

Ljubljana, 25. 11. 2020

Classification code: 30-37/2020-8

Procurement documentation for a low-value contract procedure in accordance with Article 47
of the Public Procurement Act (ZJN-3)

SUBJECT OF THE PUBLIC PROCUREMENT:

PILLAR ASSESSMENT UNDER THE CONDITIONS SPECIFIED BY THE EUROPEAN COMMISSION

Number: JN 142/2020

Contracting Entity:

**SID – Slovenska izvozna in razvojna banka, d.d., Ljubljana,
Ulica Josipine Turnograjske 6, SI-1000 Ljubljana**

November, 2020

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INSTRUCTIONS FOR TENDERERS

1. Introduction

By publishing this request for tenders the Contracting Entity pursues the objective to contract an eligible Audit Firm, which will perform the service of Pillar Assessment under the conditions specified in the Commission Decision of 17 April 2019 on establishing new terms of reference for the pillar assessment methodology to be used under Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (2019/C 191/02) and in the draft public contract (i.e. Service Agreement) (Annex 9).

2. Invitation, subject and public contract information

Pursuant to Article 47 of the Public Procurement Act (Official Gazette of the Republic of Slovenia No. 91/15 and 14/18; hereinafter: ZJN-3) the Contracting Entity invites all interested tenderers to submit a written tender in accordance with this procurement documentation.

The Contracting Entity would like to call for tenders from qualified and experienced Audit Firms (hereinafter: Tenderer, together Tenderers) to carry out the service of Pillar Assessment of SID – Slovenska izvozna in razvojna banka, d.d., Ljubljana (hereinafter: SID bank), which is a national promotional bank of Republic of Slovenia¹.

The subject of this public procurement is the assessment of the systems put in place and the controls, rules and procedures applied by SID bank in certain areas (i.e. pillars) against the criteria and specifications set in the *Commission Decision of 17 April 2019 on establishing new terms of reference for the pillar assessment methodology to be used under Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (2019/C 191/02)*² (Annex 5; hereinafter: Terms of reference or ToR). The assessment will enable the selected Tenderer to report to the Commission on whether SID bank, as Commission's potential implementing partner, fulfils all the requirements provided in the Article 154 of the Financial Regulation for indirect management of the EU Budget and that the specific criteria set out in the Terms of reference is satisfied.

Following pillars are subject to assessment through this public contract:

- Pillar 1 - the internal control system,
- Pillar 2 - the accounting system,
- Pillar 3 - an independent external audit,
- Pillar 5 – procurement,
- Pillar 6 - financial instruments (including sections 6A – budgetary guarantees, 6B - tax avoidance and non-cooperative jurisdictions and 6C - anti-money laundering and countering terrorism financing),
- Pillar 7 - exclusion from access to funding,
- Pillar 8 - publication of information on recipients and
- Pillar 9 - protection of personal data.

For avoidance of doubt, Pillar 4 (providing financing from EU funds through grants) is not included in the assessment covered by this public contract.

The Tenderer will obtain necessary integrated understanding of the engagement context of the procurement service on the basis of the documents in Annex 5 and Annexes 5.1 to 5.5, where the Annex 5.1. will be provided within the closed part of the procurement documentation.

Once the Tenderer has been contracted and prior to the actual commencement of the pillar assessment procedure, the Contracting Entity will provide more in-depth information through duly completed document: *Assessment Questionnaire* (Annex 5.3), which includes blocks of questions that relate to the

¹ <https://www.sid.si/en>. For further information on SID bank and its status and to that related engagement context see Annex 5.1. which will be provided within the closed part of the procurement documentation.

² Commission Decision of 17 April 2019 on establishing new terms of reference for the pillar assessment methodology to be used under Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (doc. C(2019)2882; *OJ C 191, 6.6.2019, p. 2–136*)

pillars key components and represents an essential source of assessment information and evidence to be used by the selected Tenderer when planning and performing the actual assessment procedure.

The selected Tenderer is expected to prepare reports as envisaged in the *Pillar Assessment Report* (Annex 5.5) and obtain sufficient relevant evidence to support its findings and on which it will base its substantiated final conclusions for the assessment of each pillar. Every step of the assessment procedure, including reporting, has to be carried out exactly as required in the Terms of reference and its annexes, especially in the *Assessment Procedures* (Annex 5.4) and as determined in the *Draft Service Agreement – Pillar Assessment* (Annex 9). Reports shall be produced in English.

The selected Tenderer may use English or Slovene as the language of communication with the Contracting Entity. The Contracting Entity, however, is not obliged to make available any translation of its documents or internal rules and relevant national regulations originally written in Slovenian that the selected Tenderer might have to examine in the course of Pillar Assessment.

The planning part of the assessment procedure, as defined in the Annex 5.4, is expected to start on the date of the execution of the contract.

Deadline by which the selected Tenderer will be required to submit the *Pillar Assessment Final report* (Annex 5.5) is due seven (7) months after the signing of the contract. If a shorter deadline is set in the Engagement plan, the latter applies.

The subject of this public tender are also consulting services of the Tenderer which might be needed in the discussion of the Pillar Assessment results with the European Commission or other relevant bodies after the submission of the Pillar Assessment Final report. These services are estimated at maximum 40 consulting hours, no matter the category of the consulted auditor, and will be contracted only if required. They include activities as providing additional explanations of pillar assessment processes, findings and recommendations, participation (on-line) in meetings with relevant bodies and similar.

The tender must meet the requirements set out in this documentation in full.

Pursuant to Article 46 of the ZJN-3, the Contracting Entity reserves the right to award additional public contracts in accordance with and in the manner set out in this article.

The public contract is indivisible and is not divided into lots. Variant tenders are not permitted.

3. Tender submission, deadline and opening of tenders

Tenderers may submit one tender only, otherwise all of its tenders shall be excluded as impermissible. The Tenderer must submit its tender to the e-JN information system at <https://ejn.gov.si/eJN2>, in accordance with point 3 of the Instructions for using the e-JN system for use of the functionalities of electronic submission of tenders in the e-JN system: TENDERERS (the "Instructions for the Use of e-JN"), which form an integral part of this procurement documentation. Instructions for the Use of e-JN can be found at: <https://ejn.gov.si/en/aktualno/vec-informacij-ponudniki.html>.

Prior to submitting a tender, the Tenderer must register at <https://ejn.gov.si/eJN2>, in accordance with the Instructions for the Use of e-JN. Tenderers who are already registered on the e-JN information system should log into the application at the same address. Instructions for registration in the e-JN system can be found at: <https://ejn.gov.si/en/aktualno/vec-informacij-ponudniki.html>.

Tenderers are reminded to timely obtain the appropriate qualified digital certificates and to carry out the first registration in the system. This is especially important for those Tenderers where the first registration in the system must be carried out by one of the legal representatives of the Tenderer, who then authorizes other persons in the system to prepare and submit tenders.

The Tenderer may upload only the * .pdf file format to the e-JN system in the "Proforma Invoice" section, the * .xml file format in the "ESPD Provider" section, and documents of all formats in the other

sections. The e-JN system enables the upload of files in the size of an individual document up to 200 MB and in the total size of all documents up to 300 MB.

To avoid oversized files, it is recommended that scanned documents be submitted at a resolution of 150dpi and scanned in black / white.

To the "Proforma Invoice" section only one document can be uploaded. The document uploaded in the "Proforma Invoice" section is revealed at the public opening of tenders, so it should not contain information that could in any way reveal personal or classified information or business secrets.

In the section "Other documents" or "Other annexes", Tenderers shall enclose all other documentation, certificates, consents, technical specifications, etc. required by the Contracting Entity.

The person of a Tenderer authorised to submit tenders in the e-JN information system (the user) submits the tender by clicking on the "Submit" button. Upon the submission of a tender, the e-JN information system logs the user's identity and the time of submission of the tender. By submitting a tender, the user demonstrates and declares intention to submit a binding tender on behalf of the Tenderer (Article 18 of the Obligations Code³). Upon the submission of a tender, that tender is binding for the time stated in the tender, unless the user withdraws or amends the tender before the deadline for submission.

A tender is deemed to have been submitted on time if the Contracting Entity receives it via the e-JN system (<https://ejn.gov.si/eJN2>) by **no later than 10:00 a.m. Central European Time on 18. 12. 2020 (deadline for the submission of tenders)**. A tender is deemed to have been submitted if it is designated as "SUBMITTED" in the e-JN information system.

The Tenderer may withdraw or revise its tender up until the deadline for the submission of tenders. If a Tenderer withdraws its tender from the e-JN information system, the tender will be regarded as not having been submitted and the Contracting Entity will not be able to see it in the e-JN system. If a Tenderer revises its tender in the e-JN information system, the latest submitted tender will be available to the Contracting Entity in the system.

The tender can no longer be withdrawn, revised or supplemented after the expiry of the deadline for the submission of tenders.

