement Portal, we hereby submit the following

**T E N D E R**

**I.**

**We are offering the contracting authority the following, under the terms and conditions of this public contract:**

**PURCHASE AND MAINTENANCE OF MATLAB SOFTWARE for a period of three years (1 May 2020 to 30 April 2023)**

A description of the contract is evident from the quote (Form 8).

**II.**

**Information about the tenderer:**

Business name, registered office, registration	
Telephone, fax, email	
Current account	
Person with power to sign contract, position	
Contact person*, telephone, email	

\* It should be noted that our contact person is also the authorised recipient pursuant to Article 89 of the ZUP.

**III.**

In this tender we are acting as (*indicate as appropriate*):

- a sole tenderer, or**  
 **a tenderer with the following subcontractors:**

	<b>Business name and registered office</b>
1.	
2.	
3.	

(Note: Form 3 must be completed, NOT Form 2)

Mandatory appendix: Written agreement between the tenderer and the subcontractor that they will

conclude a contract in accordance with point 5 of the instructions in the procurement documents. A subcontractor that requires direct payment (Article 94 of the ZJN-3) must complete the following declaration:<sup>5</sup>

Subcontractor _____, which is participating in the public service contract _____ hereby declares that it <b>requires</b> direct payment from the contracting authority.  Done in _____, on _____  Subcontractor's signature:
---

As the selected tenderer, we will submit a copy of the contract with the subcontractor(s) concluded under the terms set out in point 5 of the instructions in the procurement documents to the contracting authority upon the signing of the public contract. In the event of a change of subcontractor (with the contracting authority's prior consent), the contract shall be submitted within three business days of being concluded with the new subcontractor.

As the tenderer, we hereby declare that in the event of our tender being selected, we will be fully liable for the performance of the public contract versus payment, irrespective of the subcontractors cited above.

**IV.**

**in a joint tender with the following joint tenderers:**

	<b>Business name and registered office</b>
1.	
2.	
3.	

*(Note: In the case of a joint tender, Form 2 must be completed, NOT Form 3)*

**Mandatory appendix:** A written contract between the joint tenderers for the performance of the public contract that contains the information in accordance with point 5 of the instructions in the procurement documents. In the contract the joint tenderers must agree that they are jointly and severally liable without limitation to the contracting authority for all the obligations arising from this public contract.

**V.**

This tender shall be valid until six months after the deadline for submission of tenders.

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**INSTRUCTIONS:** The form should be completed by the tenderer's responsible person, and the form submitted electronically into the e-JN information system is considered dated and signed, and is thus binding on the tenderer in respect of the contracting authority.

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<sup>5</sup> If there are several subcontractors requiring direct payment, each shall complete a declaration and shall enclose it in this form.

**Form 2: DECLARATION OF JOINT TENDERERS**

**I**

The **undersigned** \_\_\_\_\_  
(first name and surname of authoriser)

with the title \_\_\_\_\_ of \_\_\_\_\_  
(position) (business name and registered office of firm)

The **undersigned** \_\_\_\_\_  
(first name and surname of authoriser)

with the title \_\_\_\_\_ of \_\_\_\_\_  
(position) (business name and registered office of firm)

The **undersigned** \_\_\_\_\_  
(first name and surname of authoriser)

with the title \_\_\_\_\_ of \_\_\_\_\_  
(position) (business name and registered office of firm)

hereby confirm to the contracting authority that the aforementioned persons are the authorised persons of the individual tenderers that are collectively submitting a joint tender, and by virtue of this document

authorise \_\_\_\_\_ (*first name and surname of authorised representative*)

with the title \_\_\_\_\_ (*position*)

of \_\_\_\_\_ (*business name and registered office of lead tenderer*),

who signs \_\_\_\_\_ and initials \_\_\_\_\_, and

- to sign and submit a joint tender for this public contract on our behalf,
- to act as our joint contact person for the purposes of the joint tender,
- to act as our authorised recipient pursuant to Article 89 of the ZUP, and
- to sign the public contract in the event of the selection of our joint tender for the performance of the public contract.

**II**

I, as a signatory acting on behalf of the joint tenderer, hereby declare that:

- tenders submitted electronically into the e-JN information system are deemed dated and signed by us (except where a signature is specifically required on individual forms) and that all parts of our tender are binding for us as a tenderer in relation to the contracting authority,
- we accept all the conditions and requirements of the procurement documents,
- we accept the exclusive application of Slovenian law to this public contract, and the jurisdiction of the National Review Commission and the jurisdiction of the Slovenian courts in connection with this public contract,

Low-value public contract: Purchase and maintenance of Matlab software

- all information provided in our joint tender is true and not misleading, and all copies of documents correspond to the originals, and
- in the context of this joint tender, we will not transfer the awarded public contract to another contractor without the prior agreement of the other contractors and the contracting authority.

In this connection we recognise the contracting authority's right to verify the veracity of information and the authenticity of copies of documents pursuant to the fourth indent of the previous paragraph.

We assume full liability for the information in our tender, and the veracity and relevance thereof.

