

**EMPLOYER**

**JAVNO PREDUZEĆE**

**‘ELEKTROPRIVREDA SRBIJE’**

**BEOGRAD**

**CARICE MILICE 2**

**TENDER DOCUMENTS**

**FOR THE PUBLIC PROCUREMENT OF SERVICES**

**Support and Maintenance of Information System to Support the Sale of Electricity**

**- UNDER AN OPEN PROCEDURE -**

**PUBLIC PROCUREMENT NUMBER JN 1000-0152-2016**

(filed in PE EPS number 12.01. 131044/13-16 dated 27.04.2016)

Belgrade, April 2016

Pursuant to Article 32 and 61 of the Public Procurement Law (“Official Gazette of RS” no. 124/12, 14/15 and 68/15, hereinafter referred to as: Law), Article 2 of the Rulebook on Mandatory Elements of Tender Documents in Public Procurement Procedures and on Manner of Proving Fulfilment of Requirements (“Official Gazette of RS” no. 86/15), Decision on Initiating Public Procurement Procedure number 12.01.131044/2-16 and Decision on Forming Public Procurement Committee number 12.01.131044//3-16 dated 12.04.2016, we have prepared the following:

**TENDER DOCUMENTS**

for the public procurement of the services under an open procedure

“Support and Maintenance of Information System to Support the Sale of Electricity“

Number JN 1000-0152-2016

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**DEFINITIONS**

| **Concept** | **Abbreviated Form** | **Definition** |
| --- | --- | --- |
| Information System to Support Sale of Electricity | ISSSE | Information system to support sale of electricity |
|  | KPI | Key Performance Indicator |
| Supervisory Control and Data Acquisition | SCADA | A type of industrial control system (ICS) |
| Reference Period Eligibility |  | Time period is previous 3 years and is counted until the tender submission date |
| Terms of Reference | ToR |  |
| Value Added Tax | VAT |   |
| Public Enterprise Electric Power Industry of Serbia, Belgrade | PE EPS |  |

# GENERAL DATA ON PUBLIC PROCUREMENT

1. Subject of public procurement: services “Support and Maintenance of Information System to Support the Sale of Electricity (ISSSE)“, as follows:
	* ISSSE maintenance service
	* ISSSE upgrade and integration with other information systems service.
2. Description of each lot, if the public procurement subject is divided into lots: none

# INSTRUCTION TO TENDERERS ON HOW TO PREPARE TENDERS

The Tender Documents contain Instructions to tenderers on how to prepare a tender and the necessary data on the Employer’s requirements in terms of the Tender contents, as well as the conditions under which the selection of the most favorable tender is carried out under the public procurement procedure.

The Tenderer shall meet all conditions stipulated by the Law and Tender Documents. The tender shall be prepared and submitted on the basis of the Invitation, in accordance with the Tender Documents, otherwise, the tender shall be rejected as unacceptable.

Type, technical characteristics and specification of the public procurement subject are provided under Section 5 of the Tender Documents.

## INFORMATION ON THE LANGUAGE IN PUBLIC PROCUREMENT PROCEDURE

The Employer prepared the Tender Documents in Serbian and English and it shall conduct the public procurement procedure in Serbian.

The tender with all appendices shall be prepared in Serbian and/or English. If some of the evidence or documents are in another foreign language, the latter shall be translated into Serbian or English and certified by the authorized translator/interpreter.

If the Tender with all its appendices is not prepared in Serbian and/or English, it shall be rejected as unacceptable.

## TENDER PREPARATION METHOD AND THE TENDER FORM FILLING INSTRUCTIONS

The Tenderer shall prepare its tender by clearly and unambiguously, legibly written by hand, typed on a computer or a typewriter, entering requested data into forms or according to forms representing an integral part of the Tender Documents and certified it by the seal and signature of legal representative, another representative entered in the register of the competent authority or person authorized by the legal representative with submission of Power of Attorney in tender.

Tenderer shall state in the Tender Form (Form 2 of the Tender Documents): total price without VAT, tender validity period, as well as the other Tender Form elements.

All documents submitted in the tender shall be bound in one whole with a string and sealed (with wax) or in some other way, thus preventing additional insertion, removal or replacement of individual sheets of paper, i.e. appendices, without visible damage to the sheets or the stamp.

Tenderer shall initial each tender page on both sides. It is desirable that Tenderer number each tender page by ordinal numerals, including blank pages, by hand, computer or a typewriter. Evidences attached to the tender, which cannot be damaged, numbered due to its importance (e.g. bank guarantee), shall be put in a special plastic pocket, while this plastic pocket shall be visibly numbered by ordinal numerals of the Tender page. The plastic pocket shall be glued at the top to protect the important evidence which cannot be damaged due to its importance.

Tenderer shall submit the tender with evidence certifying the fulfilment of the Tender Documents conditions in a closed and sealed envelope, so that it can be verified with certainty that it was opened for the first time, to the following address: Javno preduzeće „Elektroprivreda Srbije“, 11000 Beograd, Srbija, Carice Milice 2, PAK 103925 - Records Division – labeled with: “Tender for the Public Procurement of services “Support and Maintenance of Information System to Support the Sale of Electricity” - Public Procurement number PP-1000-0152-2016 - DO NOT OPEN“.

The back of the envelope shall contain the exact name and address of the Tenderer, its phone and fax numbers, as well as the first and the last name of the authorized contact person.

Tenderer shall also submit in the closed and sealed envelope along with the written tender CS or USB with the tender in PDF form.

In case that the tender is submitted by a group of Tenderers, it is necessary to indicate on the back of the envelope that it is a group of Tenderers and to list the names and addresses of all participants in the joint tender.

## TENDER SUBMISSION, AMENDEMENT, ADDITION AND CANCELLATION

Tenderer may submit only one Tender.

The tender may be submitted by a tenderer individually, by a group of Tenderers, as well as by a tenderer with a subcontractor.

The Tenderer who submitted the tender individually may not simultaneously participate in the joint tender or as a subcontractor. In the event that the Tenderer acts contrary to these instructions, each tender it participates shall be rejected.

The Tenderer may be the member of only one group of Tenderers submitting a joint tender, i.e. participate in only one joint tender. If the Tenderer has within the group of Tenderers submitted two or more joint tenders, the Employer shall reject all such tenders.

The Tenderer who is the member of the group of Tenderers may not simultaneously participate as a subcontractor. In the event that the Tenderer acts contrary to these instructions, each tender it participates shall be rejected.

Within the tender submission period, the Tenderer may amend or supplement an already submitted tender in writing to the Employer’s address, labelled with ‘AMENDEMENT – ADDITION – the Tender for the public procurement of services “Support and Maintenance of Information System to Support the Sale of Electricity” - Public Procurement number PP-1000-0152-2016 - DO NOT OPEN.

In the event of amendment or addition of the submitted tender, the Employer shall throughout the tender expert evaluation consider the amendment and additions only if they have been made wholly and in accordance with the form to which they relate from the already submitted tender.

Within the tender submission period, the Tenderer may revoke its already submitted tender in writing to the Employer’s address, labelled with: ‘CANCELLATION - Tender for the public procurement of services “Support and Maintenance of Information System to Support the Sale of Electricity” - Public Procurement number PP-1000-0152-2016 - DO NOT OPEN.

If the Tenderer cancels an already submitted tender prior to the expiry of the tender submission period, the Employer shall not open this tender, and it shall return it unopened to the Tenderer.

If the Tenderer amends or revokes the submitted tender after the tender submission period has expired, the Employer shall collect the security instrument provided as Tender Bond.

## LOTS

Subject Public Procurement is not formed per lots.

## TENDER WITH VARIANTS

Tender with variants is not permitted.

## TENDER SUBMISSION DEADLINE AND TENDER OPENING

A timely tender is deemed to be a tender received and sealed with a receipt stamp by the Employer’s records division, no later than 12hrs on the 35th (in words: thirty-fifth) day from the day of publishing Invitation to Tender on Public Procurement Portal, regardless of the sending method.

Having in mind that the Invitation to Tender for subject procurement was published on 27.04.2016. on the Public Procurement Portal, the deadline for Tender submission is **01.06.2016. until 12:00 hrs.**

If the Tender is submitted after the expiry of the tender submission deadline indicated in the Invitation and the Tender Documents, it shall be considered as untimely, while the Employer shall after the finalization of the tender opening procedure return it to the Tenderer unopened, with an indication that it was not submitted in time.

If the Employer extends the deadline for tender submission it shall publish the notice on extension of tender submission period on the Public Procurement Portal and its web page, and thus the deadline under this item of Tender Documents will be amended.

Public Procurement Committee shall open timely submitted tenders publicly on **01.06.2016. at 12:30hrs**  at the premises of Javno preduzeće “Elektroprivreda Srbije“, Beograd, Carice Milice 2.

Tenderers’ representatives taking part in the public tender opening procedure shall prior to the public tender opening procedure submit a power of attorney in writing for the participation in this procedure to the Public Procurement Committee issued on the Tenderer’s letterhead, filed, sealed and signed by the authorized representative of the Tenderer or another representative entered in the register of the competent authority or person authorized by the legal representative with submission of Power of Attorney in tender.

Public Procurement Committee shall take minutes of Tender opening containing the data stipulated by the Law.

Minutes of the Tender opening is signed by members of the Committee and authorized representatives of the Tenderer that take over the copy of the Minutes.

The Employer shall within three days after the Tender opening procedure has been finalized send the tender opening Minutes by post or e-mail to the tenderers who did not participate in the tender opening procedure.

## SUBCONTRACTORS

If Tenderer states in the tender that it shall trust the Subcontractor to perform partial execution of the procurement, it shall state the name of the Subcontractor, and if the Contract between the Employer and Tenderer is concluded, that Subcontractor shall be stated in the Contract.

Tenderer shall state in the Contract a percentage in the total value of procurement which shall be trusted to Subcontractor, and which cannot be higher than 50% as well as the part of the subject procurement that shall be performed through Subcontractor.

Tenderer shall, at Employer’s request, enable it access to Subcontractor in order to determine the fulfilment of conditions.

Each Subcontractor, engaged by Tenderer, must fulfil conditions under Article 75 paragraph 1 items 1), 2) and 4) of the Law, which is proved by submitting Statement stated in the section Requirements for Participation under Article 75 and 76 of the Law and Instruction how to prove the fulfilment of these requirements.

Additional conditions relating to capacities shall be met by the Tenderer independently, regardless of the subcontractors.

All forms in the Tender shall be signed and certified by the Tenderer, except Form 3 and Form 7, which shall be filled in, signed and certified by every Subcontractor on its own behalf.

The Tenderer shall be fully responsible to the Employer for the execution of contracted procurement, regardless of the number of subcontractors.

Tenderer may not engage as a Subcontractor person not indicated in tender, otherwise, Employer shall collect security instrument and terminate the Contract, unless the Employer would suffer significant damage by Contract termination.

Tenderer may engage as Subcontractor person not indicated in the tender, if upon tender submission Subcontractor sustained lasting insolvency, if the person fulfils all requirements defined for Subcontractor and if it obtains previous consent by the Employer.

Employer in this procedure does not envisage the application of provisions of paragraph 9 and 10 of Article 80 of Public Procurement Law.