The tender, electronically submitted in the e-JN information system, is deemed to be legally binding for the Tenderer in relation to the Contracting Entity. All documents submitted and signed electronically are deemed to be legally binding for the Tenderer in relation to the Contracting Entity throughout the entire duration of the public procurement procedure until the signing of the contract.

Tenders cannot be submitted after the tender submission deadline.

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?zadevald=22397

The opening of tenders shall take place automatically within the e-JN information system on **18. 12. 2020 at 12:00 a.m.** Central European Time at <https://ejn.gov.si/eJN2>.

The opening process shall take place with the e-JN information system displaying the Tenderer's details automatically at the time set for the public opening of tenders and enabling access to the PDF document uploaded by the Tenderer to the e-JN system under the "Pro-forma invoice" section.

³ Obligations Code (Official Gazette of the Republic of Slovenia Nos. 97/07 – official consolidated version, 64/16 – Constitutional Court ruling and 20/18 – OROZ631)

4. Access to and clarifications of the procurement documentation and contract award decision

The procurement documentation is available free of charge on the public procurement portal (www.enarocanje.si) and on the SID bank website (www.sid.si/javna-narocila). Tenderers should note that the ESPD form is available only in electronic form and must be imported in XML format and completed:

- in Slovenian: at <http://www.enarocanje.si/ESPD/> or
- in English: at <https://uea.publicprocurement.be/filter?lang=en>.

A scan of the completed ESPD form or signed XML format must be enclosed to the tender.

The open part of the procurement documentation includes only a blanket form *Engagement context — Key information for a pillar assessment* (Annex 5.1). In order to obtain the filled in form Tenderers have to send the signed (scanned) *Declaration of collection of the closed part of the procurement documentation* (Annex 8) to the Contracting Entity's email address jn@sid.si no later than ten (10) days prior to the final tender submission deadline. Tenderers are highly advised to do so, though the collection of the closed part of the procurement documentation is not obligatory. A Tenderer will be deemed to have received the closed part of the procurement documentation at the email address specified in the declaration if it fails to notify the Contracting Entity at the same email address that it has not received the closed part of the procurement documentation within two (2) days of the date of sending the *Declaration of collection of the closed part of the procurement documentation* (Annex 8). Interested Tenderers must treat and protect the received information as confidential and as a business secret of the Contracting Entity in accordance with the applicable data protection laws and regulations.

Tenderers may request additional clarifications regarding the procurement documentation via the public procurement portal in English or Slovene **no later than by noon (12:00) Central European Time on 9. 12. 2020**. The Contracting Entity shall reply to Tender's enquiries via the public procurement portal in English only by no later than 16:00 pm Central European Time on 11. 12. 2020. Tenderers must request any additional clarifications regarding the Annex 5.1 in writing at jn@sid.si. The Contracting Entity will reply to enquiries thus made at the email address of the sender and will reply to other interested Tenderers who received the closed part of the procurement documentation at the email addresses specified in their *Declaration of collection of the closed part of the procurement documentation* (Annex 8). The above deadlines also apply to enquiries and replies relating to the closed part of the procurement documentation. The Contracting Entity assumes no obligation to reply to enquiries not made in this manner and by the outlined deadline.

The Contracting Entity reserves the right to partly amend or supplement this documentation (all in English language only) and extend the tender submission deadline if necessary. Amendments or supplements to the documentation and clarifications in the form of replies to received enquiries form an integral part of this documentation. Tenderers are solely responsible for checking the Public Procurement Portal, where the Contracting Entity will publish all information relating to the public contract, and the inboxes for the email addresses specified in their *Declaration of collection of the closed part of the procurement documentation* (Annex 8).

The Contracting Entity will award the public contract to the Tenderer that submits the admissible tender that is the most economically advantageous in accordance with the provisions of this documentation.

The Contracting Entity reserves the right to accept any decision in compliance with the Article 90 of the ZJN-3 without any liability for damages.

The Contracting Entity shall publish the contract award decision on the Public Procurement Portal in Slovene only. The decision will be deemed to have been delivered on the day of its publication on the Public Procurement Portal.

5. Tender form, language and drafting costs

The Tenderer shall prepare the tender in accordance with the provisions of the procurement documentation and especially the provisions laid down in the Terms of Reference and its annexes.

The content of the tender must include the following forms, completed as instructed in each form, including all appendixes if demanded:

1. scan of completed Tender form (Annex 1);
2. scan of completed Tender pro-forma invoice (Annex 2);
3. completed ESPD form (for all economic operators in the tender);
4. scan of the completed Subcontractor's request for direct payment (if the Tenderer will be performing the contract with subcontractors and the subcontractors request direct payment; Annex 3);
5. scan of completed Statement on conformity with the requirements for the auditor (Annex 6);
6. scan of completed List of engagement team members, including their CVs (Annex 7);
7. scans of supporting documents (and completed forms) relating to compliance with the requirements laid down in titles 15.1 (Requirements of ZJN-3) and 15.2 (Grounds for exclusion);
8. scan of the "Draft Service Agreement– Pillar Assessment (Annex 9).

Only the above listed documents and **other documents that are demanded in specific chapters of this procurement documentation** shall be enclosed to the tender.

Tenderers shall submit tenders in the e-JN system and shall upload their own ESPD under "ESPD – tenderer", and ESPDs from other economic operators under "ESPD – other economic operators". Tenderers that submit tenders in the e-JN system must upload an electronically signed ESPD in XML form or an unsigned ESPD in XML form, whereby in the latter case, in line with the General Terms and Conditions of Use of the e-JN Information System, a legally binding document will be deemed to have been submitted that has the same validity as a signed document.

For other economic operators, Tenderers must submit a signed ESPD under "ESPD – other economic operators" in PDF format or in the form of an electronically signed XML file.

Tenders must be submitted in Slovenian or in English. Tenderers will have to demonstrate their compliance with the requirements with copies of certificates from official records demonstrating the required legal and factual status if so required by Contracting Entity. If the competent authority of a foreign country does not issue such certificates, or if such certificates do not include all the required information, the person or economic operator must submit a sworn statement or, if such statement is not provided for in the Tenderer's country, a statement from the relevant person given before a competent judicial or administrative authority, notary public or professional or trade organization in that person's home country or in the country in which the economic operator is incorporated. Certificates from competent institutions and certified statements not in Slovenian or English must be translated either into English or Slovenian.

Tenderers may submit brochures, certifications and other technical documentation in a foreign language that is not Slovenian or English. If deemed necessary by the Contracting Entity, Tenderers must have any document provided in a language other than Slovene or English translated either into English or Slovenian (by a sworn translator) at their own expense within the time limit set by the Contracting Entity.

The tender documentation must be submitted on the forms attached to these documents, or on forms produced by the Tenderer that are identical in content. Where supporting documents are required, Tenderers are not required to provide originals and may submit a photocopy of any such document. The Contracting Entity may request a tenderer to submit the original for inspection at any time during the tender review procedure. All documents submitted by Tenderers must reflect the existing legally relevant situation (as per deadline for tender submission), except where documents relating to a specific period or documents of a specific age are explicitly required. The documents should not exceed the age

set in the deadlines set in specific provisions of this documentation. The Contracting Entity may request any documents demonstrating compliance with requirements or authorisations to obtain documents from public records at a later time (after the opening of tenders and while reviewing tenders). In that case, the Contracting Entity will request the Tenderer to deliver all the documents required to demonstrate compliance with the relevant requirements within the specified time limit. If the Tenderer fails to deliver the requested authorisations or supporting or other documents within the time limit or fails to deliver the requested authorisations or supporting or other documents in accordance with the Contracting Entity's requirements, the Contracting Entity shall exclude the Tenderer or reject the tender as inadmissible.

Tenderers must fill in the required details in the forms forming an integral part of this procurement documentation and enclose the required supporting documents demonstrating compliance with requirements where required.

All costs incurred in the process of drafting and submitting the tender shall be borne by the Tenderer. In the event of the suspension of the procedure, the exclusion of a tender, the rejection of all tenders or withdrawal from the performance of the public contract, the Contracting Entity shall not reimburse Tenderers for any costs incurred in the drafting of their tender. The Contracting Entity cannot be liable in any case for potential damages that would occur due to these expenses regardless of the course of public procurement procedures and the final selection of Tenderer. Tenderers are informed about this and by submitting a tender expressly agree with the above provisions.

6. Tender validity

Tender must be valid for at least three (3) months after the expiry of the tender submission deadline. Tenders with a shorter period of validity will be excluded as inadmissible.

The Contracting Entity may request a Tenderer to extend the period of validity of its tender for a specified additional period. If the Tenderer does not comply with the request of the Contracting Entity, it is deemed that the Tenderer withdrew the tender.