Place and date:

---

Signature of authoriser:

---

Place and date:

---

Signature of authoriser:

---

Place and date:

---

Signature of authoriser:

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---

**INSTRUCTIONS:** *The authorisation is to be completed and signed by all the responsible persons of the tenderers in the joint tender and the authorised person of the lead tenderer. The authorised person of the lead tenderer encloses the scanned form with the required signatures in the electronically submitted tender.*

**Form 3: DECLARATION OF ACCEPTANCE OF TENDER CONDITIONS**

Tenderer:

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hereby declares that:

- tenders submitted electronically into the e-JN information system are deemed dated and signed by us (except where a signature is specifically required on individual forms), and all parts of our tender are binding for us as a tenderer in relation to the contracting authority,
- we accept all of the conditions and requirements set out in the procurement documents for this public contract,
- we accept the exclusive application of Slovenian law, and the jurisdiction of the National Review Commission and the jurisdiction of the Slovenian courts in connection with this public contract,
- all information provided in our tender is true and not misleading, and all copies of documents correspond to the originals, and
- we will not transfer the awarded public contract to another contractor without the prior written agreement of the contracting authority.

In this connection we recognise the contracting authority's right to verify the veracity of information and the authenticity of copies of documents pursuant to the fourth indent of the previous paragraph.

We assume full liability for the information in our tender, and the veracity and relevance thereof.

---

**INSTRUCTIONS:** *The form is to be completed by the tenderer's responsible person, and the form submitted electronically into the e-JN information system is considered dated and signed, and is thus binding on the tenderer in respect of the contracting authority.*

**Form 4: DECLARATION OF COMPLIANCE WITH CONDITIONS FOR PERFORMANCE OF PUBLIC CONTRACT**

Tenderer:

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I (we) hereby declare:

**I.<sup>6</sup>**

By signing this declaration, we confirm, under criminal and material liability, the fulfilment of the conditions below:

- no final judgment containing elements of the criminal offences defined in the first paragraph of Article 75 of the ZJN-3 has been imposed on us as an economic operator, or on a person who is a member of the administrative, management or supervisory body of the economic operator or who has powers of representation (contract signing), decision or control therein;
- as an economic operator we provide assurance that:
  - as at the date of the submission of the tender or request, in accordance with the regulations of the country of establishment or those of the contracting authority's country, we have no outstanding past-due liabilities in the amount of EUR 50 or more in connection with mandatory taxes or other non-tax monetary liabilities in accordance with the law governing financial administration;
  - as at the date of the submission of the tender or request, all withholding tax returns for employment earnings for the period of five years to the date of the submission of the tender or request have been submitted;
- as an economic operator we provide assurance that:
  - as at the deadline for submission of tenders or requests, we have not been included in the register of economic operators with negative references referred to in Article 110 of the ZJN-3;
  - a fine has not been imposed on the economic operator twice or more times during the three years prior to the deadline for the submission of tenders, by virtue of a final decision or multiple final decisions rendered by a competent authority of the Republic of Slovenia, another Member State or a third country for a breach in connection with remuneration for work, working hours, rest periods, or the performance of contract-based work despite the existence of elements of an employment relationship, or in connection with undeclared work.
- no insolvency or compulsory winding-up proceedings pursuant to the law governing insolvency and compulsory winding-up proceedings, or liquidation proceedings pursuant to the law governing companies have been initiated against us, our assets and operations are not under the administration of a liquidator or the court, our business activities have not been suspended, no proceedings have been initiated against us in accordance with the regulations of another country and no situation of equivalent legal consequences has arisen;

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<sup>6</sup> The conditions set out in this point must also be met by subcontractors.

- no significant or constant deficiencies in the performance of key obligations were evidenced in a previous public contract or previous concession agreement that we concluded with the contracting authority (Bank of Slovenia) as a result of which the contracting authority prematurely withdrew from the previous contract or agreement, claimed damages or imposed other comparable sanctions.

## II.

The economic operator and each person who is a member of the administrative, management or supervisory body of the economic operator or who has powers of representation (contract signing), decision or control therein authorise the Bank of Slovenia, for purposes of verification of the tender, to obtain all necessary information with regard to point I of this declaration from the competent authorities or from the relevant records:

### Information:

**- about the tenderer (private individual) / about the statutory representative of the tenderer (legal entity):**

First name and surname	
Personal identification number (EMŠO) <sup>7</sup>	
Place of birth	
Address of permanent residence	
Country	

**- about the tenderer (legal entity):**

Business name: \_\_\_\_\_

Registered office: \_\_\_\_\_

Registration number: \_\_\_\_\_

Place and date:

Signature:

\_\_\_\_\_

\_\_\_\_\_

**INSTRUCTIONS:** The form is to be completed, dated and signed by each person who is a member of the administrative, management or supervisory body of the economic operator that is the tenderer, a joint tenderer or a subcontractor, or who has powers of representation (contract signing), decision or control therein. The tenderer encloses the scanned form with the required signatures in the electronically submitted tender.

<sup>7</sup> Foreign tenderers should provide the personal identification number according to their own legislation.

## **Form 5: DECLARATION OF PARTICIPATION OF LEGAL AND NATURAL PERSONS IN TENDERER**

In order to ensure the transparency of the transaction and to prevent corruption risks in accordance with the sixth paragraph of Article 14 of the Integrity and Prevention of Corruption Act, the contracting authority is required to obtain a declaration or information on the participation of legal and natural persons in the ownership of the tenderer, including the participation of silent partners, and on the economic operators who, with regard to the provisions of the law regulating companies, are considered to be affiliates of the tenderer. The contracting authority is required to submit this declaration and information to the Commission for the Prevention of Corruption at the latter's request.