## GROUP OF TENDERERS (JOINT TENDER)

In the case that several tenderers submit a joint tender, they need to submit a Joint Procurement Execution Contract as the integral part of the tender, commit between themselves and towards Employer to joint execution of procurement, which mandatory has to contain information stipulated by Article 81 paragraph 4 and 5 of the Law, as follow:

* + data on the member of the Group that shall be the Holder of the work i.e. that shall submit the tender and that shall represent the Group of Tenderers before the Employer.
	+ description of jobs for each Tenderer from the Group of Tenderers in contract execution.
	+ unlimited joint liability of each member towards the Employer according to the Law.

Each Tenderer from the Group of Tenderers that submit a joint tender needs to fulfil the requirements under Article 75 paragraph 1 items 1), 2) and 4) of the Law, and prove it by submitting a Statement stated in the section Requirements for Participation under Article 75 and 76 of the Law and Instruction on how to prove the fulfilment of these requirements.

Conditions regarding capacity, in accordance with Article 76 of the Law, shall be fulfilled jointly by Tenderers from the Group of Tenderers, on the basis of submitted evidence stipulated by the Tender Documents.

In the event of joint tender by a Group of Tenderers all forms are signed and certified by a member of the Group of Tenderers nominated as the Holder of the work in the Agreement of the members of the Group of Tenderers, except for Form 1, Form 3 and Form 7 that are filled in, signed and certified by each member of the Group of Tenderers on its own behalf.

## METHOD AND TERMS OF INVOICING AND PAYMENT

Tender must contain the method and terms of payment stated by the Tenderer in the Tender Form (Form 2 of the Tender Documents).

Invoice issuing by the selected Tenderer for the ISSSE maintenance service shall be made monthly within 3 (three) days from the date of acceptance of Monthly Protocol on Maintenance Service Acceptance confirming that ISSSE maintenance service is executed in accordance with technical requirements for this service.

Invoice issuing by the selected Tenderer for the ISSSE upgrade and integration services shall be made within 3 (three) days from the date of acceptance of Protocol (Minutes) on service acceptance for each executed requirement for software change by the Employer.

In case the price is expressed in EUR, the selected domestic Tenderer shall do invoicing in RSD calculated at the middle exchange rate of the National Bank of Serbia on the date of the transaction, or the date of signing of the Minutes.

Payment is made within the period stipulated by the law of up to 45 (forty five) days as of receipt of correct invoice on the basis of the signed and verified Minutes, in accordance with the provisions of the Contract, by the authorized representatives of the Employer and the selected Tenderer.

All payments to the domestic Tenderers shall be made in RSD by payment on account of the selected Tenderer.

Payment of the contracted value for the prices expressed in EUR, shall be made to the selected domestic Tenderer in RSD at the middle exchange rate for EUR of the National Bank of Serbia on the payment date.

In the event that the selected Tenderer is a foreign person, payment to the non-resident shall be made by the Employer after deduction of withholding tax to the contracted value in accordance with the tax regulations of the Republic of Serbia. The contracted value is deemed to be gross value.

The selected Tenderer, a foreign person shall submit to the Employer at contract signing or within 8 (eight) days as of the date of contract signing evidence on the status of the resident of domicile country with a evidence of residency certified by the competent authority of the domicile country in the form specified by regulations of the Republic of Serbia or a certified translation of the form prescribed by the competent authority of the service Provider’s domicile country, and evidence that he is the real owner of income, if the Republic of Serbia with domicile country of the Tenderer-nonresident signed the Contract on avoiding double taxation. Concluded Contracts on avoiding double taxation have been published on the website of the Ministry of Finance ([www.mfin.gov.rs/pages/issue.php](http://www.mfin.gov.rs/pages/issue.php) or [www.poreskauprava.gov.rs/sr/.../ugovori-dvostruko-oporezivanje](http://www.poreskauprava.gov.rs/sr/.../ugovori-dvostruko-oporezivanje)).

In the event that the selected Tenderer - nonresident of RS fails to submit evidence of residency status and that he is the real owner of income, or Contract on avoiding double taxation was not concluded with domicile country of the Tenderer, the Employer will calculate and suspend the payment of withholding tax at the full rate in accordance with the tax regulations of the Republic of Serbia, which are published on the website of the Ministry of Finance ([www.mfin.gov.rs/закони](http://www.mfin.gov.rs/%D0%B7%D0%B0%D0%BA%D0%BE%D0%BD%D0%B8)).

The Employer did not foresee the advance payment option.

If different method and terms of payment are specified in the Tender Form, the Tender will be rejected as unacceptable.

## SERVICES EXECUTION PERIOD

The Tenderer shall execute the services that are the subject of the procurement in the period of 2 (two) years as of the date of Contract effectiveness.

If the Tenderer offers different service execution time schedule, the Tender will be rejected as unacceptable.

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## PRICE

 The price shall be expressed in RSD/EUR, without value added tax (VAT).

In the case that the submitted tender does not specify whether the offered price includes VAT or not, it shall be considered in accordance with the Law that the latter does not include VAT.

 The Tenderer may express the price in EUR, while the latter shall for Tender evaluation purposes be converted into RSD by using the middle exchange rate of the National Bank of Serbia on the tender opening day.

 The offered price shall be fixed and cannot be changed for the duration of the contract, except in the cases of contract amendment that are foreseen in Item 2.24. of this section of Tender Documents and in the Contract.

 The contracted price, VAT excluded shall be deemed to be gross value for the purpose of withholding tax calculation.

The offered price must cover and include all costs that the Tenderer has in procurement realization.

 Price change is not deemed to be adjustment of the price expressed in EUR with the previously defined parameters in item 2.10. of this section of Tender Documents and in the Contract.

 In the Form “Price Structure” (Form 4 of the Tender Documents) the price structure according to the table in the same Form should be quoted, while in the Tender Form (Form 2 of the Tender Documents) the total offered price should be quoted.

 If the tender contains an unusually low price, the Employer shall act pursuant to Article 92 of the Law.

## FINANCIAL SECURITY INSTRUMENTS

The Tenderer shall submit the following financial security instruments:

1. **Within the tender:**
* ***Tender Bond***

The Tenderer shall submit original Tender Bond in the amount 5% of the tender value, VAT excluded, for the public procurement of service “Support and Maintenance of Information System to Support the Sale of Electricity” number PP-1000-0152-2016.

Tender Bond shall be irrevocable, unconditional (without right to object) and payable at first written demand, valid at least 90 (ninety) days as of tender opening date.

Employer shall collect Tender Bond submitted with the Tender if:

1) The Tenderer after the deadline for submission of Tenders withdraws, revokes or amends its offer, or

2) The Tenderer to whom the contract was awarded does not sign or refuses to sign the public procurement contract in due time, or

3) In case the Tenderer fails to submit the required guarantee provided for the contract.

Where the head office of the bank guarantor is in the Republic of Serbia, in the event of a dispute under this Bond, jurisdiction of the court in Belgrade shall be recognized and the substantive law of the Republic of Serbia shall be applied.

Where the head office of the bank guarantor is outside the Republic of Serbia, in the event of a dispute under this Bond, jurisdiction of the International Commercial Arbitration at the Serbian Chamber of Commerce shall be recognized, and application of its Rulebook and procedural and substantive law of the Republic of Serbia.

The submitted bank guarantee may not include additional terms for payment, shorter deadlines, smaller amount or altered territorial jurisdiction for disputes resolving.

The Tenderer may submit a bank guarantee from a foreign bank only if a credit rating which corresponds to at least the credit quality of 3 (investment rank) is allocated to that bank.

The bank guarantee shall be returned to the Tenderer with whom contract was not signed immediately after signing the contract with the Tenderer whose tender was selected as the most favorable, and to the Tenderer with whom the contract was concluded within eight days from the date of submission of security instruments for execution of contractual obligations which are requested by the Contract to the Employer.

Bank guarantee model is given in Form 5 of this Tender Documents.

OR

* ***Payment of deposit to the account of the Employer***

The Tenderer shall ensure payment for tender bond as deposit in the amount equal to 5% of the tender value, excluding VAT, to the account of the Employer (for payments in RSD, account No.160-700-13 with Banca Intesa AD Beograd, and for payments in EUR, according to the following instructions:

*56: Intermediary: BCITITMM, INTESA SANPAOLO SPA, MILANO, ITALY*

*57: Account with institution: DBDBRSBG, BANCA INTESA AD, Beograd*

*59: Beneficiary: /RS35160005030000152939 , ELEKTROPRIVREDA*

*SRBIJE JP, Carice Milice 2, Beograd, Republic of Serbia*

with Banca Intesa AD Beograd) and to submit evidence on effected payment in the Tender.

All banking costs regarding payment and refund of deposit bears the Tenderer.

Paid funds shall be returned to the Tenderer with whom contract was not signed immediately after signing the contract with the Tenderer whose tender was selected as the most favorable, and to the Tenderer with whom the contract was concluded within 8 (eight) days from the date of submission of security instruments for execution of contractual obligations which are requested by the Contract to the Employer.

If the Tenderer does not submit the financial security instruments within deadlines and in a manner foreseen by the Tender Documents, the tender shall be rejected, as unacceptable.

1. **During Contract signing**
* ***Performance Bond***

The selected Tenderer shall submit to the Employer an irrevocable, unconditional (without the right to objection) and payable upon first written demand performance bond against the amount of 10% of the value of the contract, VAT excluded, for the public procurement of service “Support and Maintenance of Information System to Support the Sale of Electricity” number PP-1000-0152-2016.

The stated Performance Bond shall be submitted by Tenderer during Contract signing or not later than 8 (eight) days after the Contract signing.

Performance Bond shall be valid at least 30 (thirty) days longer than the deadline set for the final work execution.

If during Contract validity period the deadlines for execution of contractual obligation is extended, guarantee validity period must also be extended.

Submitted Performance Bond cannot include additional conditions for payment, shorter deadlines, smaller amount or changed territorial jurisdiction for solving disputes.

In the event that awarded Tenderer fails to meet the undertaken contractual obligations within the deadlines and in a manner provided in the Contract, the Employer shall collect the Performance Bond.

Where the head office of the bank guarantor is in the Republic of Serbia, in the event of a dispute under this Bond, jurisdiction of the court in Belgrade shall be recognized and the substantive law of the Republic of Serbia shall be applied.

Where the head office of the bank guarantor is outside the Republic of Serbia, in the event of a dispute under this Bond, jurisdiction of the International Commercial Arbitration at the Serbian Chamber of Commerce shall be recognized, and application of its Rulebook and procedural and substantive law of the Republic of Serbia.

In the event that the Selected Tenderer is submitting the bank guarantee of the foreign bank, the Selected Tenderer may submit the guarantee of the foreign bank only if such bank is awarded at least credit rating with the credit quality 3 (investment rank).

Bank guarantee model is given in Form 5.1 of this Tender Documents

All costs related to obtaining security instruments shall be borne by the Tenderer, and they can be stated in the Tender Preparation Cost Form (Form 6 of Tender Documents).

All financial security instruments can be made out to the member of the group of Tenderers defined in the agreement on joint procurement execution, or to the Tenderer, but not to the subcontractor.

In case that the Tenderer does not fulfil overtaken obligations in subject public procurement procedure, the Employer is entitled to collect submitted security instruments by the Tenderer.

If during the validity of the Contract deadlines for the execution of contractual obligations are changed, validity of the bank guarantee must be extended.