7. Business secrets and protection of confidential information

Tenderer may designate documents or certain information as a business secret, for example by appending "CONFIDENTIAL" or "BUSINESS SECRET" in the upper right-hand corner. If only certain information in a form or document is to be deemed confidential, the confidential part should be underlined in red and "CONFIDENTIAL" or "BUSINESS SECRET" appended on the same line in the right-hand margin. Tenderer must also enclose with its tender a valid decision on business secrecy. The Contracting Entity may not disclose any information submitted to it by an economic operator and designated a business secret as stipulated by the law governing business secrets, unless the same or another law provides otherwise. The Contracting Entity shall ensure that any information deemed personal data or confidential information according to the laws governing the protection of personal data and the protection of confidential information is protected. Tenderer that learns any confidential information in the course of participating in the procedure or performing contractual obligations must protect such information in accordance with the applicable regulations. The Contracting Entity complies with Regulation (EU) 2016/679 REGULATION (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation - GDPR), Slovenian Zakon o varstvu osebnih podatkov (Personal Data Protection Act; Uradni list RS, št. 94/07; ZVOP-1;), ZJN-3 (third paragraph, Article 105 ZJN-3) and other relevant regulation. Personal data collected in this public procurement shall be processed exclusively for the purpose of the public procurement and fulfilling obligations imposed on the Contracting Entity by regulations and the fulfilment of contractual obligations.

Without prejudice to the provisions of the first paragraph of Article 35 of the ZJN-3 regarding protection of information or confidentiality the following information are always public: specification of the tendered goods or services and the quantities in the specification, the price per unit, the value of individual items

and the total value of the tender, and all information affecting the ranking of the tender according to other criteria.

Appendixes or documents which are rightly designated as »confidential« or »business secret« by the Tenderer or are identified as such by the Contracting Entity, will be accessible and used only for the purpose of this public procedure: (i) by the persons of Contracting Entity that are involved in the course of this public procurement, (ii) National Review Commission for Reviewing Public Procurement Award Procedures (hereinafter: National Review Commission) in the case of considering a request of review, (iii) on demand of competent state or EU authorities or court.

8. Joint tenders

Joint tenders from groups of contractual partners are permitted. If a Tenderer participates in a joint tender, it may be a member of one joint tender only, otherwise all of the joint tenders in which it participates shall be excluded as impermissible.

Title 15 *Qualitative selection criteria and supporting documents* stipulates the requirements that must be satisfied by each partner in a joint tender and which requirements maybe satisfied by all the partners cumulatively. There should not be any grounds for exclusion at any of the partners.

In the case of a joint tender, all participants must be specified in the ESPD form and provide appropriate signed copies of the ESPD form. Tenderers participating in a joint tender may also designate one legal entity as the legal entity with which the Contracting Entity will communicate until the adoption of the public contract award decision. Otherwise, the Contracting Entity will address all documents to the lead partner.

A contract on joint performance must be enclosed with the tender in the case of a joint tender. Such contract on joint performance must include:

- the appointment of the lead partner in the performance of the public contract;
- the authorisation conferred on the lead partner and responsible person to sign the tender and the contract;
- a statement to the effect that all Tenderers in the joint tender are familiar with the instructions to Tenderers, the tender requirements and the criteria for the award of the public contract, and that they agree with them in their entirety;
- a statement to the effect that all the Tenderers are familiar with the payment terms set out in this documentation;
- provisions regarding payment via the lead partner;
- a statement to the effect that all the partners are jointly and severally liable to the Contracting Entity for the entire liability and for each of its parts.

The tender must be signed by the lead partner. The lead partner is the signatory of the contract and the main point of contact with the Contracting Entity.

9. Tender with subcontractors

Pursuant to the ZJN-3, a subcontractor is an economic operator that is a legal entity or natural person that supplies services directly related to the subject of this public contract for the Tenderer with whom the Contracting Entity has concluded a contract under the ZJN-3. A Tenderer that is performing the public contract with subcontractors must list all the proposed subcontractors in the ESPD. The Tenderer must also enclose with the tender completed and signed ESPD forms for each subcontractor with which it will perform the contract.

If a Tenderer performs a public contract with subcontractors, it must:

- list the names and registered offices of all the subcontractors, and every part of the public contract that the Tenderer intends to subcontract, in the tender;

- list the contact details and legal representatives of the proposed subcontractors in the tender;
- enclose ESPD forms completed by the proposed subcontractors in accordance with Article 79 of the ZJN-3; and
- enclose a subcontractor's request for direct payment if a subcontractor is requesting direct payment (in this case, such subcontractor must complete and sign the *Subcontractor's request for direct payment* form /Annex 3/).

During the performance of the public contract, the Tenderer must notify the Contracting Entity of any changes to the information referred to in the previous paragraph, and deliver the relevant information on any new subcontractors it plans to include subsequently in the performance of the works or services no later than five (5) days after the change. When including new subcontractors, the lead contractor must also deliver the information and documents referred to in the second, third and fourth indents of the preceding paragraph with the notification.

Direct payment to a subcontractor will be deemed mandatory only if a subcontractor requests direct payment, and the obligation will be binding on both the Contracting Entity and the lead contractor. Where the Tenderer intends to perform the public contract with a subcontractor requiring direct payment in accordance with this article:

- the lead contractor must authorise the Contracting Entity in the contract to pay the subcontractor directly on the basis of an invoice or statement approved by the lead contractor;
- the subcontractor must provide a letter of consent on the basis of which the Contracting Entity will settle the subcontractor's claims against the Tenderer;
- the lead contractor must enclose the invoices or payment certificates of each subcontractor as approved by the lead contractor to its own invoices or payment certificates.

The Tenderer is fully liable vis-à-vis the Contracting Entity for the performance of the public contract.

The deadlines for payment to the lead contractor and its subcontractors (if the latter have requested direct payment) are identical.

There should not be any grounds for exclusion at any of the subcontractors and each subcontractor must meet the relevant requirements for participation laid down in the forms of the procurement documentation.

Should grounds exist for a subcontractor to be excluded or if a subcontractor does not meet the relevant requirements for participation laid down in title 15 of this documentation, the Contracting Entity will reject the subcontractor and request that it be replaced.

Should the selected Tenderer replace subcontractors after the public contract is awarded, it must obtain the Contracting Entity's written consent prior to such replacement, in which case any new subcontractor must meet the requirements set out in this documentation as well as the requirements satisfied by the Tenderer with the replaced subcontractor. The provisions applicable to subcontractors also apply to subcontractors of subcontractors of the lead contractor and to subcontractors further along in the chain of subcontractors.

For nominated subcontractors that do not require direct payment, the contractor shall send to the Contracting Entity within 60 days of 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 work performed. Should the contractor fail to act in accordance with this provision, the Contracting Entity will submit a proposal to the National Review Commission to initiate offence proceedings under point 2 of the first paragraph of Article 112 of the ZJN-3.

USE OF THE CAPACITIES OF OTHER ENTITIES

In case the Tenderer states that he is using the capacities of other entities, the Contracting Entity will act in accordance with Article 81 of the ZJN-3. The Tenderer may, where appropriate and permitted in

accordance with the ZJN-3, rely on the capacities of other entities, regardless of the legal nature of the connection with them. If the Tenderer wishes to use the capacities of other entities, it must demonstrate to the Contracting Entity that it will have the necessary means to perform the contract. The Contracting Entity will consider as a supporting document a written document showing the will of both entities (all relevant entities) to provide the necessary means for the performance of this procurement.

If entities whose facilities the Tenderer intends to use do not meet the relevant conditions for participation laid down in this documentation and / or have reasons for exclusion, the Contracting Entity will, if permitted by law, request the replacement of the non-qualifying entity. If the replacement is unsuccessful or not permitted, the Contracting Entity will reject the offer.

10. Supplements, corrections, amendments or clarifications of tenders

If the Contracting Entity finds that any information or documents to be delivered by the Tenderer are or appear to be incomplete or erroneous, or if individual documents are missing, the Contracting Entity may request that the Tenderer submits the missing documents or supplement, correct or clarify the relevant information or documents within an appropriate time limit. The Contracting Entity shall only request that a Tenderer supplements, corrects, amends or clarifies its tender if the Contracting Entity is unable to verify a given fact by itself. The tender shall be supplemented or amended in writing. The submission of a missing document or the supplementation, correction or clarification of information or documents may relate solely to those elements of the tender whose existence prior to the expiry of the deadline set for the submission of the tender can be objectively verified. Should the Tenderer fail to submit a missing document or fail to supplement, correct or clarify the relevant information or documents, the Contracting Entity shall exclude the Tenderer or reject 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;
- the part of the tender relating to the technical specifications of the subject of the public contract;
- the 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 Entity in the public procurement procedure.