<b>Public contract</b>	
<b>Contracting authority</b>	<b>Bank of Slovenia Slovenska 35 1000 Ljubljana</b>
<b>Ref</b>	2.09.3.1.01-4/2020
<b>Project name</b>	Purchase and maintenance of Matlab software
Information on the tenderer (legal entity):	
Full name or business name	
Registered office	
Municipality of registered office	
Entry number in companies register	
Registration number	

I, the undersigned statutory representative, hereby declare that the following legal persons participate in the ownership of the aforementioned tenderer:

	<b>Name:</b>	<b>Registered office:</b>	<b>Registration number:</b>	<b>Participating interest, %</b>
<b>1</b>				
<b>2</b>				
<b>3</b>				
<b>4</b>				
<b>...</b>				

I, the undersigned statutory representative, hereby declare that the following natural persons participate in the ownership of the aforementioned tenderer:

	<b>First name:</b>	<b>Surname:</b>	<b>Address of permanent residence:</b>	<b>Participating interest, %</b>
<b>1</b>				

Low-value public contract: Purchase and maintenance of Matlab software

2				
3				
....				

I, the undersigned statutory representative, hereby declare that the following economic operators are considered to be affiliates of the aforementioned tenderer according to the law governing companies:

	<b>Name:</b>	<b>Registered office:</b>	<b>Registration number:</b>	<b>Participating interest, %</b>
1				
2				
3				
....				

By signing this declaration, I guarantee that, in the ownership structure, there are no other legal and natural persons, silent partners or economic operators considered to be affiliates under the law governing companies.

Statutory representative:

Done in \_\_\_\_\_, on \_\_\_\_\_

First name and surname:  
Signature and stamp:

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**INSTRUCTIONS:** *The form is to be completed by the responsible person of the tenderer, who encloses the scanned form with the required signature in the electronically submitted tender.*

**Form 6: DECLARATION OF PROFESSIONAL, PERSONNEL AND TECHNICAL QUALIFICATIONS**

Tenderer:

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

We hereby declare that:

- (1) we have the relevant technical ability to perform the public contract;
- (2) we have a contractual relationship with the manufacturer of the tendered software for the current calendar year.

As proof of the declaration set out in this point, we enclose a relevant copy (certification, contract or other document).

Enclosed: \_\_\_\_\_

We are aware that any erroneous or misleading statements by the tenderer will result in the exclusion of the tender by the contracting authority.

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***INSTRUCTIONS:*** *The form is to be completed by the tenderer's responsible person, and the form submitted electronically into the e-JN information system is considered dated and signed, and is thus binding on the tenderer in respect of the contracting authority.*

## Form 7: SPECIMEN CONTRACT

**Bank of Slovenia**, Slovenska cesta 35, 1505 Ljubljana, represented by first name, surname, title  
registration number: 5023912  
VAT ID number: SI92582087  
settlement account: 01000-0000100090  
/hereinafter: the **contracting authority**/

and

Contractor's name, represented by first name, surname, title,  
registration number: number  
VAT ID number: SInumber  
current account: number, open at bank name  
(hereinafter: the **contractor**)

hereby enter into this

### CONTRACT 02/30.50/20 FOR THE PURCHASE AND MAINTENANCE OF MATLAB SOFTWARE

#### I. RECITALS

##### Article 1

The contracting parties hereby establish that:

- contracting authority published a contract notice for the public contract entitled "Purchase and maintenance of Matlab software" (hereinafter: the **public contract**) on the Public Procurement Portal under contract notice number number of date and in the Official Journal of the EU under contract notice number number of date,
- the contractor responded to the contract notice referred to in the previous indent with its tender referenced reference of date,
- by virtue of contract award notice number number of date published on the Public Procurement Portal on date and in the Official Journal of the EU on date, the contracting authority selected the contractor as the most advantageous tenderer.

The contractor confirms that it has been fully acquainted with the procurement documents and the terms and conditions of the public contract, and accepts them in their entirety.

The procurement documents and the contractor's tender constitute integral parts of this agreement in the form of *Appendix 1* and *Appendix 2*.

The appendices to this contract are integral parts thereof. In the event of discrepancies between the contract and its appendices, the contractual provisions shall take precedence. In the event of discrepancies between Appendix 1 and Appendix 2, the content of Appendix 1 shall take precedence.

#### II. SUBJECT OF CONTRACT

##### Article 2

The contractor undertakes to supply Matlab software as described in *Appendix 1* to the contracting authority, and to maintain it in accordance with this contract; the contracting authority undertakes to pay the agreed consideration (contract value) to the contractor.

The supply and maintenance of software on the basis of this contract shall be instituted and performed within 14 days of the signing of the contract.

The supply of software also encompasses toolboxes for three existing licences, as described in Appendix 1.

The maintenance of Matlab software and technical support services shall encompass:

- the subscription fee for regular Matlab software updates,
- access to new Matlab software functions,
- direct technical support such as technical enquiries via phone and email, and online support,
- online licence management,
- the possibility of adding new licences to online support, and
- the twice-yearly download of a new version of Matlab software.

By virtue of this contract, the contracting parties also regulate their mutual rights and obligations in connection with the performance of the public contract.

### **III. CONTRACT VALUE**

#### **Article 3**

The contract value for the purchase of the toolboxes is as follows:

- net of VAT:
- VAT:
- Total:

The contract value of the maintenance is as follows:

- net of VAT:
- VAT:
- Total:

The contract value of the purchase of the toolboxes and the maintenance is as follows:

- net of VAT:
- VAT:
- Total:

The total contract value includes the price of purchasing and maintaining Matlab software for the period from 1 May 2020 to 30 April 2023, and all other costs of the public contract during that period.

On the basis of a signed contract, the contractor shall issue an invoice in the amount of EUR \_\_\_\_\_ net of VAT or EUR \_\_\_\_\_ including VAT for the first year, and invoices in the same amount for the period to 30 April 2021 and in the same amount for the period to 30 April 2022.