## ADDITIONAL INFORMATION AND CLARIFICATIONS

Tenderer may require additional information or clarifications in written form regarding Tender preparation, no later than five days prior to the Tender submission deadline, at the address of the Employer, with the label: “CLARIFICATION – Invitation for the Public Procurement number JN 1000-0152-2016“ or via e-mail address to: nina.nikolajevic@eps.rs and slavica.vasic@eps.rs during working days (Monday - Friday) from 08 to 16 hours. Request for clarification received after this time or during weekends/non-working day will be recorded as received on the next working day. In the request for additional clarification the interested party may indicate to the Employer possible deficiencies and irregularities in the tender documents.

The Employer shall, within three days as of receipt of the request published on the Public Procurement Portal and its website.

Communication in the public procurement procedure is carried out in the manner prescribed in Article 20 of the Law.

## ADDITIONAL EXPLANATION, CONTROL AND PERMITTED CORRECTIONS

Employer may, after the opening of tenders, in written form or via e-mail, request from the Tenderer additional explanations that shall help during review, evaluation and comparison of the tenders, as well as to perform the control (insight) of the Tenderers and/or its Subcontractor, i.e. participants in the joint tender.

The Tenderer shall act upon the request of the Employer, i.e. it shall submit required explanations and enable direct insight.

Employer can, with the consent of the tenderer, make the corrections of calculation errors observed during the consideration of the tender upon finalized tender opening procedure.

In the event of the difference between unit and total price, unit price shall prevail.

## NEGATIVE REFERENCES

Employer may reject the tender if it has the evidence that tenderer in the previous three years prior to issuing of the Invitation for tenders submission, in the public procurement procedure:

1. did not act in accordance with the ban from Article 23 and 25 of the Law;
2. breached competition rules;
3. submitted false data in tender or without justified reasons refused to conclude the public procurement contract, after contract was awarded to it;
4. refused to submit evidence and security instruments for which it was obliged according to tender.

Employer shall reject the tender if it has the evidence confirming that the tenderer did not fulfil its obligations under previously concluded public procurement contracts referring to the same subject of procurement, for the period of three previous years prior to the issuing of the Invitation for tenders submission.

Evidence of the stated can be:

* final and binding court decision or final decision of other competent body;
* document on collected security instrument for the fulfilment of obligations in public procurement procedure or fulfilment of contractual obligations;
* document on collected liquidated damages;
* complaints of the customers, i.e. users, if not solved in the agreed deadline;
* statement on contract termination due to failure to fulfil essential contractual elements, provided in the manner and under conditions prescribed by the law governing contracts and torts;
* evidence on having engaged the persons not listed in tender as subcontractors i.e. members of the group of tenderers;
* other relevant evidence appropriate to the public procurement subject that relates to the fulfillment of commitments in previous public procurement procedures or under previously signed contracts on public procurement.

Employer may reject tender if it possesses evidence under Paragraph 3 Item 1) of Article 82 of the Law which refers to procedure executed or contract awarded by another employer, where it refers to the same type of public procurement subject.

Employer shall also act in the stated manners in the case of joint tender of the group of tenderers if it finds that aforementioned evidence for one or more members of the group of tenderers exist.

## COMPLIANCE WITH LABOUR LAW REGULATIONS AND OTHER REGULATIONS

Tenderer shall when preparing the Tender explicitly state that it complied with all valid regulations on safety at work, employment and working conditions, environmental protection, as well that it was not prohibited from performing the activity in force at the time of tender submission (Form 3 of the Tender Documents).

The tenderer shall act in accordance with the applicable policies of information security by the Employer during the implementation of the EISSSE project.

## PATENT USE FEE

Patent use fee, as well as responsibility for infringement of protected intellectual property rights of third parties shall be borne by the Tenderer.

## TENDER VALIDITY PERIOD

The tender shall be valid at least 90 (ninety) days as of the tender opening day.

In the event that the Tenderer indicates a shorter tender validity period, the tender shall be rejected as unacceptable.

## CONTRACT SIGNING DEADLINE

The Employer shall deliver the public procurement contract to the Tenderer to whom the contract was awarded within 8 (eight) days from the expiry of deadline for submission of request for protection of rights.

If the Tenderer who was awarded the contract refuses to sign the contract or fails to sign the contract within the stated deadline, the Employer shall decide whether it will sign the contract on public procurement with the next shortlisted tenderer.

The Tenderer shall submit to the Employer during Contract signing appendices 2, 3, 5, as well as appendix 6 to the Contract (in case of Contract conclusion with the Group of Tenderers) in certified translation into Serbian by the authorized translator, since they are appendices to the Contract.

Also, Tenderer shall sign Confidentiality Agreement.

The Employer may conclude, before expiry of the deadline for submission of the request for protection of rights, the contract on public procurement in the event of fulfilment of conditions from Article 112 paragraph 2 item 5 of the Law.

## CONFIDENTIAL DATA LABELLING METHOD

Data appropriately labelled by the Tenderer as confidential shall be used only within the public procurement procedure in accordance with the Invitation and they shall not be made available to anyone outside the group of persons included in the public procurement procedure. Such data shall neither be published during tender opening, nor in the continuation of the procedure.

The Employer may refuse to provide information that would entail a breach of data confidentiality received in the tender.

The Tenderer may label as confidential documents containing personal data, not contained in any public register, or otherwise not available, as well as business data determined by the regulations as confidential.

The Employer shall treat as confidential the documents labelled in capital letters with “CONFIDENTIAL” in the upper right corner.

The Employer shall not be responsible for the confidentiality of information not labelled in the above specified manner.

If certain information is labelled as confidential and it does not meet the above specified conditions, the Employer shall request from the Tenderer to remove the confidentiality label. The Tenderer shall perform this in the following manner: its authorized representative shall write “CANCELLED” above the confidentiality label, with the date, time and signature.

If the Tenderer does not cancel the confidentiality of documents within the period specified by the Employer, the Employer shall regard this tender as one without confidential information.

Employer shall duly observe lawful interests of Tenderers, by protecting their technical and business secrets in terms of the law governing the protection of business secrets.

Evidence on fulfilment of mandatory conditions, price and other information from the Tender relevant for applying elements of the criterion and for the ranking of tenders shall not be deemed as confidential.

## TENDER COSTS

Costs for preparation and submission of tender are borne exclusively by the Tenderer and cannot be reimbursed by the Employer.

Tenderer may include in its Tender the total amount and structure of costs for Tender preparation in such so as to be filled in, signed and certified by the seal of the Form of tender preparation costs (Form 6 of the Tender Documents).

If the procurement procedure has been ceased for reasons that are on the side of the Employer, the Employer shall reimburse to the Tenderer cost for making samples or models, if they are made in accordance with the technical specifications of the Employer and cost for obtaining security instruments, provided that the Tenderer asked for reimbursement of these costs in its tender.

## PRICE STRUCTURE FORM

The Tender shall indicate the price structure by filling in, signing and stamping Form 4 of the Tender Documents.

## MODEL CONTRACT

 In accordance with provided Model Contract (Section 7 of the Tender Documents) and elements of the most favorable Tender, Public Procurement Contract shall be signed.

 Tenderer is obliged to fill in, sign and stamp the given Model Contract and submit it with the Tender, otherwise Tender shall be rejected as unacceptable.

## AMENDMENTS DURING CONTRACT DURATION

The Employer may after the signing of the public procurement contract without conducting public procurement procedure increase the procurement subject scope to the limit prescribed by Article 115, paragraph 1 of the Law.

In the given case, the price for additional man/day, i.e. the price for additional month of ISSSE maintenance shall be the offered unit price for ISSSE upgrade and integration service, i.e. the offered unit price for maintenance service given in the Tender of the selected Tenderer, in Form 4.

Regarding the above, the Employer shall make Decision on amending the contract containing the information in accordance with Appendix 3L of the Law and publish the latter within three days as of the adoption at the Public Procurements Portal and submit a report to the Public Procurement Office and the State Audit Institution.

## REASONS FOR REJECTION OF THE TENDER AND PROCEDURE CANCELLATION

 In public procurement procedure the Employer shall reject the unacceptable Tender in accordance with Article 107 of the Law.

 The Employer shall adopt the decision on cancellation of the public procurement procedure in accordance with Article 109 of the Law.

 In the event of cancellation of the public procurement procedure, the Employer shall not be liable, in any respect, for real damage, lost profit, or any other damage that the Tenderer may suffer although the Employer has been warned of the possibility of damage occurrence.

## DATA ON THE TENDER CONTENT

Content of the Tender, apart from Tender Form, includes all other evidence on fulfilment of conditions from Article 75 and 76 of the Law, stipulated in Article 77 of the Law, that are listed in the Tender Documents, as well as all required appendices and statements in the manner provided in the following paragraph of this item:

* Filled in, signed and stamped form of “Statement on Independent Tender”
* Filled in, signed and stamped form of “Tender Form“
* Filled in, signed and stamped form of statement in accordance with Article 75 of paragraph 2 of the Law
* Filled in, signed and stamped form “Price Structure“
* Filled in, signed and stamped form of “Form of Costs for Tender Preparation “, if applicable
* Filled in, signed and stamped form of “Statement on fulfilment of conditions from art. 75 of the Public Procurement Law“
* Filled in, signed and stamped form of “Tenderers Reference List“
* Filled in, signed and stamped form of “Certificate”, issued by the prior Employers
* Filled in, signed and stamped form of “List of Engaged Persons to be Responsible for Contract Implementation“
* Signed and stamped “Model Contract“
* Forms, statements and evidence defined in item 2.7 or 2.8 of these instructions in the event that the Tenderer submits the Tender with subcontractor or joint Tender is submitted by the group of Tenderers
* Tender Bond in accordance with item 2.12. of this instruction and Form 5.
* Evidence on fulfilment of conditions from Article 76 of the Law in accordance with Article 77 of the Law and Section 4 of the Tender Documents.

## SAFEGUARD OF TENDERERS’ RIGHTS

Request for safeguard of rights may be submitted during the entire public procurement procedure, against any activity, unless otherwise stipulated by the Law.

The request for the protection of rights may be submitted by a tenderer or an interested party having an interest in the contract award, under the particular public procurement procedure and who has suffered or could suffer damage due to actions of the Employer contrary to the provisions of the Law.

The request for the protection of rights shall be submitted to the Employer, stating “Request for the protection of rights PP. No. 1000-0152-2016 “.

Copy of the request shall also be submitted by the applicant to the Republic Commission for Protection of Rights under the Public Procurement Procedures, to the following address: 11000 Belgrade, Str. Nemanjina 22-26.

The request for protection of rights shall include:

1. name and address of the applicant and contact person;
2. name and address of the Employer;
3. data on public procurement being the subject of the request or the employer’s decision;
4. violation of the regulation governing the public procurement procedure;
5. facts and evidence to prove the violation;
6. proof of payment of the fee referred to in Article 156 of the Law
7. applicant's signature.

The request for the protection of rights challenging the type of procedure, the contents of the invitation to tender or tender documentation shall be deemed timely if received by the Employer at least seven days before the tender submission deadline, regardless of the method of delivery, and if the applicant in line with Article 63, paragraph 2 of the Law pointed out to the Employer any deficiencies and irregularities, and the Employer has failed to remove the latter.