Without prejudice to the previous paragraph the Contracting Entity exclusively, if given a written consent of the Tenderer, can correct errors in calculation that were discovered while reviewing and evaluating tenders. The quantity and price per unit (net of VAT) should not be changed. If while reviewing and evaluating tenders an error in the calculation is discovered, occurred due to an incorrect predetermined mathematical operation on the Contracting Entity's side, the Contracting Entity, if given a written consent of the Tenderer, can correct errors in calculation, in a way that it calculates the total value of tender (net of VAT) by considering the prices per unit (net of VAT) and quantities and by using the correct mathematical operation. With no prejudice to the previous paragraph the Contracting Entity, if given a written consent of the Tenderer, can correct a wrong used VAT rate to the correct rate.

The Contracting Entity may, in checking whether the requirements laid down in the documentation have been met, request that the Tenderer submit an additional authorisation to obtain information from official records to enable the verification of information from official records.

11. Agreement

The Contracting Entity will enter into a public contract with the selected Tenderer that meets the requirements laid down in this procurement documentation. The content of the public contract is set out in the *Draft Service Agreement – Pillar Assessment* (hereafter: Agreement; Annex 9).

Tenderers must enclose a scan of the Agreement (Annex 9) to their tenders. If the tenderer encloses also its General terms and conditions to the tender their provisions shall be deemed as irrelevant to the provisions of the Agreement.

After the Agreement award decision becomes final, the Agreement will be sent for signing to the selected Tenderer by the Contracting Entity. The Contracting Entity will not permit the selected Tenderer to alter the contractual provisions. Prior to its signature, the Agreement will be adjusted to take account of whether the Tenderer has submitted a joint tender, engaged subcontractors, etc. If the selected Tenderer fails to sign the Agreement within the deadline set by the Contracting Entity, the Contracting Entity may deem the Tenderer to have withdrawn from the tender. In that event, the Contracting Entity may require the selected Tenderer to reimburse it for any additional damages it has incurred as a result of the Tenderer's conduct. The Contracting Entity also reserves the right to pursue judicial means to compel the Tenderer to sign the Agreement if this is in the Contracting Entity's interest.

Pursuant to the sixth paragraph of Article 14 of the Integrity and Prevention of Corruption Act (Official Gazette of the Republic of Slovenia No. 69/11-UPB2; the "ZIntPK"), the selected Tenderer shall, at the Contracting Entity's request and prior to signing the Agreement, submit a declaration or information on the participation of natural persons and legal entities in the ownership of the Tenderer, including the participation of silent partners, and on the economic operators that, according to the provisions of the law governing companies, are deemed to be affiliates of the Tenderer. If the Tenderer submits a false declaration or provides inaccurate information with regard to the aforementioned facts, the Agreement will be declared null and void.

At the Contracting Entity's request, the selected Tenderer shall submit the following information in the public procurement procedure or in the course of the performance of the Agreement within eight (8) days of receiving the request:

- its founders, partners, shareholders, limited partners or other owners, and details of their respective ownership shares;
- any economic operators deemed its affiliates under the provisions of the law governing companies;
- partners participating in the performance of the Agreement and its founders, partners, shareholders, limited partners or other owners, and details of their respective ownership shares.

In the event of the withdrawal of the most advantageous Tenderer from an admissible tender or the Agreement, the Contracting Entity reserves the right to select the next most advantageous Tenderer, on condition that its tender is admissible.

12. Selection criteria

The Contracting Entity will select the Tenderer that achieves the highest number of points based on the following selection criteria:

I. Tender price as defined in the title 13. Tender price of this procurement documentation.

Following maximum points may be awarded for each section of the Tender price:

- | | |
|--|-----------|
| - section a) of the Tender price ⁴ (price for Pillar assessment): | 50 points |
| - section b) of the Tender price (price for Consulting services): | |
| I. Category 1 Audit partner | 4 points |
| II. Category 2 Audit manager | 3 points |
| III. Category 3 Senior auditor | 2 points |
| IV. Category 4 Assistant Auditor | 1 point |

⁴ Total of items I, II and III of section a).

Calculation of points for the section a) of the Tender price:

The Tenderer with the lowest total price for this section receives the maximum number of points. The Tenderer with a price higher than the lowest price for this section receives the proportional number of points by way of using the following formula:

$$\text{number of points for Tenderer } X = \frac{\text{section a) lowest tendered price}}{\text{section a) tendered price of Tenderer } X} * 50 \text{ points}$$

Calculation of points for the section b) of the Tender price:

The Tenderer with the lowest tendered price for single auditor category receives the maximum number of points for that auditor category. The Tenderer with a price higher than the lowest price for single auditor category receives the proportional number of points. Points achieved for single auditor category are summoned up to derive to the total number of points for section b) for each Tenderer. Following formula is applied for the calculation of points for the section b) of the Tender price:

$$\text{number of points for Tenderer } X =$$

$$\sum_{y=1}^4 \left(\frac{\text{auditor category } y \text{ lowest tendered price}}{\text{auditor category } y \text{ tendered price of Tenderer } X} * \text{maximum number of points for auditor category } y \right)$$

Symbol:

y - auditor category 1-4, as defined in ToR

Total number of points per Tenderer for the criterion Tender price are calculated as a sum of points achieved for the section a) and the section b) of the Tender price.

II. Team's experience with pillar assessments in the context of European Commission framework contracts or in the context of ToR

Maximum number of points that may be awarded to a Tenderer for this criterion is 40 points.

Professional experience of each team member with pillar assessments in the context of European Commission framework contracts or in the context of ToR is defined as active participation in pillar assessment engagements by performing assessments of the systems put in place and the controls, rules and procedures, preparing reports and communicating with the European Commission. Active participation in one project (pillar assessment engagement) by one team member counts as one experience.

The Tenderer will provide in Annex 7 for each team member the number and the description of pillar assessment experiences (including the team member's role in each pillar assessment engagement) that they acquired in the last five (5) years or are currently participating in.

The Tenderer must in Annex 7 clearly divided which project (pillar assessment experience) is submitting as in the context of 15. 3 Requirements of the Terms of reference (which will not be the subject in scope of Selection criteria) and which experiences is submitting as in the context 12. Selection criteria II. Team's experience with pillar assessments in the context of European Commission framework contracts or in the context of ToR.

The engagement team with the highest number of pillar assessment experiences (i.e. sum of pillar assessment experiences of each team member) is awarded 40 points. The engagements team with the second highest number of experiences is awarded proportional number of points based on the following formula:

$$\text{number of points for Tenderer X} = \frac{\text{Tenderer X number of experiences}}{\text{highest number of experiences of any Tenderer}} * 40 \text{ points}$$

Total number of points per Tenderer is the sum of points achieved for criterion Tender price and the criterion Team's experience.

If the Contracting Entity is unable to select the most economically advantageous Tenderer based on these criteria, it will select the most advantageous Tenderer based on the highest number of points for criterion Tender price only. If the Contracting Entity is still unable to select the most economically advantageous Tenderer based on the criterion Tender price, it will select the most advantageous Tenderer based on the highest number of points for section a) of the Tender price criterion only.

13. Tender price

The Tender price is divided into two sections of services:

- a) Fixed price for Pillar assessment performed in line with the tender requirements, divided into three items as defined in ToR:
 - I. Preparatory meeting and planning
 - II. Fieldwork and closing meeting
 - III. Reporting

- b) Fixed hourly rates for consulting services (if contracted) after the issuance of the Pillar Assessment Final report, defined by the categories of auditors:
 - I. Category 1 Audit partner
 - II. Category 2 Audit manager
 - III. Category 3 Senior auditor
 - IV. Category 4 Assistant Auditor

The tender must cover the entirety of the services being put out to tender and must consider all elements that affect its price calculation. The Tenderer must use the *Tender pro-forma invoice* form (Annex 2) to compile its tender. Tenderer may not amend the content of the form. The Tenderer must specify a price in EUR for every item in the *Tender pro-forma invoice* rounded to a maximum of two (2) decimal points and enclose the signed *Tender pro-forma invoice* form with their tender. If a Tenderer specifies a price of zero (0) EUR, it will be deemed to be offering the relevant item free of charge. If the Contracting Entity identifies an obvious calculation error in reviewing and evaluating a tender, it will act in accordance with the seventh paragraph of Article 89 of the ZJN-3. If a Tenderer fails to enter a price (leaves a field empty) for a certain item in the *Tender pro-forma invoice* form, it will be deemed not to be offering that item. In that case, the Contracting Entity shall reject his tender.

The tender price net of VAT for items a)I, a)II and a)III must include all the elements it comprises and all costs (labour costs, equipment costs, travel and lodging costs, translation costs and all other costs that might arise in relation to the performance of contractual works for the entire duration of the contractual period), fees and other charges (except for VAT), and any discounts or commissions, tax burdens and reverse tax charges so that the Contracting Entity is not liable for any costs associated with the subject of the public contract.

The prices and the hourly rates in the *Tender pro-forma invoice* are fixed until the completion of the Agreement, unless the Agreement provides otherwise. The hourly rates remain the same as in the submitted tender in the event of any increase or reduction in the scope of services.