The contractor shall address the issued invoice to the contracting authority and the contact person, and shall email it in paperless form to [eracuni@bsi.si](mailto:eracuni@bsi.si) (email in xml format, with attachments in pdf).

The contracting authority undertakes to pay the invoice within 30 days of receipt; otherwise the contracting authority shall pay the default interest prescribed by law.

The contracting authority may at any time withhold the payment of any invoice of the contractor (issued on the basis of this contract or any other contract) if it finds that the contractor has caused damage and/or has breached its obligations under this contract.

#### **IV. NOTIFICATION, CONTRACT ADMINISTRATORS AND CONTACT PERSONS**

##### **Article 4**

The contracting parties shall inform each other promptly of any material change or circumstance that impacts or could impact the performance of this contract.

The contracting parties shall each appoint a contract administrator who is responsible for the performance of the contract in accordance with its provisions, as follows:

- for the contracting authority: first name, surname, tel: number, email: email address
- for the contractor: first name, surname, tel: number, email: email address

Notwithstanding the previous paragraph, with the aim of amicably agreeing on the performance of this contract and resolving all organisational and technical issues in connection herewith, including controls of the performance of contractual obligations, the provision of information on payments, and the confirmation of invoices and other documents, the contracting parties each designate a contact person as follows:

- for the contracting authority: first name, surname, tel: number, email: email address
- for the contractor: first name, surname, tel: number, email: email address

Communications between the contracting parties shall be undertaken in writing, via email as a rule, whereby the moment that a message is received by the recipient during business hours shall be deemed to be the moment that it was sent. A message sent outside these hours shall be deemed to have been received by the recipient's next business hour, with the exception of a defect report, unless the contracting parties agree otherwise in writing.

The deadline for the performance of the recipient's obligations shall be counted from the first business hour that the recipient receives the message, unless otherwise agreed by the contracting parties.

The contracting parties shall report all changes in connection with contact persons and contract administrators, including any replacement thereof, in writing, and in advance as a rule. The replacement of a contact person or a contract administrator shall not be deemed an amendment to the contract.

The contractor expressly emphasises that its contract administrator is also its authorised mail recipient.

#### **V. CONTRACTOR'S OBLIGATIONS**

##### **Article 5**

Throughout the duration of this contract, the contractor shall perform its obligations in accordance with this contract in a high-quality manner, regularly, with the diligence of a good expert, and in accordance with the rules of the profession, the best professional practices and standards, laws and other regulations governing the area of contractual obligations, and the manufacturers' instructions and standards.

The contractor shall in particular:

- protect the interests of the contracting authority, and notify it in writing of any obstacles to the performance of contractual obligations;
- immediately report any conflict of interest, and make proposals for the management of that conflict;
- provide the services in a professional, flawless and high-quality manner, and in accordance with good business practices;
- ensure the highest possible service level with regard to the time and place of provision;

- provide the services in the most efficient manner within the framework of the contracting authority's requirements;
- use advanced information technology and methods when providing the services, and ensure that no damage is done to the contracting authority's information system;
- perform the envisaged obligations by the prescribed deadlines and in the envisaged manner.

#### **Article 6**

The contractor shall uphold the contracting authority's house rules and rules of conduct, its security policy and measures, and other internal rulebooks that the contracting authority notifies it of, should its conduct extend into their areas of application.

### **VI. CONTRACTING AUTHORITY'S OBLIGATIONS**

#### **Article 7**

Regular performance of the obligations under this contract.

### **VII. DELAYS AND CONTRACTUAL PENALTY**

#### **Article 8**

A delay shall be deemed to have arisen on the part of the contractor when it fails to perform its obligations in the agreed scope, in the agreed manner, to the agreed quality, by the agreed deadlines and in the agreed quantity.

Excluding cases of *force majeure* and/or grounds arising on its own part, in the event of a delay the contracting authority shall be entitled to charge the contractor a contractual penalty in the amount of EUR 100 for each day of delay with respect to the deadline referred to in the second paragraph of Article 2 of this contract, up to a maximum of 10% of the total contract value net of VAT. The contracting authority's entitlement to the contractual penalty referred to in this paragraph shall arise on the first day of the delay, irrespective of the contracting authority's written deadline for the rectification of the breach.

Notwithstanding the provision of the previous paragraph, excluding cases of *force majeure* and/or grounds arising on its own part, in the event of the non-performance or partial performance of the obligations under this contract the contracting authority shall be entitled to charge the contractor a contractual penalty in the amount of 10% of the total contract value net of VAT.

In the event of a breach of the non-disclosure obligation, the contracting authority shall be entitled to charge a contractual penalty in the amount of 10% of the total contract value net of VAT for each individual case, irrespective of the contractual penalty referred to in the second and/or third paragraphs of this article.

Contractual penalties shall be processed and charged separately and independently. They shall be billed during payment, and the contractor shall be obliged to settle them within 30 days of receiving the contracting authority's written instruction. The contracting authority may also seek the payment of a contractual penalty by liquidating any financial collateral that it has at its disposal. The contracting authority shall inform the contractor that it reserves the right to a contractual penalty due to missed deadlines no later than upon the acceptance/confirmation of the contractual obligations. The contracting authority shall have the right to demand a contractual penalty from the contractor due to non-performance of the contractual obligations referred to in the third and fourth paragraphs of this article, or to demand the performance of the contractual obligations.