The request for protection of rights challenging the actions taken by the Employer prior to the tender submission deadline, and after the expiry of the deadline from the previous article, shall be considered timely if it is filed no later than the tender submission deadline.

After the contract award decision has been made and the decision to suspend the procedure, the deadline to submit the request for protection of rights is ten days from the date of publication of the decision at the Public Procurements Website.

The request for protection of rights does not restrict further activities of the Employer under the public procurement procedure in accordance with the provisions of Article 150 of the Law.

The Employer shall publish the notice on the request for the protection of rights at the Public Procurements Website and its own website no later than two days from the date of receipt of the request for protection of rights, which includes data from Appendix 3LJ of the Law.

The Employer may decide to stop further activities if the request for protection of rights has been submitted, whereby its notice on the request for protection of rights shall state that the further public procurement procedure activities have been suspended.

The applicant shall pay a fee to the account of the budget of the Republic of Serbia (account number: 840-30678845-06, payment code 153 or 253, reference number JN 1000-0152-2016, purpose: ZZP, JP EPS, PP. No. JN 1000-0152-2016, payment recipient: the budget of the Republic of Serbia):

* If by the application for the rights protection is contested public procurement procedure type, the content of the Invitation for tender submission, I.e. the content of the tender documents or the Employer other actions undertaken before the opening of tenders, the fee is RSD 250,000.00, considering that the estimated value of the contract exceeds RSD 120,000. 000.00;
* If by the application for the rights protection are challenged actions taken by the Employer after tenders opening, except of Decisions on the Contract award of public procurement, the amount of the fee is determined by the estimated value of the public procurement (*which tenderers learn in the process of tenders opening*) and 0.1% of the estimated public procurement value;
* If by the application for the rights protection is contested the Decisions on the Contract award of public procurement, the amount of the fee is determined by the offered price of the Tenderer to whom the contract was awarded, and if the price does not exceed RSD 120,000,000.00 the fee is 120,000.00 dinars, and if that price exceeds 120,000,000.00 dinars, the fee is 0.1% of the offered price for the Tenderer to whom the contract was awarded**.**

Instructions for the payment of the fee is publicly available on the website of the Republic Commission for the Protection of Rights in Public Procurement Procedures:

<http://www.kjn.gov.rs/ci/uputstvo-o-uplati-republicke-administrativne-takse.html>

# CONTRACT AWARDING CRITERIA

Contract awarding criteria shall be “**the lowest offered price**“.

In the event that offers of two or more tenderers have the same offered price, which is also the lowest, tenderer’s bid with the lowest offered price for maintenance services of ISSSE, will be selected.

# CONDITIONS FOR PARTICIPATION IN PUBLIC PROCUREMENT PROCEDURE STIPULATED UNDER ARTICLE 75 AND 76 OF THE PUBLIC PROCUREMENT LAW AND INSTRUCTION ON HOW TO PROVE FULFILLMENT OF THOSE CONDITIONS

## MANDATORY CONDITIONS FOR PARTICIPATION IN PUBLIC PROCUREMENT PROCEDURE

In public procurement procedure the Tenderer has to prove that:

1. It is registered with the competent authority i.e. entered into the corresponding register;
2. It or its legal representative have not been convicted for any criminal act as members of an organized criminal group; that it has not been convicted for commercial criminal offence, criminal offence against environment, criminal offence of receiving or offering bribe, criminal offence of fraud;
3. It settled all due taxes, contributions and other public duties in accordance with the regulations of the Republic of Serbia, or with foreign state of its head office;

## ADDITIONAL CONDITIONS FOR PARTICIPATION IN PUBLIC PROCUREMENT PROCEDURE

In public procurement procedure the Tenderer has to prove that it:

1. Has required financial capacity:
	* that for the previous 3 (three) fiscal years (2013, 2014, 2015) it had revenues of minimum EUR 2 (two) million per year; values expressed in Serbian dinars will be calculated in EUR according to the middle exchange rate of the National Bank of Serbia on the last day of fiscal year to which financial statements refer to;
	* that it has been profitable in the past three fiscal years (2013, 2014and 2015);
	* that in the last 6 (six) months preceding the day of tender announcement has not recorded any restrictions on its current accounts.
2. Has required business capacity:
	* that it is authorized by the manufacturer of application software (IPESOFT spol. s.r.o. Bratislava, Slovakia) for the provision of maintenance and upgrade services (changes to the source code) of application software ISSSE;
	* that in the previous three (3) years from the date of submission of offers, it has implemented maintenance and upgrade services of application software in at least two users of application software for electricity trading.
3. Has required staff capacity:
	* minimum 30 employed/engaged persons with experience in providing services of maintenance and upgrade of application software for electricity trading, engaged in implementation of services being a part of the subject procurement;
	* minimum 5 employed/engaged programmers with experience in providing services of maintenance and upgrade (changes to the source code) of application software ISSSE, engaged in implementation of services being a part of the subject procurement.

## INSTRUCTIONS ON HOW TO PROVE THE FULFILMENT OF CONDITIONS

As evidence of fulfilment of mandatory conditions for participation the tenderer shall submit the Statement in the tender given under full substantive and criminal liability confirming that it fulfills mandatory conditions for participation in accordance with Article 77 paragraph 4 of the Law.

Tenderer shall submit in the tender the Statement in accordance with Form 7 of Tender Document. This statement is submitted, i.e. the same is given by each member of the Group of Tenderers as well as the subcontractor on its own behalf.

Tenderer shall submit in the tender evidence that it fulfills additional conditions for participation in public procurement procedure in accordance with the Law, as follows:

1. Evidence of adequate financial capacities:

Domestic Tenderers

* Balance Sheet and Profit and Loss Statement for three previous financial years (2013, 2014 and 2015) with the certified auditor opinion if there is such an opinion. If the Tenderer is not the subject of the audit in accordance with the Law on Accounting and Auditing, it is obliged to submit appropriate act - notification in terms of legislation for each of the said years - Notification of Classification of Legal Entities.

For the year 2015, balance sheets from the Report for statistical purposes are acceptable, if a Regular financial annual report for 2015 has not yet been submitted to the Business Registers Agency. In this case, along with the balance sheets for 2015, there should also be submitted printed details of the processed subject - Report for statistical purposes to be taken from the website of the Agency for Business Registers;

OR

Credit Report, Form BON JN for the last three financial years (2013, 2014 and 2015) Issued by the Serbian Business Registry Agency, if exists;

* certificate of the data on liquidity issued by the National Bank of Serbia - Department of Collection Enforcement, for the period of the previous 6 months prior to the date of publishing the invitation to tender.

Foreign Tenderers

* Balance Sheet and Profit and Loss Statement for three previous financial years (2013, 2014 and 2015) with the certified auditor opinion, if there is such an opinion. If the audit of statement for 2015 has not been completed until the moment of tender submission, tenderer shall submit the Statement about the said along with the Balance for 2015 given under substantive and criminal liability. If the Tenderer is not the subject of the audit in accordance with regulations of country where it has seat, it is obliged to submit Statement along with Balance Sheet and Profit and Loss Statement given under substantive and criminal liability that it is not subject of auditing for the mentioned years.
* Certificate or opinion or statement of the bank or other specialized institution in accordance with the regulations of the country in which Tenderer has seat concerning blocked accounts for the period of previous 6 months prior to the date of publishing the invitation to tender .
1. Evidence of adequate business capacities:
* Authorization IPESOFT spol. s.r.o Bratislava, Slovakia confirming, as the manufacturer of application software ISSSE that the tenderer is authorized to maintain and modify the source code of application software ISSSE. Authorization must be addressed to the name of the tenderer submitting the bid for services that are the subject of this procurement, and it has to be addressed to the Employer.
* As an evidence for the references listed in the List of References (Form 8 of Tender Documents), the Tenderer shall also submit in a tender a copy of concluded contracts or certificates of previous employers in Form 9. of the Tender Documents or in similar form that has the same content as Form 9. The submitted certificate must include at least the following data: previous Employer (name, address, phone, e-mail, contact person), Tenderer to whom the certificate is being issued (name, address), type and description of services and deliveries executed; period of services execution, the method of service execution (independently or as a leader of group of tenderers or as a member of group of tenderers), participation of a member of the group of tenderers expressed in % of total value of services executed (if needed), signature of the previous Employer authorized person and stamp.
* In case of doubt in the truthfulness of the submitted data, Employer retains the right to check them based on the relevant evidence. If the Employer determines that the Tenderer presented untrue data or that the documents are false, the tender of that Tenderer shall be deemed incorrect and shall be rejected.
* Subject of evaluation are references of the tenderer that: a) the Tenderer performed independently or b) as a leader of the group of tenderers or c) by having participation in total group’s value of the performed services exceeding 50%. References not meeting the above criteria will not be evaluated.
* References of subcontractors who are engaged by the Tenderer are not the subject of evaluation under this condition.
1. Evidence of sufficient staff capacities:
* Copies of relevant individual M forms or employment contracts for persons engaged with the tenderer;
* Copies of contracts on employment of persons with tenderer outside employment.
* For persons employed/engaged with the foreign tenderer: tenderer’s statement (stamped, signed by the authorized person, under full moral and substantive liability) confirming that the person is engaged by the tenderer’s company;
* List of employed/engaged persons that will be responsible for contract execution (Form 10 of Tender Documents);
* CV (Form 10.1 of Tender Documents) accompanied by a Statement of the given person and the tenderer that it is true and correct.

## CONDITIONS THAT EVERY SUBCONTRACTOR, I.E. MEMBER OF THE GROUP OF TENDERERS MUST FULFILL

Every subcontractor has to fulfil the conditions from Article 75 paragraph 1 item 1), 2) and 4) of the Law, which it proves by submitting the required Statement. Requirements related to capacities under Article 76 of the Law the tenderer shall fulfil independently regardless of the subcontractor engagement, based on the submitted evidence in accordance with this section of Tender Documents.

Every tenderer from the group of tenderers that submits joint tender has to fulfil the conditions from Article 75 paragraph 1 item 1), 2) and 4) of the Law, which it proves by submitting the required Statement. Conditions related to the capacities stipulated in the Article 76 of the Law the Group of Tenderers are fulfilling together, on the basis of the evidence submitted in accordance with this Section of the tender documentation:

## FULFILLMENT OF THE CONDITIONS FROM ARTICLE 75, PARAGRAPH 2 OF THE LAW

Employer requires from the tenderers while preparing the Tender to explicitly state that they complied with all obligations that result from valid regulations on safety at work, employment and working conditions, environmental protection, as well as that there was no prohibition for Tenderer to perform its activity that was effective at the time of tender submission.

Regarding this condition the Tenderer shall submit the Statement - Form 3 from the Tender Documents in its Tender.

This statement shall be submitted, i.e. it has to be given by every member of the Group of Tenderers, i.e. subcontractor on its own behalf.