The hourly rates in the section b) of the Tender price must include all costs (i.e. labour costs, equipment costs, translation costs and all other costs that might arise in relation to the performance of contractual works for the entire duration of the contractual period), fees and other charges (except for VAT), any discounts or commissions, tax burdens and reverse tax charges, with the exception of travel and lodging costs. Should the Contracting Entity order the consulting services from the section b) of the Tender price and should they include any travel or lodging costs, the Tenderer will have to clearly define such costs upfront and prior to incurring them acquire a written consent from the Contracting Entity. If the Contracting Entity agrees to the specified costs and approves them in writing, and if these costs are actually incurred by the Tenderer, the Contracting Entity shall pay such costs.

The hourly rate applies to an hour of service equal to sixty (60) minutes. The Contracting Entity shall round the rendered hours of service to thirty (30) minutes, with up to fourteen (14) minutes in excess of a full hour or half-hour being rounded downwards and fifteen (15) or more minutes being rounded upwards. The offered prices per unit (hour) constitute the maximum price per unit charged for any additional services.

Tenderers must upload the *Tender pro-forma invoice* (Annex 2) to the "Pro-forma invoice" section of the e-JN system in PDF format.

By submitting the *Draft Service Agreement – Pillar Assessment* (Annex 9), the Tenderer confirms that the offered service meets the tender requirements. Tenderers must complete the form and enclose it with their tender.

14. Performance guarantee

To secure the performance of its obligations towards the Contracting Entity, the Tenderer is required to submit to the Contracting Entity the guarantee in the form of the model guarantee provided in the documentation (Annex 4: *Bank performance guarantee under URGD-758*) or in a form that must not differ in terms of content from the model guarantees contained in the documentation.

As a condition for the validity of the Agreement, the selected Tenderer will be required to deliver to the Contracting Entity within eight (8) days after the signature of the Agreement a performance guarantee for an amount equal to 10% of the Tender price net of VAT for the services under the section a) (i.e. Pillar Assessment), with a validity period of eighteen (18) months after the signature of the contract.

If the term of the Agreement or the warranty period, the type of service, or the quality or quantity changes in the course of the performance of the Agreement, the selected Tenderer must amend the performance guarantee accordingly and/or extend its period of validity.

15. Qualitative selection criteria and supporting documents

Tenderer and its team who will perform the service to be procured must meet the general legal requirements laid down in the ZJN-3 and the specific requirements foreseen in this procurement documentation, in particular those provided for the Auditors specified in detail in the *Terms of reference* (Annex 5), section 3 »*Standards and Guidance*« and section 4 »*Requirements for the Auditors*« and its annexes (Annexes 5.1 to 5.5), in order to be regarded as having capacity.

The tendered service must be in full compliance with the requirements set out in the procurement documentation, and all its parts. If any grounds exist for exclusion, if a Tenderer does not meet the conditions for participation, or if a Tenderer's tender does not satisfy the Contracting Entity's needs and requirements as set out in the procurement documentation, the Contracting Entity will exclude the Tenderer or reject the tender as inadmissible.

Where a Tenderer is participating in a joint tender or is to perform the public contract with subcontractors, the qualitative selection criteria, where stipulated in the procurement documentation, must be met by each of the partners in the joint tender and each of the subcontractors listed by the Tenderer in its tender. To determine capacity, the Tenderer, individual members of a group of Tenderers presenting a joint tender and nominated subcontractors must complete, sign and submit a completed copy of the ESPD form forming an annex to this procurement documentation in English or Slovenian.

15.1. Requirements of ZJN-3

In the submission of tenders, the Contracting Entity will, in place of certificates issued by public authorities or third parties, accept the ESPD form, which includes an up-to-date self-declaration as preliminary proof that the economic operator in question:

- a) is not in one of the situations set out in Article 75 of the ZJN-3 that could exclude it from taking part in a public procurement procedure;
- b) meets the relevant conditions for participation set out in Article 76 of the ZJN-3.

If an economic operator uses the capacities of other entities under Article 81 of the ZJN-3, the ESPD information referred to in the previous paragraph must also contain the required information in connection with the entities whose capacities are to be utilised by the economic operator.

The Contracting Entity may request that Tenderers at any time during the procedure submit all relevant authorisations, supporting documents or parts of supporting documents relating to the statements made in the ESPD form. Prior to awarding the public contract, the Contracting Entity may request certificates, declarations and other supporting documents as referred to in Article 77 of the ZJN-3 as proof of the absence of any grounds for exclusion under Article 75 of the ZJN-3 and as proof of compliance with the conditions for participation under Article 76 of the ZJN-3.

If an EU member state or a third country does not issue such documents and certificates, or if they do not cover all the cases referred to in the first and second paragraphs, point b) of the fourth paragraph and point b) of the sixth paragraph of Article 75 of the ZJN-3, these documents or certificates may be replaced by a sworn statement or, if such statement is not provided for in the member state or third country, by a statement from the relevant person given before a competent judicial or administrative authority, notary public or professional or trade organisation in that person's home country or in the country in which the economic operator is incorporated.

Information held in official records and for which the Tenderer itself has not submitted supporting documents may be verified by the Contracting Entity in the single information system (a database of Tenderers and their tenders kept by the ministry responsible for administration) instead of in the official records, if the Tenderer approves the Contracting Entity in this system.

15.2. Grounds for exclusion

15.2.1. Absence of criminal record

The Contracting Entity will exclude an economic operator from the public procurement procedure if, after performing checks pursuant to Articles 77, 79 and 80 of the ZJN-3, it determines or is otherwise apprised that the economic operator, a member of an administrative, management or supervisory body of the economic operator, or a person empowered to represent or carry out decision-making or supervisory tasks at the economic operator has been convicted by the binding decision of any of the criminal offences listed in the first paragraph of Article 75 of the ZJN-3.

Proof: Economic operators may satisfy this requirement by delivering a completed ESPD where they state all persons who are members of an administrative, management or supervisory body of the economic operator, including all persons empowered to represent or carry out decision-making or supervisory tasks at the economic operator.

15.2.2. Settlement of mandatory tax and other non-tax financial liabilities

The Contracting Entity will exclude an economic operator from participation in the public procurement procedure if, after performing checks pursuant to Articles 77, 79 and 80 of the ZJN-3, it determines that the economic operator has failed to settle mandatory tax or other non-tax financial liabilities under the law governing financial administration that are levied by the tax authority in accordance with the regulations of the country in which the tenderer is incorporated, or the regulations of the Contracting Entity's country, if the value of such outstanding past-due liabilities amounts to EUR 50 or more at the date of submission of the tender or application. An economic operator will also be deemed not to have performed the obligations referred to in the preceding sentence if it has failed to submit all its withholding tax returns for employment earnings for the last five years by the date of submission of the tender or application.

Proof: Economic operators must satisfy this requirement by submitting a completed ESPD form.

15.2.3. Non-inclusion in the list of economic operators with negative references and compliance with the conditions regarding remuneration for work

The Contracting Entity will exclude an economic operator from participation in the public procurement procedure:

- a) if at the day the deadline for submitting tenders expires, it has been excluded from public contract award procedures due to inclusion in the list of economic operators with negative references;
- (b) if during the three years prior to the deadline for the submission of tenders or requests, any fine has been imposed on the economic operator twice or more by virtue of one or more final decisions rendered by a competent authority of the Republic of Slovenia, another member state or a third country for a misdemeanour in connection with remuneration for work, work time, rest periods, performance of work on the basis of civil law contracts despite the existence of elements of an employment relationship or in connection with undeclared work. If the above stated reasons for exclusion in point b) are met the economic operator may according to the Constitutional Court decision U-I-180/19-17 and in compliance with ninth paragraph of Article 75 of the ZJN-3 submit evidence of taking sufficient measures with which it can demonstrate his reliability despite the existence of exclusion grounds.

Proof: Economic operators must satisfy this requirement by submitting a completed ESPD form. If in part »III: Exclusion grounds, Section D: Purely national exclusion grounds« of the ESPD form the economic operators answer is »YES« and the economic operator is asserting a repair mechanism, he must state the breaches and the measures with which he can demonstrate his reliability despite the existence of exclusion grounds in the field »Please describe them« of the ESPD form.