The contracting authority shall have the right to demand a contractual penalty for non-performance of contractual obligations even if the contractual penalty exceeds the damage that it has incurred and even if it has incurred no damage. If the damage incurred by the contracting authority exceeds the contractual penalty for non-performance of contractual obligations, the contracting authority shall have the right to claim the shortfall relative to full compensation.

## VIII. LIABILITY AND FORCE MAJEURE

### Article 9

The payment of a contractual penalty under this contract shall not relieve the contractor of the performance of contractual obligations, nor shall it affect the contracting authority's right to withdraw from this contract.

In the event of a breach of this contract, the contractor is obliged to reimburse the contracting authority for all directly incurred damage, irrespective of the exercise of institutions under this contract.

Should the contractor fall into delay as a result of *force majeure*, it shall inform the contracting authority accordingly as soon as possible in writing, and shall continue the works when the aforementioned grounds no longer apply. The contractor shall inform the contracting authority of the cessation of *force majeure* without delay. All unforeseen developments over which no party has or had any influence and could not prevent, and which prevented the performance of the contractual obligations (illness, natural disasters, war, *force majeure* events recognised in case law, etc.) shall be deemed *force majeure*. In the event of *force majeure*, the contractor shall immediately embark on rectifying the consequences if they impact on the contracting authority's rights. The contractor shall endeavour to minimise the incurring of damage by the contracting authority due to *force majeure*.

## IX. NON-DISCLOSURE CLAUSE

### Article 10

The contracting parties undertake, during the performance of this contract and after its expiry, to safeguard all personal data, trade secrets, classified information and other confidential information (hereinafter: **confidential information**) referred to in this contract, and confidential information that they have learned of in connection with this contract or that they will learn of during the performance of this contract, as information to which the rules for the safeguarding of confidential information apply with regard to the particular type of confidential information, and not to use it for their own purposes or for third parties, or to disclose it to third parties.

The obligation referred to in the previous paragraph shall not apply to information classed as public in accordance with applicable regulations.

The contractor shall use the contracting authority's confidential information exclusively for the performance of contractual obligations in accordance with this contract.

Before commencing work, the contractor undertakes to issue the contracting authority with a list of the persons who will directly carry out the works and will learn of the contracting authority's confidential information, and to sign a statement of assurance, which is an integral part of this contract and constitutes *Appendix 3a*. The contractor shall expand the obligation to safeguard confidential information to all those who will directly carry out works under this contract, such that before commencing works they deliver to the contracting authority a signed specimen non-disclosure agreement, which is an integral part of this contract and constitutes *Appendix 3b*. The signed statements referred to in this article are not integral parts of this contract, but shall be kept by the contracting authority's contract administrator until the storage deadline passes.

Upon the signing of this contract, the contracting authority shall brief the contractor in writing regarding the content of its security policy and data protection procedures in mutual communications to ensure the effective performance of contractual obligations and the safeguarding of confidential information. The contractor undertakes to uphold the security policy and the data protection procedures communicated in accordance with the previous sentence.

Should the contracting parties learn of personal data during the performance of this contract, each contracting party shall be required to safeguard and process that personal data as a controller in

accordance with European and national legislation governing personal data protection. Each contracting party shall ensure that data subjects whose personal data it holds are guaranteed the rights of the data subject in accordance with the legislation binding on that contracting party. The contracting parties hereby agree that they shall not process personal data acquired on the basis of this contract on behalf of the other contracting party, and that neither contracting party is a contractual processor for the other contracting party, as the processing of personal data is not the subject of this contract. The personal data of data subjects who are involved in the performance of this contract or are otherwise important to the performance of the contract shall be exchanged between the contracting parties so that each contracting party is able to perform its contractual obligations or to exercise its rights under this contract (i.e. each contracting party shall process personal data on its own behalf). Each contracting party shall process personal data only in the manner that is vital to the performance of this contract, shall store it only for such time as is vital for the performance of this contract or its legal remedy, and shall safeguard it by means of appropriate technical and organisational measures to protect it against unauthorised or unlawful processing, accidental loss, destruction or damage. Each contracting party shall ensure that it has a legitimate legal basis for the dissemination of the personal data of a data subject to the other contracting party.

The Bank of Slovenia's General Privacy Statement is published on its website at <https://www.bsi.si/en/privacy-protection>.

At the contracting authority's request, the contractor shall also be required to carry out additional procedures that constitute a vital security standard for the contracting authority's work needs.

The contracting authority shall have the right to record and monitor all activities carried out by the contractor in connection with the contract.

The contractor shall ensure that the persons who will directly perform contractual obligations are informed that they are required to safeguard the confidentiality of information at all times, even after the termination of the employment or other legal relationship with the contractor. The contractor shall bear liability if the disclosure or unauthorised use of confidential information referred to in this contract occurs, either through its fault or the fault of persons who directly carry out works.

Data in connection with this contract and the order that competent authorities and organisations request on the basis of regulations may be forwarded to them by the contracting authority. The contracting authority may publish the entire content of the contract, if so required by regulations.

In the event of a breach of the obligation to safeguard confidential information, the contractor shall be obliged to pay the contracting authority the contractual penalty set out in the fourth paragraph of Article 8 of this contract; in the event of damage being incurred, it shall also pay for all direct damage in excess of the aforementioned sum.

The contractor shall immediately inform the contracting authority of any breaches of security or security incidents in connection with the unauthorised use or disclosure of personal data and other confidential information referred to in this contract.