## MANNER OF EVIDENCE SUBMISSION

 Prior to adoption of the Contract Award Decision the Employer shall ask from the tenderer whose tender was evaluated as the most favorable one to submit the copy of evidence on fulfillment of mandatory conditions for participation as follows:

Legal entity:

1. Extract from the Business Registers Agency register, i.e. extract from the registry of competent Commercial Court; for foreign Tenderers extract from other adequate register of the competent authority of the state of its head office;
2. Extract from criminal records, i.e. certificate of the competent court and competent Police Administration of the Ministry of Interior that it or its legal representative have not been convicted for any criminal act as members of an organized criminal group; that it has not been convicted for commercial criminal offence, criminal offence against environment, criminal offence of receiving or offering bribe, criminal offence of fraud

For domestic Tenderers:

* *Extract from criminal records of Municipal Court at whose territory is the head office of the domestic legal entity, i.e. head office of the representative or branch of foreign legal entity;*
* *Extract from criminal records of the special department (for organized crime) of Higher Court in Belgrade;*
* *Certificate from criminal records of Police Administration of the Ministry of Interior for its legal representative – request for issuance of this certificate might be submitted by place of birth or by residence.*

*If there are several legal representatives the certificate from criminal records is submitted for each one.*

For foreign Tenderers certificate of the competent state authority of its head office;

1. Certificate issued by the Tax Authority of the Ministry of Finance indicating that it has settled all due taxes and contributions and certificate issued by the competent local government authority indicating that it has settled dues for local public revenues; for foreign Tenderers certificate of the competent state authority of the state of its head office.

Evidence from item 2) and 3) cannot be older than two months before Tender opening.

Entrepreneur:

1. Extract from the Business Registers Agency register, i.e. extract from the competent registry;
2. Extract from criminal records, i.e. certificate of the competent Police Administration of the Ministry of Interior that it has not been convicted for any criminal act as members of an organized criminal group; that it has not been convicted for commercial criminal offence, criminal offence against environment, criminal offence of receiving or offering bribe, criminal offence of fraud;

For domestic Tenderers:

* *Certificate from criminal records of competent Police Administration of the Ministry of Interior – request for issuance of this certificate might be submitted by place of birth or by residence.*

For foreign Tenderers certificate of the competent state authority of the state of its head office;

1. Certificate issued by the Tax Authority of the Ministry of Finance indicating that it has settled all due taxes and contributions and certificate issued by the competent local government authority indicating that it has settled dues for local public revenues

For foreign Tenderers certificate of the competent state authority of the state of its head office.

Evidence from item 2) and 3) cannot be older than two months before Tender opening.

Natural person:

1. Extract from criminal records, i.e. certificate of the competent Police Administration of the Ministry of Interior that it has not been convicted for any criminal act as members of an organized criminal group; that it has not been convicted for commercial criminal offence, criminal offence against environment, criminal offence of receiving or offering bribe, criminal offence of fraud;

For domestic Tenderers:

* *Certificate from criminal records of competent Police Administration of the Ministry of Interior – request for issuance of this certificate might be submitted by place of birth or by residence.*

For foreign Tenderers certificate of the competent state authority of the state of its head office;

1. Certificate issued by the Tax Authority of the Ministry of Finance indicating that it has settled all due taxes and contributions and certificate issued by the competent local government authority indicating that it has settled dues for local public revenues.

Evidence from item 1) and 2) cannot be older than two months before Tender opening.

Employer shall at the same time ask for the copy of stated evidence on fulfilment of mandatory conditions for participation from the other tenderers who took part in the subject public procurement procedure as well.

If the Tenderer fails to submit requested evidence within the given adequate deadline, which cannot be shorter than five days, the Employer shall reject its tender as unacceptable.

If the Tenderer has required adequate evidence for the tenderer from the other public procurement procedures it is not obliged to ask for submission of the stated evidence.

Tenderers that are registered with the Business Registers Agency do not need to submit at Employers request the evidence from Article 75, paragraph 1 item 1) of the Law - Extract from Business Registers Agency, which is public and published on the webpage of the Business Registers Agency. In this case the tenderer shall submit to the Employer within the given deadline along with other required evidence the written notification with the data on hyperlink where information on tenderer’s registration is available.

Tenderers that are registered with the Tenderer Register do not need to submit at Employers request the evidence from Article 75, paragraph 1 item 1), 2) and 4) of the Law. Tenderer Register is public and published on the webpage of the Business Registers Agency. In this case the tenderer shall submit to the Employer within the given deadline the written notification with the data on hyperlink where information on tenderer’s registration with Tenderer Register is available.

Employer shall not reject the tender as unacceptable, if it does not contain evidence on fulfilment of additional condition for participation defined in Tender Documents, if Tenderer states in the tender the web page where the data required as a condition are publicly available.

If the evidence on fulfilment of conditions is document in e-form, Tenderer shall submit a written copy of document in e-form, in accordance with the law governing document in e-form.

If the Tenderer has its registered seat in another country, Employer can verify whether documents by which the Tenderer proves the fulfilment of requested conditions were issued by the competent authorities of that country.

If the evidence under Article 77, paragraph 1, from item 1), 2) and 4) of the Law is not issued in the country where the Tenderer has its seat the Tenderer can, instead of the evidence, submit its written statement, given under substantive and criminal liability certified by the court or administrative body, public notary or other competent body of that country.

If the Tenderer was not in the position to obtain required documents within the deadline for submission of Tender, because they could not have been issued from the moment of tender submission according to the regulations of the country in which the Tenderer has its seat and if the Tenderer submits appropriate evidence together with the Tender, Employer shall allow the Tenderer to submit the required documents subsequently, within the appropriate deadline.

The Tenderer shall without delay inform the Employer in written form on every change regarding the conditions’ fulfilment from the public procurement procedure, that occurs until decision making, i.e. contract conclusion, i.e. during validity period of the public procurement contract and it shall prepare the documents about it in prescribed manner.

In case of doubt in the truthfulness of the submitted data, Employer retains the right to check them based on the relevant evidence. If the Employer determines that the Tenderer presented untrue data or that the documents are false, the tender of that Tenderer shall be deemed unacceptable and shall be rejected.

# TYPE, TECHNICAL CHARACTERISTICS AND SPECIFICATION OF THE PUBLIC PROCUREMENT SUBJECT

## SUBJECT OF THE INVITATION

**Subject of the invitation** to tender submissionis the procurement of services “Support and Maintenance of Information System to Support the Sale of Electricity (ISSSE) for the period of two years

* Maintenance service ISSSE, which includes:
* Software Patches and Software Upgrade ISSSE;
* Operational support ISSSE;
* Integration and upgrade of ISSSE with other information systems.

The subject of maintenance and upgrade under this procurement is ISSSE information system, the company IPESOFT spol. s.r.o Bratislava, Slovakia, which is the copyright holder. The same is used for the needs of PE EPS for the processes of wholesale electricity trade. Software is installed on the hardware of PE EPS in the range and specification listed in Table 1 in this section of the tender documents. The tenderer is obliged to provide for the Purchaser, from the copyright holder, a non-exclusive, non-transferable right to use, maintenance and upgrade of the software system ISSSE, on the software installed on the territory of the Republic of Serbia, which is limited to the period of execution of the service which is the subject of this public procurement, without any additional obligations of the Purchaser toward the holder of the copyright.

**Table 1: ISSSE – scope and specification of IPESOFT software used by the Employer**

|  |  |
| --- | --- |
| **No. of user licenses** | **Software IPESOFT** |
| 20 NU | IPESOFT D2000 Entis Enterprise Edition, Runtime Environment, Single node |
| 20 NU | IPESOFT Databridge, Single node license |
| 20 NU | IPESOFT EDA - Advanced EnergyTimeSeries DataWH, Single node license |
| 20 NU | IPESOFT SELT Pro, Single node licence |

## DEADLINES

Period for the execution of services which are the subject of procurement is 2 (two) years from the date of entry into force of the Contract.

In the context of maintenance services of ISSSE, response time and deadlines for removal of defects in the operation are given in clause 5.3. of this section of tender documents, as key performance indicators (KPIs).

In the context of upgrade and integration services of ISSSE, deadlines for implementation are defined for each individual request for the change of software, through the procedure defined in clause 5.3.2. of this section of tender documents.

## SPECIFICATION OF SERVICES

### SOFTWARE SYSTEM ISSSE MAINTENANCE SERVICE

The scope of ISSSE maintenance services include:

* ISSSE Software Patches - The service includes delivery and implementation of ISSSE software patches that contain bug fixes and appropriate performance optimization of system modules.
* ISSSE Software Upgrade - The service includes preparation and delivery of ISSSE upgraded software. Update contains a new versions of the ISSSE software (improving the characteristics of the system, new functions in connection with the new version of ISSSE system - a set of functions is defined by the Tenderer), i.e. the ISSSE system adjustment and performance improvements.
* ISSSE operational support - Service of operational support includes implementation of the activities listed in Table 2 in this section. The quality of performed operational support service must comply with the minimum requirements for the service defined in Table 2 regarding the availability of services and KPI incidents resolving.

**Table 2: ISSSE Operational Support - Objectives, tasks, scope and contractual deliveries**

|  |  |
| --- | --- |
| Aim and task description | The aim is to provide operational support for a period of two years for ISSSE solution implemented in the PE EPS  |
| Main task description | Main tasks to be carried by the selected Tenderer are as follows:* Operational Support (Level 1 - Level 3) that covers as a minimum:
* Level 1:
	+ Management by tickets (acceptance, processing, closing the registered tickets in the helpdesk system)
	+ Priority phone support (availability of allocated engaged persons by the Tenderer with oral knowledge of Serbian and/or English language for receiving calls by users, providing the first level of systemic guidelines for ISSSE and resolving of minor issues)
	+ Support on site (regular presence of Tenderer’s engaged persons in the premises of the Employer to support ISSSE customers - at least once per week),
* Level 2:
* Resolving of incidents and providing alternatives (analysis of reported issues, design of an appropriate solution, providing alternative solutions for reported issues, testing of provided solutions),
* Detection of ISSSE upgrade (recognizing of situations when the new function of the system can improve the efficiency of the system, simplifying the ISSSE system use),
* Remote Support – by phone, e-mail support to customers in case of issues reporting, possibility of remote support via VPN account.
* Level 3:
* Corrective changes (analysis of reported issues, design of an appropriate solution, providing final solutions for reported issues, testing of provided solutions),
* Readiness for upgrade (development) based on the change request (availability of development resources for the analysis, design, implementation, testing and commissioning of a new system functionalities at the request of the Employer),
* Technical Support off-site during operating hours of EPS (5 days/weekly, 9 hours/daily, working days),
* Corrective incidents management and resolution of program bugs on the request for the provision of services as specified in the text below
* Adjusting ISSSE due to changes in the relevant legislation,
* Solve of critical incidents at the site,
* Prophylactic services (health and performance monitoring system - continuous system monitoring that enables early detection of possible falls, critical use of system components).

Requirements for the provision of services:* Availability of operational support 5 days/weekly, 9 hours/daily, working days,
* Level 1 must be available in the Serbian language, too,
* KPI for resolving reported incidents as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| Description of KPI | Critical Incidents | Incidents of greater severity | Incidents of less severity |
| 1. Response time to start incident resolving
 | up to 1 hour | up to 8 hours | up to 72 hours |
| 1. Time required to resolve the incident as a temporary solution
 | up to the end of the next working day | up to 3 working days | up to 10 working days |
| 1. Time required to deliver the final solution of the incident
 | up to 2 working days | up to 5 working days | up to 15 working days |

 Response time is counted from the moment of issue reporting at the helpdesk system until the moment when the Tenderer’s expert person contacts Employer’s user.Time for corrective action is calculated from the moment of issue reporting at the helpdesk system until the moment when the Tenderer’s expert person informed Employer’s user that issue is resolved. |
| Deliverables | * Deliverables 1-24 – Monthly Protocol on maintenance services acceptance (operational support) ISSSE (1 protocol per month, period of 24 months) confirming that the maintenance services (operational support) ISSSE were made according to the above Requirement for the service.
 |

### ISSSE UPGRADE AND INTEGRATION SERVICE

Tenderer shall implement all requirements for upgrade and integration of ISSSE software by the Employer in order to modify / improve the existing ISSSE functionality and to add new functionalities in accordance with changes of regulations, operational requirements and internal regulations of the Employer or observed opportunities for increasing the level of joint interaction and integration of information systems, and for which it has authorization from the owner of the software copyright, which the Employer and the Employer users allow freely use without incurring any obligation to the holder of the copyright.