15.2.4. Other grounds for exclusion

The Contracting Entity will also exclude an economic operator from participation in the public procurement procedure in the following cases:

- a) if the Contracting Entity is able to demonstrate in any way a breach of the obligations laid down in the second paragraph of Article 3 of the ZJN-3;
- b) if insolvency or compulsory composition proceedings have been initiated against the economic operator under the law governing insolvency and compulsory composition proceedings, liquidation proceedings have been initiated against the economic operator under the law governing companies, the assets and operations of the economic operator are under the administration of a liquidator or the court, the business activities of the economic operator have

been suspended, proceedings have been initiated against the economic operator in accordance with the regulations of another country, or a situation of equivalent legal consequences has arisen;

- c) if the Contracting Entity is able to demonstrate, using appropriate evidence, that the economic operator has committed a serious breach of professional rules by which its integrity has been compromised;
- d) if it is not possible to effectively remedy the distortion of competition resulting from the prior involvement of economic operators in preparation of the public procurement procedure in accordance with Article 65 of the ZJN-3 using other, less severe measures;
- e) if significant or constant deficiencies appeared in a previous agreement on the implementation of a public contract or previous concession agreement concluded between the economic operator and the Contracting Entity in connection with the performance of key obligations, owing to which the Contracting Entity was forced to prematurely withdraw from any previous contract or agreement, claim damages or impose other comparable sanctions
- f) if the tender price together with other non-audit services other than those referred to in Article 5(1) of *Regulation (EU) No 537/2014 of the European Parliament and of the Council on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC⁵*, would exceed the limits defined in Article 4 of the said Regulation.

The Contracting Entity will verify the fulfilment of requirements at the deadline set for tender submission.

Proof: Economic operators must satisfy the requirements in points a)-e) by submitting a completed ESPD form. Economic operators must satisfy the requirement in point f) by submitting a signed copy of the *Statement on the conformity with the auditor's conditions* (Annex 6).

All the requirements set out in title 15.2 must be satisfied by the Tenderer. In the case of a joint tender, the requirements must be satisfied by all partners. In the case of a tender using subcontractors, the requirements must also be satisfied by each of the subcontractors. Where the capacities of other operators are used, the requirements must also be satisfied by such other operators whose capacities are to be used by the Tenderer.

Pursuant to the eighth paragraph of Article 75 of the ZJN-3, the Contracting Entity will exclude an economic operator (a Tenderer, a Tenderer in a joint tender, a subcontractor or an operator whose capacities are to be used by a Tenderer) from the public procurement procedure at any time during the procedure if it proves to be in one of the situations referred to in title 15.2 based on its acts or omissions, either before or during the public procurement procedure.

15.3. Requirements of the Terms of reference

Only Tenderers that will prove necessary capacity according to the requirements laid down in *Terms of reference* (Annex 5), in particular specified in detail in section 3 »*Standards and Guidance*« and section 4 »*Requirements for the Auditors*«, to pursue adequate professional activity, economic and financial capacity, technical capacity and professional capacity (references and staff capacity) will be considered eligible.

The Tenderer provides evidence of conformity with the requirements in section 3 "Standards and guidance" of the *Terms of reference* by providing a signed copy of the document *Statement on conformity with the auditor's conditions* (hereafter: Statement; Annex 6).

⁵ OJ L 158, 27.5.2014

The Tenderer provides evidence of conformity with the requirements in the subsection 4.1. "General principals" of the section 4 "Requirements for the auditor" of the *Terms of reference* by providing the signed Statement.

In relation to the paragraph Qualifications and experience of subsection 4.2. "Qualifications, experience and team composition" of the section 4 "Requirements for the auditor" of the *Terms of reference*, the Tenderer provides evidence of conformity with the requirements with the signed Statement.

In relation to the paragraph Team composition in subsection 4.2. "Qualifications, experience and team composition" of the section 4 "Requirements for the auditor" of the *Terms of reference*, the Tenderer will name the engagement team that will be composed of at least one Category 1 auditor, at least one Category 2 auditor and at least one Category 3 auditor. In addition, at least one Category 1 auditor has to have experience with pillar assessments in the context of European Commission framework contracts or in the context of ToR and at least one team member has to be fluent in Slovenian for the purpose of reviewing internal documents and contracts of the Contracting Entity and local regulation. The Tenderer will provide sufficient number of experts and the appropriate level of qualifications and experience in the engagement team in order to fulfil the requirements laid down in this procurement documentation. The Tenderer provides evidence of conformity with the stated requirements by providing a signed *List of engagement team members* and the CVs of all members of the engagement team (Annex 7).

The Contracting Entity may at any time during the tendering process or throughout the assessment procedure require from the Tenderer to provide evidence of the qualifications and experience of the engagement team members, which the Tenderer has to provide within five (5) days.

Failure to provide the signed Statement and other documents required in this chapter will result in the exclusion of the tender.

16. Legal basis and legal protection

The public procurement procedure will be implemented subject to the provisions of:

- the Public Procurement Act (Official Gazette of the Republic of Slovenia No. 91/2015, the "ZJN-3");
- the Legal Protection in Public Procurement Procedures Act (Official Gazette of the Republic of Slovenia No. 43/2011, as amended, the "ZPVPJN");
- the Obligations Code (Official Gazette of the Republic of Slovenia No. 97/07, as amended, the "OZ");
- Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 (Financial regulation; OJ-L 193/30.07.2018, p.1);
- Commission's Decision of 17. 4. 2019 on establishing new Terms of reference for the pillar assessment methodology to be used under Regulation (EU, Euratom) 2018/1046 of the European Parliament and the Council (C (2019) 2882 final);
- all applicable EU and national legislation governing the subject of the public contract.

Reference to any statute, enactment, order, regulation or other similar instrument (or a provision thereof) shall be construed as a reference to such statute, enactment, order, regulation or other similar instrument (or a provision thereof) as amended, supplemented, modified, consolidated, superseded or re-enacted.

Legal remedy:

Pursuant to Article 25 of the ZPVPJN, a review claim that relates to the content of the notice, invitation to tender or this documentation must be lodged within ten (10) business days of the date of publication of the contract notice or notice of additional information, information on an incomplete procedure or a correction, if such notice serves to amend or supplement a requirement or criterion for the selection of the most advantageous Tenderer. A review claim as referred to in the preceding sentence may not be

lodged after the tender submission deadline, unless the Contracting Entity has set tender submission deadline in the public procurement procedure that is shorter than ten business days. In that case, a review claim may be lodged within ten (10) business days of the date of publication of the contract notice. After the tender submission deadline, the Tenderer may not allege breaches that were or should have been known to the Tenderer before the expiry of the deadline, except where permitted by the ZPVPJN and in cases where the Tenderer proves that it was objectively impossible to identify the alleged breaches before the deadline.

A review claim must contain all the information and supporting documents laid down in Article 15 of the ZPVPJN: the name and address of the Tenderer and the contact person; the name of the Contracting entity; the designation of the public contract or the public contract award or capacity recognition decision; the subject of the public contract; the authorisation to represent in the pre-review and review procedure (if the Tenderer is acting through proxies) and confirmation of the payment of the administrative fee under Article 71 of the ZPVPJN. The Tenderer's claim must include the alleged breach and the facts and evidence that prove that a breach has occurred.

Pursuant to the first paragraph of Article 71 of the ZPVPJN, a fee of EUR 2,000.00 must be paid to a transaction account held with the Bank of Slovenia, Slovenska cesta 35, 1505 Ljubljana, Slovenia, No. SI56 0110 0100 0358 802, SWIFT code BS LJ SI 2X, IBAN SI56011001000358802 and reference 11 16110-7111290-XXXXXXLL (in place of XXXXXXLL, enter the public contract number from the public procurement portal).

A review claim, along with a certificate of payment of the fee, shall be filed in Slovene language via <https://www.portalerevizija.si/>. The review claim shall also be lodged in writing directly to the Contracting Entity by registered mail or registered mail with record of receipt or in electronic form if certified by a qualified certificate. The language of review procedure is Slovene.

17. Content of the tender documentation

Tenderers must enclose with their tender the properly completed forms and other documents required in the Instructions for Tenderers, including a completed ESPD form in Slovenian or English.

Tenderers must enter the required information in the blank fields of all the required forms. Any blank fields or specific content that has no relevance to the tender must clearly be marked by the Tenderer to indicate that it has no relevance (e.g. by striking it through).

18. Annexes

Annex 1: Tender form

Name of Tenderer: _____
Registered office: _____
VAT reg. number: _____
Company register number: _____
Bank account number: _____
with _____

As a Tenderer in the public procurement procedure for the selection of the contractor to supply "**PILLAR ASSESSMENT UNDER THE CONDITIONS, SPECIFIED BY THE EUROPEAN COMMISSION**", we hereby submit the following tender:

Tender number: _____

Tender valid until: _____
(no less than 3 months after the tender submission expiry deadline)

We submit this tender (circle as appropriate):

(a) independently (b) with subcontractors (c) as a joint tender

List of partners acting jointly/ subcontractors/ use of the capacities of other entities (excluding the lead partner):

	Name of economic operator	Role of economic operator (mark accordingly)
1.		<input type="checkbox"/> PARTNER <input type="checkbox"/> SUBCONTRACTOR <input type="checkbox"/> ENTITY WHOSE FACILITY THE TENDERED INTENDS TO USE
2.		<input type="checkbox"/> PARTNER <input type="checkbox"/> SUBCONTRACTOR <input type="checkbox"/> ENTITY WHOSE FACILITY THE TENDERED INTENDS TO USE
3.		<input type="checkbox"/> PARTNER <input type="checkbox"/> SUBCONTRACTOR <input type="checkbox"/> ENTITY WHOSE FACILITY THE TENDERED INTENDS TO USE

Contact person: _____

Email address: _____

Phone: _____

Person authorised to sign the tender and contract: _____

The electronically submitted form in the e-JN information system is deemed to be dated and signed by the authorised person of the Tenderer and legally binding for the Tenderer in relation to the Contracting Entity.