## **X. ANTI-CORRUPTION CLAUSE**

### **Article 11**

This contract shall be null and void should any person, on behalf or for the account of the contractor, promise, offer or otherwise provide any undue advantage to the contracting authority's representative, statutory representative or agent:

- to obtain this transaction, or
- to conclude this transaction under more favourable terms, or
- to omit due oversight of the performance of contractual obligations, or

- to engage in any other act or omission that damages the contracting authority, or provides an undue advantage to the contracting authority's representative, statutory representative or agent, or to the contractor or its representative, statutory representative or agent.

In order to ensure the transparency of the transaction and to prevent corruption risks, the contractor shall submit to the contracting authority a written declaration or information on the participation of legal and natural persons in the ownership of the contractor, including the participation of silent partners, and on the economic operators that according to the law regulating companies are considered to be affiliates of the contractor. For natural persons, the declaration shall cite the name and surname, the address of residence and the participating interest. If the contractor submits a false declaration or provides inaccurate information regarding the above facts, this shall result in the contract being declared null and void. The contractor shall inform the contracting authority of any change in its ownership within five business days of the change occurring.

## **XI. WITHDRAWAL FROM CONTRACT AND SOCIAL CLAUSE**

### **Article 12**

Either contracting party may withdraw from this contract by registered letter with a notice period of 30 days, if the other party continues to breach this contract despite a written warning to desist and a request to rectify the breach.

The contractor expressly agrees that insufficient quality in the performance of contractual obligations, owing to which at least one of the contractual obligations is not met in its entirety and/or is met at a level below the expectations typical of professionals working in the area of the public contract, shall also be understood as breach of contract owing to which withdrawal from the contract pursuant to the previous paragraph is possible.

The notice period shall be counted from the moment of receipt of a written notice of withdrawal, and shall take effect on the day that the opposing party receives the notice.

Notwithstanding the law governing obligational relationships, the contracting authority may withdraw from the contract in the following cases:

- a) the public contract has been substantially modified during performance, requiring a new public procurement procedure;
- b) at the time of the award of the public contract, the contractor was in one of the situations owing to which the contracting authority would have to exclude it from the public procurement procedure, but the contracting authority was not made aware of this fact during the public procurement procedure;
- c) owing to serious breaches of the obligations set out in the TEU, the TFEU and the ZJN-3, which were identified by the Court of Justice of the European Union in accordance with Article 258 of the TFEU, the public contract should not have been awarded to the contractor.

The contract shall be terminated under a condition subsequent that is applied if the contracting authority learns that by virtue of a final decision a court has found a breach of obligations under environmental, social or labour law as set out in the second paragraph of Article 3 of the ZJN-3, on the part of either the contractor or its subcontractor. The contract shall also be terminated under a condition subsequent if the contracting authority learns that a fine has been imposed on the contractor or its subcontractor twice or more during the performance of the contract by virtue of one or more final decisions rendered by a competent state authority for a misdemeanour in connection with remuneration for work, working hours, rest periods, or the performance of contract-based work despite the existence of elements of an employment relationship, or in connection with undeclared work.

The condition subsequent referred to in the previous paragraph shall be applied if the contracting authority learns of the breach at least six months before the expiry of the contract or, in the case of performance with subcontractors, if after the identification of a breach by a subcontractor the

subcontractor is not substituted or replaced within 30 days of the breach being discovered. In the event of the fulfilment of the condition subsequent referred to in the previous paragraph, the contract shall be rescinded on the day that the new public contract is concluded, the contracting authority initiating the new public contract award procedure within 30 days of learning of the breach. Should the contracting authority fails to initiate a new public contract award procedure by this deadline, the contract shall be rescinded on the thirtieth day after the contracting authority learned of the breach.

## **XII. OTHER PROVISIONS**

### **Article 13**

Any amendments and addenda to this contract shall be valid only if concluded in a written addendum.

Neither of the parties to this contract may transfer this contract in full or the individual rights deriving therefrom to third parties without the prior written consent of the opposing party. In the event of a change in the contractor's status, the rights and obligations under this contract shall only be transferred to its legal successor with the contracting authority's prior written consent.

In the event that one or more of the provisions of this contract become invalid, unlawful or infeasible in any respect, such invalidity, unlawfulness or infeasibility shall not prejudice any other provision of this contract, and the invalid, unlawful or infeasible provisions shall be interpreted as if they were not part of this contract, and the contract shall be performed to the greatest possible extent in accordance with the original terms and purpose, until the contracting parties replace the provisions in the form of an annex.

### **Article 14**

The contracting parties shall attempt to resolve any disputes arising in connection with the performance of this contract amicably.

If the issue at dispute cannot be resolved amicably, either of the contracting parties may initiate dispute proceedings at the court with subject-matter jurisdiction in Ljubljana.

Slovenian law, in particular the Code of Obligations and the Public Procurement Act, shall apply to any issues not specifically regulated by this contract.

### **Article 15**

The contract is concluded once it has been signed by both contracting parties.

This contract enters into force on 1 May 2020, and expires on 30 April 2023.

This contract is drawn up in two identical copies, one of which is received by each contracting party.