Tenderer shall within 7 (seven) days upon the receipt of request for software modification inform the Employer, in written form, on activities to be undertaken for the request implementation, necessary number of man/day engagement for the request implementation and the deadline for implementation of the same.

For all implemented requirements to change the software Tenderer will provide the Protocol (minutes) with the quoted activities and the number of man/days engagement spent for their implementation, to be signed by authorized representatives of the Employer.

ISSSE upgrade and integration service is implemented according to the following procedure:

* Employer shall issue the request (*CR – change request*)
* Tenderer shall estimate requirements wholeness and implementation time and submits to the Employer, within 7 (seven) days, the specification of activities (tasks) with a total time required for requirements implementation and deadline for implementation
* Employer shall notify Tenderer in writing whether he accepts or rejects implementation conditions
* In case of acceptance of implementation conditions Tenderer starts realization and informs the Employer of all implementation phases
* Tenderer notifies the Employer upon realization of requirement that he can access the testing phase
* The Employer carries out testing and submits observed comments and suggestions, or accept the completion of implementation
* If necessary, at the request of Tenderer is conducted joint verification of testing
* Tenderer is obliged to deliver to the Employer an updated users documentation.
* Mutual verification of Protocol (minutes) on services acceptance
* In the event that Employer performs modification or amendment to the request the entire procedure is repeated.

Obligations of the Tenderer:

* To provide management services and version of program code (*release management*)
* To provide services of compiling and installing of executable application versions
* To maintain the test platform, aligning it with the current version of the production system
* To prepare and maintain additional training for application use to the request of the Employer
* To ensure changes to user and technical manuals in accordance with the changes of the Software.

Approximate amount: up to **440** man/day.

### Mode of technical support service operation (Helpdesk)

Technical Support (Helpdesk) service must be provided through an Internet portal with user interface in Serbian or English language. It must be available for authorized persons of the Employer and will be used for the creation of the documentation required by the Employer and to monitor the process of solving issues. This application must be provided without time constraints and availability of 24/7. Helpdesk will also be used for communication between the Employer and the authorized person assigned by the Tenderer team responsible for solving issues. Helpdesk includes operator who coordinates the processes.

In case of circumstances under which Helpdesk is not available, the backup system for communication via e-mail must be available.

## EMPLOYER RESPONSIBILITIES

Employer is obliged to:

* Provide and maintain a production computer-communication infrastructure necessary for the ISSSE software operation with all required licenses.
* Provide a test computer-communication infrastructure on which Tenderer will submit the newly developed functionality.
* Provide access (physical or remote) to ISSSE test and production environment of Tenderer’s authorized persons with the appropriate credentials in accordance with the applicable Employer's information security policy.
* Provide cooperation of its employees with Tenderer’s operators during elimination of reported issues in ISSSE operation.

# FORMS

## FORM 1

In accordance with the Article 26 of Public Procurement Law “Official Gazette of the RS, no. 124/12, 14/15 and 68/15) we provide the following

**STATEMENT ON INDIVIDUAL TENDER**

In the capacity of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(*enter: Tenderer*, *member of* *the* *group of Tenderers in a joint Tender*)

WE S T A T E

under full substantive and criminal liability that

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

(*full name and seat*)

shall submit (joint) Tender in an open procedure of PP No. 1000-0152-2016, Employer – Javno preduzeće “Elektroprivreda Srbije”, independently, without agreement with other Tenderers or interested parties.

|  |  |  |
| --- | --- | --- |
| Date: |  L.S. | Tenderer/ group member: |
|  |  |  |
|  |  |  |

## FORM 2

**TENDER FORM**

Tenderer’s name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Tenderer’s address \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Tenderer’s protocol number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Place: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(in the case of joint tender the information of the holder of the works shall be filled in)

On the basis of the invitation for the submission of the tenders in an open procedure for public procurement of services “Support and Maintenance of Information System to Support the Sale of Electricity**”,** public procurement No. JN 1000-0152-2016 issued on 27.04.2016 on the Public Procurement Portal, we submit

**TENDER**

In accordance with requested requirements and conditions determined by the invitation and Tender Documents, we fulfill all conditions for the execution of the public procurement.

|  |  |
| --- | --- |
| **PUBLIC PROCUREMENT NUMBER** | JN 1000-0152-2016 |

|  |  |
| --- | --- |
| **NAME AND SEAT OF THE TENDERER** **IDENTIFICATION NO. OF THE TENDERER**  |  |
| **TENDERER'S ACTIVITY (code)** |  |
| **NAME AND SURNAME OF THE RESPONSIBLE PERSON (CONTRACT SIGNATORY)** |  |
| **TENDER SUBMISSION METHOD** (encircle) | * individually
* joint tender
* with a subcontractor
 |
| **LEADER- HOLDER OF THE WORK**  |  |
| **NAME AND SURNAME OF CONTACT PERSON** |  |
| **PHONE NUMBER** |  |
| **FAX NUMBER** |  |
| **E-MAIL** |  |
| **TIN** |  |
| **CURRENT ACCOUNT OF THE TENDERER AND BANK NAME** |  |

**Data on other members of the group of Tenderers or the subcontractors**

|  |  |
| --- | --- |
| **NAME, SEAT, IDENTIFICATION NUMBER AND TIN****OF OTHER MEMEBERS OF THE GROUP OF TENDERERS OR SUBCONTRACTORS**  |  |

**Note:** Table“ **Data on other members of the group of Tenderers or the subcontractors**“ to be filled only for those Tenderers who submit a joint Tender or Tender with subcontractors, and if there is a larger number of other members of the group of Tenderers or subcontractors table in case of need can be extended

**In case of subcontracting:**

Data on the percent of total value of procurement shall be entrusted to subcontractor, as well as the part of procurement subject that shall be performed via subcontractor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

**1. TOTAL PRICE amounts \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (in letters: \_\_\_\_\_\_\_\_\_\_\_) (indicate currency and price, without calculated VAT in price) VAT excluded, from that:**

1. Total maintenance service price for ISSSE is: \_\_\_\_\_\_\_\_\_\_\_ (in letters: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_) *(indicate currency and price, without calculated VAT*)
2. Total price for upgrade and integration of ISSSE is (approximate 440 man/day) is:\_\_\_\_\_\_\_\_\_\_ (in letters: \_\_\_\_\_\_\_\_\_\_\_\_\_) *(indicate currency and price, without calculated VAT*)

**2. PAYMENT and INVOICING METHOD AND CONDITIONS,** subject to issue 2.9 of Tender Documents.

Invoicing by the Tenderer of ISSSE maintenance services is performed monthly within 3 (three) days upon the date of the Monthly Protocol on Maintenance Service Acceptance approval, confirming that the ISSSE maintenance services was carried out according to the technical requirements for this service.

Invoicing by the Tenderer for upgrade and integration of ISSSE software is performed within 3 (three) days upon the date of the Protocol (minutes) of receipt of services performed for each software Change request by the Purchaser.

In the event that the price is expressed in EUR, domestic Tenderer performs invoicing in RSD calculated under the middle Euro exchange rate of the National Bank of Serbia on date of transaction, i.e. date of signing of the Minutes. Payment is made within the legal period of up to 45 (forty five) days as of receipt the correct invoice issued on the basis of signed and verified Protocol (minutes) in accordance with the provisions of the contract, by the authorized representatives of the Employer and Tenderer.

All payments to domestic Tenderers are to be made in RSD by payment on the Tenderer account. Payment of the contracted value for the price expressed in EUR, will be carried out to domestic Tenderer in RSD at the average exchange rate for EUR by National Bank of Serbia on the payment date.

*In the event that the Tenderer is a foreign person[[1]](#footnote-1):*

Price referred to in point 1, is the gross value of the compensation to which is calculated tax on the profit after deduction:

1. According to the Agreement on avoiding of double taxation by the Republic of Serbia signed with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (indicate the domicile country of the Tenderer)
2. At the full rate, considering that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_( indicate the domicile country of the Tenderer) it has not signed an Agreement with the Republic of Serbia

**3. SERVICE EXECUTION PERIOD:** 2 (two) years as from the date of Contract entry into force.

**4. KEY PERFORMANCE INDICATORS:**

|  |  |  |  |
| --- | --- | --- | --- |
| Description of KPI | Critical Incidents | Incidents of greater severity | Incidents of less severity |
| 1. Response time to start incident resolving
 | up to 1 hour | up to 8 hours | up to 24 hours |
| 1. Time required to resolve the incident as a temporary solution
 | up to the end of the next working day | up to 3 working days | up to 10 working days |
| 1. Time required to deliver the final solution of the incident
 | up to 2 working days | up to 5 working days | up to 15 working days |

**5. TENDER VALIDITY PERIOD:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*(at least 60 days as of tender opening)*

|  |  |  |
| --- | --- | --- |
| Place and date: | L.S. | Tenderer: |
|  |  |  |
|  |  |  |

1.

## FORM 3

Pursuant to Article 75, paragraph 2 of Public Procurement Law (“Official Gazette of RS” No. 124/12, 14/15 and 68/15) we provide the following

**STATEMENT**

In the capacity of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(*enter: Tenderer*, *member of* *the* *group of Tenderers in a joint Tender, Subcontractor*)

WE STATE

under full substantive and criminal liability that

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

(*full name and seat*)

it shall follow all obligations arising from valid regulations about safety at work, employment and work conditions, environmental protection and is not prohibited for performing the activity which is in effect at the time of submission of the bid in the public procurement number JN 1000-0152-2016.

|  |  |  |
| --- | --- | --- |
| Date: | L.S. | Tenderer/ group member/ /Subcontractor: |
|  |  |  |
|  |  |  |

## FORM 4

**PRICE BREAKDOWN**

1. **ISSSE Maintenance Services**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **DESCRIPTION** | **Unit** | **Qty.** | **Unit price****excluded VAT****in \_\_\_\_\_\_****(enter curency)** | **Total price****excluded VAT****in \_\_\_\_\_\_****(enter curency)** |
| *ISSSE Software Patches* and *Software Upgrade*  | month | 24 |  |  |
| *ISSSE* operational support | month | 24 |  |  |
| **ISSSE Maintenance Services in TOTAL** |  |

1. **ISSSE Upgrade and Integration Service**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **DESCRIPTION** | **Unit** | **Qty.** | **Unit price****excluded VAT****in \_\_\_\_\_\_****(enter curency)** | **Total price****excluded VAT****in \_\_\_\_\_\_****(enter curency)** |
| ISSSE Upgrade and Integration Service | man/day | 440 |  |  |

|  |  |
| --- | --- |
| **TOTAL OFFERED PRICE (1+2) EXCLUDED VAT** |  |
| **RELATED TOTAL AMOUNT OF VAT**  |  |
| **TOTAL OFFERED PRICE WITH VAT** |  |

|  |  |  |
| --- | --- | --- |
| Date: | L.S. | Tenderer: |
|  |  |  |
|  |  |  |

## FORM 5

***(N.B. attached to the tender)***

**TENDER BOND**

(Letterhead of the commercial bank)

BANK: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address of the Bank: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Current account № \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

PRINCIPAL: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address of the Principal: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

TIN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ID № \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Current account № \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

BENEFICIARY:

Javno preduzece “Elektroprivreda Srbije”, Beograd

11000 Belgrade

Carice Milice 2

Republic of Serbia

TIN: 103920327

ID № 20053658

Current account № Banka Intesa Beograd 160-700-13

Belgrade, \_\_\_\_\_\_\_\_ 2016

We were notified that …………………………………………. (hereinafter referred to as: the Principal), in accordance with the conditions stipulated by the Tender Documents by the Javno preduzece “Elektroprivreda Srbije”, published at the Public Procurements Portal on 27.04.2016, for the submission of tenders under an open procedure for the procurement of the services “Support and Maintenance of Information System to Support the Sale of Electricity”, PP № 1000-0152-2016, submitted its tender № …… on …………

As per your requirements, the tenders need to be accompanied by a tender bond against the value of 5 % of the tender value exclusive of VAT.