Annex 2: Tender pro-forma invoice

The Tenderer must upload this *Tender pro-forma invoice* form (Annex 2) to the “Pro-forma invoice” section of the e-JN system in .pdf format separately from other tender documentation.

In accordance with the tender requirements and the procurement documentation for public contract no. JN 142/2020 “Pillar Assessment under the conditions specified by the European Commission» we offer the following tender prices for the implementation of the subject of the public contract:

a) Pillar assessment (fixed price):			
I. Preparatory meeting and planning:	EUR	_____	(net of VAT)
II. Fieldwork and closing meeting:	EUR	_____	(net of VAT)
III. Reporting:	EUR	_____	(net of VAT)
Total (sum of items a)I, a)II and a)III):	EUR	_____	(net of VAT)

b) Consulting services after the issuance of the Pillar Assessment Final report (fixed hourly rate):			
I. Category 1 Audit partner	EUR	_____	(net of VAT) per hour
II. Category 2 Audit manager	EUR	_____	(net of VAT) per hour
III. Category 3 Senior auditor	EUR	_____	(net of VAT) per hour
IV. Category 4 Assistant Auditor	EUR	_____	(net of VAT) per hour

Items a)I, a)II and a)III include all the services as defined in the *Terms of reference* (Annex 5).

The tender price net of VAT for items a)I, a)II and a)III includes all the elements, i.e. all costs (labour costs, equipment costs, travel and lodging costs, translation costs and all other costs that might arise in relation to the performance of contractual works for the entire duration of the contractual period), fees and other charges (except for VAT), any discounts or commissions, tax burdens and reverse tax charges, so that the Contracting Entity is not liable for any costs associated with the subject of the public contract.

The prices and the hourly rates in the tender pro-forma invoice are fixed until the completion of performance of the subject of the public contract, unless the contract provides otherwise. The hourly rates remain the same as in the submitted tender in the event of any increase or reduction in the scope of services.

The hourly rates in the section b) of the Tender price must include all costs (i.e. labour costs, equipment costs, translation costs and all other costs that might arise in relation to the performance of contractual works for the entire duration of the contractual period), fees and other charges (except for VAT), any discounts or commissions, tax burdens and reverse tax charges, with the exception of travel and lodging costs. Should the Contracting Entity order the consulting services from the section b) of the Tender price and should they include any travel or lodging costs, the Tenderer will have to clearly define such costs upfront and prior to incurring them acquire a written consent from the Contracting Entity. If the Contracting Entity agrees to the specified costs and approves them in writing, and if these costs are actually incurred by the Tenderer, the Contracting Entity shall pay such costs.

The hourly rate applies to an hour of service equal to sixty (60) minutes. The Contracting Entity shall round the rendered hours of service to thirty (30) minutes, with up to fourteen (14) minutes in excess of a full hour or half-hour being rounded downwards and fifteen (15) or more minutes being rounded upwards. The offered prices per unit (hour) constitute the maximum price per unit charged for any additional services.

The Tenderer must enclose with its tender the completed *Tender pro-forma invoice* form (Annex 2).

The electronically submitted form in the e-JN information system is deemed to be dated and signed by the authorised person of the Tenderer and legally binding for the Tenderer in relation to the Contracting Entity.

Annex 3: **Subcontractor's request for direct payment**¹

Public procedure: JN 142/2020 PILLAR ASSESSMENT UNDER THE CONDITIONS, SPECIFIED BY THE EUROPEAN COMMISSION

Name of subcontractor: _____

Full address: _____

VAT reg. no: _____

We request that the Contracting Entity settle our claims against the lead partner instead of the Tenderer in accordance with the provisions of the ZJN-3.

I, the undersigned legal representative _____, hereby request that the Contracting Entity make a direct payment to our current account for the work that we performed for the implementation of the relevant public contract in the amount stated in the tender on the basis of the invoice issued by the Tenderer to the Contracting Entity. We agree to the deadlines and other payment terms referred to in the contract.

Place and date:

Subcontractor's signature:

¹ Complete only in the case of participation with a subcontractor requesting direct payment.

Annex 4: **Bank Performance guarantee under URGD-758**

Header with guarantor's (bank's) information

To:

(enter the name of the beneficiary, i.e. the Contracting entity under the public procurement procedure)

Date:

(enter the date of issue)

TYPE:

(performance guarantee)

NUMBER:

(enter the number of the guarantee)

GUARANTOR:

(enter the name and address of the bank at the place of issue)

PRINCIPAL:

(enter name and address of the principal, i.e. the Tenderer selected in the public procurement procedure)

BENEFICIARY:

(enter the name of the Contracting entity under the public procurement procedure)

UNDERLYING TRANSACTION: The principal's obligation under contract no. _____ of _____ *(insert the number and date of the public contract executed under the procedure labelled "Service agreement – Pillar Assessment".*

AMOUNT AND CURRENCY:

(enter the maximum amount in figures and words, and the currency)

DOCUMENTS TO BE SUBMITTED IN THE PAYMENT DEMAND ALONGSIDE THE DECLARATION AND EXPLICITLY REQUIRED IN THE TEXT BELOW:

/

LANGUAGE OF REQUIRED DOCUMENTS: Slovenian or English

FORM OF SUBMISSION: In paper form by registered mail or any form of express mail, in person or in electronic form through the SWIFT system to the following address:

(specify the SWIFT address of the guarantor)

PLACE OF SUBMISSION:

(guarantor to insert the address of the branch where paper documents are to be submitted or, in the case of electronic submission, the relevant electronic address, such as the guarantor's SWIFT address)

Regardless of the branch address specified by the guarantor, paper documents may be submitted at any of the guarantor's branches in the Republic of Slovenia.

EXPIRY DATE:

DD MM YYYY *(enter the expiry date of the guarantee)*

PARTY REQUIRED TO PAY THE COSTS:

(enter name of the principal, i.e. the Tenderer selected in the public procurement procedure)

We, as the guarantor, undertake pursuant to this guarantee to pay to the beneficiary any amount up to the amount of the guarantee when the beneficiary submits the relevant payment demand in the above-

specified form of submission, signed by an authorised signatory(ies), along with any other documents listed above, and in any case together with the beneficiary's declaration, either included in the actual wording of the payment demand or in a separate signed document that is enclosed or refers to the payment demand, which specifies in what way the principal has failed to perform its obligations under the underlying transaction.

The guarantee may be enforced on the following grounds, which must be stated in the beneficiary's declaration or payment demand:

1. if the principal fails to perform its obligations in accordance with the contract in the agreed scope, quality and deadlines; or
2. if the principal terminates the performance of the contract; or
3. if the principal fails to deliver an appropriate new performance guarantee at least fifteen (15) days before the expiry of the performance guarantee delivered upon the signature of the contract; or
4. if the beneficiary terminates the contract due to a breach of contract by the contractor/principal.

Any payment demand under this guarantee must be received on or before the guarantee's expiry date at the place of submission specified above.

The amount of this guarantee will be reduced by each amount paid under this guarantee.

Any disputes in connection with this guarantee will be settled before the court of competent jurisdiction in Ljubljana in accordance with Slovenian law.

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

Guarantor:

(stamp and signature)

Annex 5: **Terms of reference**

(separate document)

Annex 5.1: Terms of reference – Annex 1 (closed part)

(template in a separate document)

See title 4. *Access to and clarifications of the procurement documentation and contract award decision* for the collection of the closed part of the procurement documentation.

Annex 5.2: **Terms of reference – Annex 2**

(separate document)

Annex 5.3: **Terms of reference – Annex 2A**

(separate document)

Annex 5.4: **Terms of reference – Annex 3**

(separate document)

Annex 5.5: **Terms of reference – Annex 4**

(separate document)

Annex 6: **Statement on conformity with the requirements for the auditor**

In relation to public contract no. JN 142/2020 "Pillar Assessment under the conditions specified by the European Commission", I, the undersigned:

_____ (name and surname),

as the person authorised to sign the tender and the Agreement on behalf of

_____ (company name and registered office),

declare under material and criminal liability that all information given in the tender application is true and accurate and that the Tenderer fulfils all the requirements of the tender documentation.