CONTRACTOR:

Name of contractor

First name, surname

Title

CONTRACTING AUTHORITY:

BANK OF SLOVENIA

First name, surname

Title

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Organisational unit

Organisational unit

Signature

Signature

\_\_\_\_\_

\_\_\_\_\_

Date

Date

\_\_\_\_\_

\_\_\_\_\_

APPENDICES:

Appendix 1: Procurement documents (Appendix 1)

Appendix 2: Contractor's tender (Appendix 2)

Appendix 3: Statement of assurance and non-disclosure agreement (Appendix 3a and Appendix 3b)

**ANNEX 3a**

**Non-disclosure agreement (contractor)**

**STATEMENT OF ASSURANCE**  
(or NON-DISCLOSURE COMMITMENT)

**FIRM:**

**1.**

On the basis of **Contract number 01/30.50/18** of \_\_\_\_\_ concluded with the Bank of Slovenia, our firm is performing particular contracted works and/or services for the former (hereinafter: **contracted works**).

**2.<sup>8</sup>**

The contracted works are projected to take place between \_\_\_\_\_ and \_\_\_\_\_, and will be performed for the firm by:

- |       |       |          |                |        |
|-------|-------|----------|----------------|--------|
| 1.    | _____ | personal | identification | number |
| _____ |       |          |                |        |
| 2.    | _____ | personal | identification | number |
| _____ |       |          |                |        |
| 3.    | _____ | personal | identification | number |
| _____ |       |          |                |        |
| 4.    | _____ | personal | identification | number |
| _____ |       |          |                |        |

(hereinafter: **employees**).

**3.**

As the firm's statutory representative (hereinafter: the **signatory**), I hereby guarantee to the Bank of Slovenia, under criminal and material liability, that the information on employees is accurate, and as the signatory of this statement undertake at the same time that:

- I/we will use the confidential information in the permitted extent solely for the performance of contractual obligations under this contract, and will not use it for my/our own purposes or for a third party or disclose it to third parties either during the performance of this contract or at any time after its expiry;
- in the event of the misappropriation of confidential information received by me/us, I/we will immediately inform the contracting authority's contact person of the incident;
- I/we will do nothing to endanger the availability or integrity of the resources of the contracting authority's information system by my/our actions or activities;
- I/we will, after performing the contracted works or upon breaking from work at the Bank of Slovenia, immediately return all documents that I/we have used in my/our work and delete any copies of confidential information that I/we have stored with its consent outside its information system for the purposes of performing the contracted works;
- upon the signing of this statement I/we know of no grounds or circumstances that would admit any doubt as to the expertise or fitness of the employees (e.g. a criminal record, unlawful possession of arms, dependence on drugs or alcohol) that will perform the works;

<sup>8</sup> In the case of a larger number of employees, the declaration is adapted appropriately in this part.

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- should I/we learn of any circumstance referred to in the previous point, I/we undertake to inform the Bank of Slovenia immediately, and to immediately prevent the employee from performing any further work for it;

in so doing, I am / we are aware that:

- persons learning of the Bank of Slovenia's confidential information are obliged to safeguard this information in accordance with Article 47 of the Bank of Slovenia Act (Official Gazette of the Republic of Slovenia, Nos. 72/06 [official consolidated version 1] and 59/11, with amendments);
- breaches of trade secrets constitute a breach of the Trade Secrets Act (Official Gazette of the Republic of Slovenia, No. 22/19);
- the disclosure and unjustified acquisition of a trade secret constitute a criminal act under Article 236, the misuse of an information system constitutes a criminal act under Article 237 and the disclosure of classified information constitutes a criminal act under Article 260 of the Criminal Code of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, No. 50/12 [official consolidated version 2], with amendments);
- damage incurred as a result of a breach of the obligation to safeguard confidential information can result in liability for damages on the part of the person committing the breach under the Code of Obligations (Official Gazette of the Republic of Slovenia, No. 97/07 [official consolidated version 1], with amendments);
- I am / we are also obliged to safeguard confidential and classified information that I/we learn of in the course of my/our work in accordance with the Banking Act (Official Gazette of the Republic of Slovenia, No. 25/15, with amendments) and the Classified Information Act (Official Gazette of the Republic of Slovenia, No. 50/06 [official consolidated version 2], with amendments), and in my/our work I am / we are obliged to observe the Personal Data Protection Act (Official Gazette of the Republic of Slovenia, No. 94/07 [official consolidated version 1], with amendments) and the EU's general data protection regulation (Regulation 2016/679);

and I expressly permit:

- the contracting authority, in exercising its rights in relation to this statement, to obtain my personal data from controllers of personal data;
- the contracting authority to use this statement and the obligations assumed hereunder to protect its legitimate interests before a court.

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

Statutory representative (*printed and signature*): \_\_\_\_\_

Statement received on behalf of the contracting authority on \_\_\_\_\_ by:  
\_\_\_\_\_

(signature) \_\_\_\_\_

## ANNEX 3b

### NON-DISCLOSURE AGREEMENT

I, the undersigned \_\_\_\_\_, born \_\_\_\_\_, resident at \_\_\_\_\_ (hereinafter: the **employee**), will, pursuant to Contract number 01/30.50/18 of \_\_\_\_\_ concluded between the Bank of Slovenia and the contractor (firm), perform particular contracted works (hereinafter: the **contracted works**) for the contractor between \_\_\_\_\_ and \_\_\_\_\_.