At the request of the Principal, we …………………………………………….. (name and address of the bank) hereby irrevocably and unconditionally, without the right of objection, upon your first request in writing, undertake to pay the amount or amounts not exceeding the total amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (in words: …………………….) making 5 % /percent/ of the total tender value, exclusive of VAT, after receiving your first request in writing and your statement in writing indicating that the Principal has defaulted on its obligation(s) stipulated by the Tender Documents, i.e.

* after the tender submission period has expired, it has withdrawn, cancelled or amended its tender or
* refused to sign the public procurement contract in accordance with the accepted tender, or failed to sign the public procurement contract timely or
* it failed to deliver, within 8 days, from the contract signing date, a tender bond, stipulated under the Tender Documents and the contract.

Validity of this guarantee is \_\_\_\_\_\_\_\_\_\_\_\_ (insert date) (at least as long as the tender validity period, and minimum 90 (in letters: ninety) days after the tender opening date) and all your payment requests under this bond shall be received by such date.

In the event that the head office of the guarantor bank is in the Republic of Serbia and in the case of a dispute under this bond, the Court in Belgrade shall be competent and substantive law of the Republic of Serbia applied.

In the event that the head office of the guarantor bank is outside the Republic of Serbia and in the case of a dispute under this bond, the jurisdiction of the International Commercial Arbitration at the Serbian Chamber of Commerce shall be established with the application of the Rules of the Chamber of Commerce of Serbia and the procedural and substantive law of the Republic of Serbia.

This bond cannot be assigned and is not transferable without the written agreement of the Beneficiary, the Principal and the Guarantor Bank.

This bond is governed by the provisions of the Uniform Rules for Demand Guarantees, 2010 revision, (URDG 758) of the International Chamber of Commerce in Paris.

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

(Bank name)

|  |  |
| --- | --- |
|  |  |
| (Responsible person of the Bank) |  |

N.B. Where the Principal submits a guarantee by a foreign bank, such bank shall have a minimum awarded credit rating corresponding to the credit rating of 3 (investment rank).

## FORM 5.1

**(note: not to be submitted within the tender)**

**PERFORMANCE BOND**

BENEFICIARY: Javno preduzece “Elektroprivreda Srbije” Beograd, Carice Milice 2, Beograd, TIN 103920327, registration number 20053658, current account number: 160-700-13 Banka Intesa

Principal: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name and address), TIN\_\_\_\_\_\_\_\_, registration number \_\_\_\_\_\_\_\_\_\_, current account number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

BANK GUARANTEE NO.\_\_\_\_\_\_\_\_\_\_

We have been informed that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as:

“Principal”) and Javno preduzece “Elektroprivreda Srbije” Beograd, Carice Milice 2, Beograd, (hereinafter referred to as: Beneficiary) have concluded Contract no. ......................dated ................ (hereinafter referred to as: Contract) for procurement of the services “Support and Maintenance of Information System to Support the Sale of Electricity” and in accordance with conditions of Contract, performance bond should be submitted by the Principal in the amount of ………./amount in numbers/ that makes 10% of the value of Contract, VAT excluded.

In accordance with the abovementioned, we .......................................................... /bank name and address/ hereby irrevocably and unconditionally guarantee that we will, upon your first demand, waiving all rights of objection and defense and despite opposition from the Principal, pay any sum or sums not exceeding the total amount of ..................... /amount in numbers/ (in letters: ..............................................) immediately upon receipt of your first written demand and your written statement stating that: the Principal violated its obligation(s) under the terms of the Contract and in what way he committed the violation.

This guarantee is valid 30 (thirty) days longer than the date of final completion of work, and no later than.................................... (insert date). Accordingly, we have to receive demand for payment under this Guarantee until that date at the latest, or before that date.

This guarantee cannot be assigned or transferred without written consent of the Beneficiary, Principal and Guarantor Bank.

In the event that the seat of business of the Guarantor Bank is in the Republic of Serbia, in case of a dispute under this Guarantee, jurisdiction of a court in Belgrade shall be determined, as well as application of substantive law of the Republic of Serbia. In the event that seat of business of the Guarantor Bank is outside the Republic of Serbia, in case of a dispute under this Guarantee, jurisdiction of the International Commercial Arbitration at the Serbian Chamber of Commerce is determined, venue of arbitration in Belgrade, with the application of Rulebook of the Chamber and procedural and substantive law of the Republic of Serbia.

This guarantee is governed by the Uniform rules for guarantees URDG 758, International Chamber of Commerce in Paris.

Place \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature and stamp of the Guarantor

Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*NOTE: In case that the Principal submits a guarantee of foreign bank, credit rating awarded to such bank has to be at least of the level corresponding to quality 3 (investment rank) credit rating.*

## FORM 6

Pursuant to the Article 88 of the Public Procurement Law (Official Gazette of the Republic of Serbia, No. 124/12, 14/15 and 68/15) we provide the following:

**TENDER PREPARATION COSTS FORM**

|  |  |
| --- | --- |
| **Cost name and description** | **Amount** |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
| **TOTAL** |  |

|  |  |  |
| --- | --- | --- |
| Date: | L.S. | Tenderer: |
|  |  |  |
|  |  |  |

**Note:** The Tenderer may submit within the tender total amount and structure of tender preparation costs in accordance with the given Form and Article 88 of the Law.

## FORM 7

Pursuant to the Article 77, paragraph 4 of the Public Procurement Law (Official Gazette of the Republic of Serbia, no. 124/12, 14/15 and 68/15), hereinafter referred to as the Law, I give the following

**STATEMENT**

**ON FULFILMENT OF CONDITIONS AS PER THE ARTICLE 75 OF THE LAW**

**IN THE PUBLIC PROCUREMENT PROCEDURE**

In the capacity of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(*insert: tenderer, member of the group of tenderers in joint tender, subcontractor*)

WE HEREBY DECLARE

under full material and criminal responsibility that

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

(*full name and head office*)

meets all conditions under the Article 75, paragraph 1, of the Law, i.e. terms and conditions defined by tender documents in open procedure of public procurement no. 1000-0152-2016, of the Employer – Javno preduzece “Elektroprivreda Srbije” Beograd, as follows:

1. It is registered with the competent authority, i.e. entered into corresponding register;
2. It and its legal representative have not been convicted of any criminal offense as a member of an organized criminal group, that it has not been convicted for crimes against economy, criminal acts against environment, the offense of receiving or giving bribe, the crime of fraud;
3. It has settled all due taxes, contributions and other public duties in accordance with the regulations of the Republic of Serbia (*or foreign country if its head office is on the territory of a foreign country*).

Date: L.S. Tenderer/group member/subcontractor:

**\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**FORM 8**

**LIST OF TENDERER’S REFERENCES**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **No.** | **Name and seat of the previous client/employer**  | **Name of services and description of executed service** | **Contracting date, execution period** | **Manner of execution** |
| 1. |  |  |  |  |
| 2. |  |  |  |  |
| 3. |  |  |  |  |
| 4. |  |  |  |  |
| 5. |  |  |  |  |
| 6. |  |  |  |  |

Date: L.S. Tenderer:

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

*Form to be copied as needed.*

## FORM 9

|  |  |
| --- | --- |
| **Employer’s name** |  |
| **Seat, address and number** |  |
| **Telephone, fax, е-mail** |  |
| **Identification number** |  |
| **TIN** |  |
| **Authorized person and position at Employer** |  |

**C E R T I F I C A T E**

Tenderer \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ implemented for us the contract \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ that included \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

*(enter name and description of executed services*)

in the period from \_\_\_\_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_\_.

The subject contract was implemented by the Tenderer \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*insert: independently or as a Leader or as a member of the group of tenderers*), its share being \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ % (*insert % if the tenderer implemented the subject contract as a member of the group of tenderers*).

Place: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

The correctness of data herein is certified by signature and stamp of the

 Employer

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

 (signature and stamp of authorized person)

## FORM 10

**LIST OF ENGAGED PERSONS THAT SHALL BE RESPONSIBLE FOR CONTRACT PERFORMANCE**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Name and surname** | **Qualification/****degree** | **Field he is in charge of in the project** | **Project position** |
|  |  |  |  |  |
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| --- | --- | --- |
| DATE | L. S. | Tenderer |
|  |  |  |
|  |  |  |

## FORM 10.1

**CURRICULUM VITAE OF THE TEAM MEMBER – CV**

1. Proposed role in the project: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. Name of the person (full name and surname): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

3. Date of birth: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

4. Education:

|  |  |  |
| --- | --- | --- |
| 4.1 | Degree(s) or Diploma(s) obtained: |  |
| 4.2 | Institution(s) - Date: from(months/year) to (months/year): |  |

5. Membership in professional bodies:

6. Other trainings (state the institutions and degrees/diplomas/specializations obtained):

7. Countries where work experience was obtained (list of countries):

8. Language skills: (Mark 1 to 5 for competence, where 1 is the highest):

|  |  |  |  |
| --- | --- | --- | --- |
| Language | Speaking | Reading | Writing |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

9. Professional experience (starting from the current position up to the first employment):

|  |  |
| --- | --- |
| Date:from (months/year) to (months/year)  |  |
| Location  |  |
| Company  |  |
| Position |  |
| Description  |  |

|  |  |
| --- | --- |
| Date:from (months/year) to (months/year)  |  |
| Location  |  |
| Company  |  |
| Position |  |
| Description  |  |

|  |  |
| --- | --- |
| Date:from (months/year) to (months/year)  |  |
| Location  |  |
| Company  |  |
| Position |  |
| Description  |  |

10. Engagement plan (list of tasks for which he/she will be engaged):

11. Previous experience in providing services as per the Section 4, item 4.2, subitem 3, indent 1 of Tender Documents

|  |  |
| --- | --- |
| Project name:  |  |
| Year:  |  |
| Location:  |  |
| Client:  |  |
| Main characteristics of the project:  |  |
| Position:  |  |
| Activities:  |  |