I, the undersigned, declare under material and criminal liability that:

1. The Tenderer is independent external auditor.
2. The Tenderer is certified to perform statutory audits.
3. The Tenderer is governed by all of the following:
 - a. The IFAC International Framework for Assurance Engagements and International Standard on Assurance Engagements ('ISAE') 3000 for Assurance Engagements other than Audits or Reviews of Historical Financial Information insofar as these can be applied in the specific context of this pillar assessment;
 - b. The IFAC Code of Ethics for Professional Accountants, issued by IFAC's International Ethics Standards Board for Accountants (IESBA), which establishes fundamental ethical principles for auditors with regard to integrity, objectivity, independence, professional competence and due care, confidentiality, professional behaviour and technical standards;
 - c. The IFAC International Standards on Quality Control (ISQCs), which establish standards and provide guidance on an auditor's system of quality control.
4. The Tenderer meets at least one of the following conditions (mark all the conditions that apply):
 - The auditor and/or the firm is a member of a national accounting or auditing body or institution, which in turn is member of the International Federation of Accountants (IFAC).
 - The auditor and/or the firm is a member of a national accounting or auditing body or institution. Although this organisation is not member of the IFAC, the auditor gives a commitment to undertake this engagement in accordance with the IFAC standards and ethics set out in these ToR.
 - The auditor and/or the firm is registered as a statutory auditor in the public register of a public oversight body in an EU Member State in accordance with the principles of public oversight set out in Directive 2006/43/EC of the European Parliament and of the Council¹. This applies to auditors and audit firms based in an EU Member State.
 - The auditor and/or the firm is registered as a statutory auditor in the public register of a public oversight body in a third country and this register is subject to principles of public oversight as set out in the legislation of the country concerned (this applies to auditors and audit firms based in a third country).

5. The Tenderer employs sufficient staff with: (i) appropriate professional qualifications and suitable experience with IFAC standards, in particular the ISAE 3000 for Assurance Engagements other than Audits or Reviews of Historical Financial Information; and (ii) with experience in performing institutional or compliance assessments and/or performing systems audits or equivalent engagements of entities comparable in size and complexity to the entity in question.
6. The engagement team that the Tenderer will use for this engagement:
 - a. has experience with institutional or compliance assessments and/or systems audits or equivalent engagements of EU funded programmes and projects funded by national and/or international donors and institutions;
 - b. at least one Category 1 auditor has to have experience with pillar assessments in the context of European Commission framework contracts or in the context of ToR;
 - c. the leader of the fieldwork team i.e. either the Audit manager (category 2) or the Senior auditor (category 3) has experience with systems audits of EU funded external aid actions and/or other EU funded actions, and/or institutional or compliance assessments of organizations in the development aid sector and/or economic sector;
 - d. is fluent in English;
 - e. at least one of its member is fluent in Slovenian for the purpose of understanding and reviewing internal documents and contracts of the Contracting Entity and local regulation;
 - f. is composed of a Category 1 auditor (as defined in ToR) who has the ultimate responsibility for the assessment, and an engagement team composed of an appropriate mix of category 2-4 auditors (as defined in ToR), of which there will be at least one Category 2 and at least one Category 3 auditor.
7. the tender price together with other non-audit services other than those referred to in Article 5(1) of *Regulation (EU) No 537/2014 of the European Parliament and of the Council on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC²*, shall not exceed the limits defined in Article 4 of the said Regulation.

The electronically submitted form in the e-JN information system is deemed to be dated and signed by the authorised person of the Tenderer and legally binding for the Tenderer in relation to the Contracting Entity.

² OJ L 158, 27.5.2014

Annex 7: List of Engagement team members

In relation to the Pillar Assessment part of the public contract no. JN 142/2020 "Pillar Assessment under the conditions specified by the European Commission" the Tenderer assigns following auditors for the provision of services as required by the procurement documentation (enter first and last name):

1. _____, Category 1 Audit partner
2. _____, Category 2 Audit manager
3. _____, Category 3 Senior auditor
4. _____, Category 4 Assistant auditor
5. _____, Category ___ Audit partner/Audit manager/Senior Auditor/Assistant auditor (*select appropriate*)
6. _____, Category ___ Audit partner/Audit manager/Senior Auditor/Assistant auditor (*select appropriate*)
7. _____, Category ___ Audit partner/Audit manager/Senior Auditor/Assistant auditor (*select appropriate*)
8. _____, Category ___ Audit partner/Audit manager/Senior Auditor/Assistant auditor (*select appropriate*)
9. _____, Category ___ Audit partner/Audit manager/Senior Auditor/Assistant auditor (*select appropriate*)
10. _____, Category ___ Audit partner/Audit manager/Senior Auditor/Assistant auditor (*select appropriate*)

In the context of 15. 3 Requirements of the Terms of reference (“at least one Category 1 auditor has to have experience with pillar assessments in the context of European Commission framework contracts or in the context of ToR”)

- following assigned Category 1 auditor has experience with pillar assessments in the context of European Commission framework contracts or in the context of ToR (provide one project only, other projects, if existing, of the same auditor provide in the second table below):

Name of the auditor	Name of the project (Pillar assessment engagement) and time frame of the project <i>(state relevant project in the period 11/2015-11/2020 or currently ongoing)</i>	Auditor Pillar assessment engagement <i>(short description of the project)</i>	Role of the auditor in the project and short description of active participation

In the context of 12. Selection criteria II. Team’s experience with pillar assessments in the context of European Commission framework contracts or in the context of ToR:

- following assigned auditors (team members) have experience with pillar assessments in the context of European Commission framework contracts or in the context of ToR:

Name of the auditor	Name of the project (Pillar assessment engagement) and time frame of the project <i>(each project is one row in the table; state relevant projects in the period 11/2015-11/2020 or currently ongoing)</i>	Auditor Pillar assessment engagement <i>(short description of the project)</i>	Role of the auditor in the project and short description of active participation

Enclosures:

CVs of all Engagement Team members.

CVs have to include at least following information (provide detailed information with listing the projects that support the required experience), if relevant:

- university degree or professional qualification,
- knowledge of languages with emphasis on English or Slovenian,
- authorisation to certify accounts by the laws of the country in which the audit firm is registered,
- membership in a national accounting or auditing body or institution,
- experience as a professional auditor or accountant in public audit practice (at least 12 years for category 1, 6 years for category 2, 3 years for category 3 and 6 months for category 4 auditor according to ToR),
- managerial experience of leading audit teams,
- experience with IFAC standards, in particular the ISAE 3000 for Assurance Engagements other than Audits or Reviews of Historical Financial Information,
- experience in performing institutional or compliance assessments and/or performing systems audits or equivalent engagements of entities comparable in size and complexity to the entity in question,
- experience with institutional or compliance assessments and/or systems audits or equivalent engagements of EU funded programmes and projects funded by national and/or international donors and institutions,
- experience with systems audits of EU funded external aid actions and/or other EU funded actions and/or of EU funded financial instruments, and/or institutional or compliance assessments of organisations in the development aid sector and/or economic sectors,
- experience with pillar assessments in the context of European Commission framework contracts.

The electronically submitted form in the e-JN information system is deemed to be dated and signed by the authorised person of the Tenderer and legally binding for the Tenderer in relation to the Contracting Entity.

Annex 8: Declaration of collection of the closed part of the procurement documentation

In relation to public contract no. JN 142/2020 "Pillar Assessment under the conditions specified by the European Commission", I, the undersigned:

_____ (name and surname),

as the person authorised to sign the tender and the Agreement on behalf of

_____ (company name and registered office),

declare under material and criminal liability in connection with the closed part of the procurement documentation that:

- the documentation comprising the closed part of the procurement documentation will be used exclusively and solely for the purpose of drafting our tender in accordance with this procurement documentation;
- the closed part of the procurement documentation will not be printed, copied or otherwise distributed and/or communicated by the recipient to other natural persons and/or legal entities, except for the purposes specified in indent 1.

We undertake to request any additional clarifications relating to the Annex 5.1. Terms of reference – Annex 1 at the Contracting Entity's email address jn@sid.si and not to make any such enquiries via the Public Procurement Portal. We accept full material and criminal liability for any breach of the above undertaking.

The Tenderer's email address for the closed part of the procurement documentation and for any additional clarifications in connection with the closed part of the procurement documentation is:

Place and date:

Tenderer's signature:

The Tenderer must send the signed (scanned) declaration to the Contracting Entity's email address jn@sid.si no later than ten (10) days prior to the final tender submission deadline. The Tenderer will be deemed to have received the closed part of the procurement documentation at the email address specified in the declaration if it fails to notify the Contracting Entity at the same email address that it has not received the closed part of the procurement documentation within two (2) days of sending the declaration.

Annex 9: Draft Service Agreement– Pillar Assessment

The Tenderer must enclose a scan of the »Draft Service Agreement– Pillar Assessment« with its tender.

The electronically submitted draft Agreement in the e-JN information system is deemed to be dated and signed by the authorised person of the Tenderer and legally binding for the Tenderer in relation to the Contracting Entity.

Prior to signing the Agreement with the selected Tenderer, the Contracting Entity will complete the draft Agreement with all other information specified by the Tenderer in its tender (on the tender forms).

(separate document)