In connection with the performance of the contracted works, as an employee I shall or may learn of confidential information of various types (national, military, official, trade secrets) and levels of confidentiality (strictly confidential, restricted) that may include technical data, banking secrets, account numbers and other information and data with a designated type and level of confidentiality (hereinafter: **confidential information**), for which reason I declare that:

- I will use the confidential information in the permitted extent solely for the performance of contractual obligations under this contract, and will not use it for my own purposes or for a third party or disclose it to third parties either during the performance of the contract or at any time after its expiry;
- in the event of the misappropriation of confidential information received by me/us, I will immediately inform the contracting authority's contact person of the incident;
- I will do nothing to endanger the availability or integrity of the resources of the contracting authority's information system by my/our actions or activities;
- I will, after performing the contracted works or upon breaking from work at the Bank of Slovenia, immediately return all documents that I have used in my work and delete any copies of confidential information that I have stored with its consent outside its information system for the purposes of performing the contracted works;

in so doing I am aware that:

- persons learning of the Bank of Slovenia's confidential information are obliged to safeguard this information in accordance with Article 47 of the Bank of Slovenia Act (Official Gazette of the Republic of Slovenia, Nos. 72/06 [official consolidated version 1] and 59/11, with amendments);
- breaches of trade secrets constitute a breach of the Trade Secrets Act (Official Gazette of the Republic of Slovenia, No. 22/19);
- the disclosure and unjustified acquisition of a trade secret constitute a criminal act under Article 236, the misuse of an information system constitutes a criminal act under Article 237 and the disclosure of classified information constitutes a criminal act under Article 260 of the Criminal Code of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, No. 50/12 [official consolidated version 2], with amendments);
- damage incurred as a result of a breach of the obligation to safeguard confidential information can result in liability for damages on the part of the person committing the breach under the Code of Obligations (Official Gazette of the Republic of Slovenia, No. 97/07 [official consolidated version 1], with amendments);
- I am also obliged to safeguard confidential and classified information that I learn of in the course of my work in accordance with the Banking Act (Official Gazette of the Republic of Slovenia, No. 25/15, with amendments) and the Classified Information Act (Official Gazette of the Republic of Slovenia, No. 50/06 [official consolidated version 2], with amendments), and in my work I am obliged to observe the Personal Data Protection Act (Official Gazette of the Republic of Slovenia, No. 94/07 [official consolidated version 1], with amendments) and the EU's general data protection regulation (Regulation 2016/679);

and I expressly permit:

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- the contracting authority, in exercising its rights in relation to this statement, to obtain my personal data from controllers of personal data;
- the contracting authority to use this statement and the obligations assumed hereunder to protect its legitimate interests under Slovenian law before a Slovenian court.

Date of signature: \_\_\_\_\_

First name and surname of employee: \_\_\_\_\_

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

Received for the Bank of Slovenia on \_\_\_\_\_ by: \_\_\_\_\_

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

**Form 8: QUOTE**

Tenderer:

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On the basis of the procedure to award a public contract for the “Purchase and maintenance of Matlab software”, which is being conducted under the low-value public procurement procedure, as announced on the Public Procurement Portal, we hereby submit the following

**QUOTE**

for the purchase and maintenance of Matlab software for a period of three years:

<b>Number of users</b>	<b>Main licence number 30340515</b>	<b>Number of months</b>	<b>Price, EUR (net of VAT)</b>
<b>Renewal of subscription fee: 1 May 2020 to 30 Apr 2023</b>			
23	MATLAB	36	
3	Database Toolbox	36	
18	Econometrics Toolbox	36	
16	Financial Toolbox	36	
22	Optimization Toolbox	36	
11	Spreadsheet Link	36	
21	Statistics and Machine Learning Toolbox	36	
4	Financial Instruments Toolbox	36	
1	Datafeed Toolbox	36	
1	Curve Fitting Toolbox	36	
1	Global Optimization Toolbox	36	
1	MATLAB (Concurrent)	36	
1	Optimization Toolbox (Concurrent)	36	
1	Statistics and Machine Learning Toolbox (Concurrent)	36	

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<b>Number of users</b>	<b>Main licence number 31225720 (concurrent licence)</b>	<b>Number of months</b>	<b>Price, EUR (net of VAT)</b>
<b>Renewal of subscription fee: 1 May 2020 to 30 Apr 2023</b>			
1	MATLAB	36	
1	Econometrics Toolbox	36	
1	Optimization Toolbox	36	
1	Spreadsheet Link	36	
1	Statistics and Machine Learning Toolbox	36	
<b>Total price of maintenance, EUR (net of VAT):</b>			
<b>Number of users</b>	<b>Toolboxes for licence number 308368 with final maintenance date of 30 Apr 2023</b>	<b>Price, EUR (net of VAT)</b>	
1	Optimization Toolbox		
1	Financial Toolbox		
1	Econometrics Toolbox		
1	Spreadsheet Link		
<b>Number of users</b>	<b>Toolboxes for licence number 588358 with final maintenance date of 30 Apr 2023</b>	<b>Price, EUR (net of VAT)</b>	
1	Statistics and Machine Learning Toolbox		
1	Financial Toolbox		
1	Econometrics Toolbox		
1	Spreadsheet Link		
<b>Number of users</b>	<b>Toolboxes for licence number 40761940 with final maintenance date of 30 Apr 2023</b>	<b>Price, EUR (net of VAT)</b>	
1	Financial Toolbox		
<b>Total price of purchase of toolboxes, EUR (net of VAT):</b>			

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<b>Service</b>	<b>Value, EUR (net of VAT)</b>
<b>Purchase of toolboxes for Matlab software</b>	
<b>Maintenance of Matlab software</b>	
<b>Total value, EUR (net of VAT):</b>	

The price is fixed until the conclusion of the performance of the public contract.

Amounts in euros are rounded to the nearest cent.

Place and date:

Signature:

\_\_\_\_\_

\_\_\_\_\_

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**INSTRUCTIONS:** *The form is to be completed, dated and signed by the responsible person of the tenderer. The tenderer encloses the scanned form with the required signatures in the electronically submitted tender.*