12. Previous experience in providing services as per the Section 4, item 4.2, subitem 3, indent 2 of Tender Documents

|  |  |
| --- | --- |
| Project name:  |  |
| Year:  |  |
| Location:  |  |
| Client:  |  |
| Main characteristics of the project:  |  |
| Position:  |  |
| Activities:  |  |

Date:

Team member signature:

***Note****: Attached Curriculum Vitae shall be accompanied by the Statement of the relevant person and the tenderer confirming that it is true and accurate.*

# **7. MODEL CONTRACT**

*In accordance with the given Model Contract and elements of the most favorable tender, the Public Procurement Contract shall be concluded. The Tenderer shall sign, certify and deliver the given Model Contract within the tender.*

Contracting Parties:

1. EMPLOYER: Public Enterprise "Electric Power Industry of Serbia", Belgrade, Carice Milice 2, Company ID Number: 20053658, TIN 103920327, Current Account Number: 160-700-13 Banca Intesa ad Beograd, represented by legal representative Milorad Grčić, Acting Director (hereinafter: Employer)

and

1. SERVICE PROVIDER:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ from \_\_\_\_\_\_\_\_, (address), Company ID Number: \_\_\_\_\_\_\_\_\_\_\_, TIN: \_\_\_\_\_\_\_\_\_\_\_, represented by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_, (as a Leader for and on behalf of the Group of Tenderers*, [note: shall be indicated in the text of the Contract in case of a joint tender]* (hereinafter referred to as: Service Provider)

(hereinafter jointly referred to as: Contracting Parties)

*(In case of tender with subcontractors or joint tender*):

while the group members/subcontractors are:

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_from\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(address), Company ID Number: \_\_\_\_\_\_\_\_\_\_\_, TIN \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Current Account Number: \_\_\_\_\_\_\_\_\_\_\_\_ Bank \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, represented by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_from\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(address), Company ID Number: \_\_\_\_\_\_\_\_\_\_\_, TIN \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Current Account Number: \_\_\_\_\_\_\_\_\_\_\_\_ Bank \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, represented by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Concluded in Belgrade, on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_2016, the following

**CONTRACT**

**ON SERVICE PROVISION**

**INTRODUCTORY PROVISIONS**

Having in mind that:

* the Employer has conducted an open procedure for public procurement of “Support and Maintenance of Information System to Support the Sale of Electricity (ISSSE)“ in accordance with Article 32 of the Public Procurement Law, PP number JN 1000-0152-2016;
* the Invitation to Tender related to the subject public procurement was published on the Public Procurement Portal on 27.04.2016., as well as on the Portal of official journals of the Republic of Serbia and the base of regulations and web site of the Employer;
* the Tender submitted by the Service Provider within the open procedure for JN 1000-0152-2016, registered with the Employer under number \_\_\_\_\_\_\_\_\_\_\_ dated \_\_\_\_\_\_\_\_\_, fully meets the Employer’s requests under Invitation to Tender and Tender Documents;
* the Employer, based on the Tender of the Service Provider and Decision on Contract Award, selected the Service Provider for subject procurement realization.

**SUBJECT OF THE CONTRACT**

**Article 1**

With this Contract on Service Provision (hereinafter referred to as: Contract) Service Provider undertakes to execute and provide the services “Support and Maintenance of Information System to Support the Sale of Electricity (ISSSE)“ (hereinafter referred to as: ISSSE) for the needs of the Employer, comprised of the following:

1. ISSSE maintenance service which includes:
	* ISSSE Software Patches and Software Upgrade;
	* ISSSE operational support;
2. ISSSE upgrade and integration service with the other information systems,

fully in accordance with the Tender Documents of the Employer number JN 1000-0152-2016 as Appendix 1 and Tender of Service Provider as Appendix 2, that make an integral part of this Contract.

**PRICE**

**Article 2**

The service price under Article 1 of the Contract is fixed and amounts to \_\_\_\_\_\_\_\_\_\_\_ (in words: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_) RSD/EUR, VAT excluded.

For the service price under paragraph 1 hereof the appropriate value added tax shall be calculated in accordance with the regulations of the Republic of Serbia.

The price includes all costs related to Service implementation.

Unit prices for services which are the subject of this Contract, indicated in Appendix 2, are fixed and cannot be changed during the Contract validity period.

*(Note: Final text of this Article of the Contract shall be agreed upon if the Contract is signed with foreign person, resident of the state with which the Republic of Serbia does have or does not have the contract concluded)*

Total price as per paragraph 1 of this Article represents gross value of the remuneration subject to withholding tax:

1. under the Contract on double-taxation avoidance concluded by the Republic of Serbia with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*indicate the domicile country of the Service Provider*)
2. at full rate, taking into account that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*indicate the domicile country of the Service Provider*) did not conclude the Contract on double-taxation avoidance with the Republic of Serbia.

**MANNER AND TERMS OF INVOICING AND PAYMENT**

**Article 3**

 *(Note: final text of this Article shall be agreed on upon contract award)*

 Employer shall pay the Service Provider for the executed Service in RSD or foreign exchange remittance in the following manner:

* Service Provider shall issue the invoice for the services of ISSSE maintenance on a monthly basis within 3 (three) days as of the date of acceptance of Monthly Protocol (Minutes) on Maintenance Service Acceptance, confirming that ISSSE maintenance service is executed in accordance with the technical requirements for this service.
* Service Provider shall issue the invoice for the services of ISSSE upgrade and integration within 3 (three) days as of the date of acceptance of Protocol (Minutes) on Service Acceptance for each executed requirement for the software change by the Employer.

Employer shall effect the payment within statutory term of up to 45 (fortyfive) days as of the day of receipt of correct invoice issued on the basis of the signed and verified Protocol (Minutes), in accordance with the paragraph 1 hereof, by the authroized representatives of the Employer and Service Provider.

Service Provider’s invoices for the executed Services shall be made out to: Javno preduzeće „Elektroprivreda Srbije”, Beograd, Carice Milice 2, 11000 Belgrade, the Republic of Serbia.

Payment of the contracted value shall be made to the account of the Service Provider number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ with the bank \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

*If the contract is signed with domestic Service Provider and the price expressed in EUR:*

Service Provider invoices in dinars, calculated acording to the middle exchange rate for EUR of the National Bank of Serbia on the date of transaction, i.e. date of Protocol (Minutes) signing.

 Payment shall be effected within statutory term of up to 45 (fortyfive) days as of the day of receipt of correct invoice issued on the basis of the signed and verified Protocol (Minutes), in accordance with the provision of the Contract, by the authroized representatives of the Employer and Service Provider.

Payment of the contracted value shall be made to the Service Provider in RSD according to the middle exchange rate of EUR of the National Bank of Serbia on the date of transaction.

*If the Service Provider is a foreign person:*

The Employer shall effect the payment to the Service Provider – non-resident, after deduction of withholding tax for gross contracted value under Article 2 in accordance with tax regulations of the Republic of Serbia.

Service Provider shall submit to the Employer evidence on status of the resident of the domicile country by submitting certificate of residence certified by competent authority of the docimiclie country in the form provided by regulations of the Republic of Seriba or certified translation of the form prescribed by competent authority of the domiclie country of the Service Provider and evidence that it is the real owner of the right of benefit at contract singing or within 8 days as of the day of contract signing, in accordance with concluded Contract \_\_\_\_\_\_\_\_\_\_ on double-taxation avoidance \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*state the exact name of the Contract*).

In case it fails to submit evidence as per the previous paragraph, the Employer shall calculate, deduct and pay the withholding tax in accordance with the regulations of the Republic of Serbia without applying concluded Contract on double-taxation avoidance with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*state the exact name of the Contract*).

*If foreign Service Provider submitted all evidence for the Contract on double-taxation application*:

Employer shall submit to the Service Provider certificate on withholding tax paid, it shall be original certificate issued by the tax authority of the Republic of Serbia within 30 (thirty) days as of the day of tax payment.

**ISSSE MAINTENANCE SERVICE**

**Article 4**

Service Provider shall for the Employer’s needs execute and provide ISSSE information system maintenance service, which includes:

* ISSSE Software Patches and Software Upgrade;
* ISSSE operational support.

products defined in Appendix 1 and Appendix 2, which make its integral part.

The scope of ISSSE operational support that the Service Provider shall provide to the Employer, provisions for conditions of ISSSE operational support for all software products that are the subject of this Contract are given in detail in Appendix 1 and Appendix 2, which make an integral part of this Contract.

Service Provider shall execute maintenance service in accordance with the response time and time for corrective action defined as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| Description of KPI | Critical Incidents | Incidents of greater severity | Incidents of less severity |
| 1. Response time to start incident resolving
 | up to 1 hour | up to 8 hours | up to 72 hours |
| 1. Time required to resolve the incident as a temporary solution
 | up to the end of the next working day | up to 3 working days | up to 10 working days |
| 1. Time required to deliver the final solution of the incident
 | up to 2 working days | up to 5 working days | up to 15 working days |

Response time is counted from the moment of issue reporting at the *helpdesk* system of the Service Provider until the moment when the Service Provider’s expert person contacts the Employer’s user.

Time for corrective action is calculated from the moment of issue reporting at the *helpdesk* system of the Service Provider until the moment when the Service Provider’s expert person informed the Employer’s user that issue is resolved.

Contracting Parties shall upon expiry of each month prepare Monthly Protocol (minutes) on Maintenance Service Acceptance, confirming that ISSSE maintenance service is executed according to technical requirements for this service.

**Article 5**

Total price of ISSSE maintenance service under Article 4 paragraph 1 of the Contract amounts to \_\_\_\_\_\_\_\_\_ (in words: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_), VAT excluded.

The manner and conditions for invoicing and payment for ISSSE maintenace service under this Contract are defined in Article 3 of this Contract.

**ISSSE UPGRADE AND INTEGRATION SERVICE**

**Article 6**

Service Provider shall for Employer’s needs execute and provide ISSSE information system upgrade and integration service in the amount of up to 440 man/days for the validity period of this Contract.

The scope and manner of ISSSE upgrade and integration service provision that the Service Provider shall provide to the Employer, are given in detail in Appendix 1 and Appendix 2, which make an integral part of this Contract.

Quality acceptance shall be performed within 5 days as of completion of each activity.

Quality acceptance shall include installation of the software on the test server and test of new functionalities of the software.

Employer's Committee shall, with mandatory presence of the Service Provider's representatives, immediately upon performed quality acceptance, prepare the Protocol (minutes) on Service Acceptance, for each executed requirement for the change of software by the Employer.

Service Provider shall solve all possible comments stated in the Protocol within the period defined in the Protocol. In the event that quality control was not successful, it shall be repeated within the period given in paragraph 1 hereof, that starts from the receipt of the Service Provider's notice that the issues have been resolved, and after that Protocol on Service Acceptance with no comments shall be signed.

**Article 7**

Total price of ISSSE information system upgrade and integration service under Article 6 paragraph 1 of the Contract amounts to \_\_\_\_\_\_\_\_\_\_\_\_ (in words: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_), VAT excluded.

The manner and conditions for invoicing and payment for ISSSE upgrade and integration service under this Contract are defined in Article 3 of this Contract.

**STAFF**

**Article 8**

Staff is made of persons engaged by the Service Provider.

Service provider shall submit to the Employer the List of Staff, with the given qualifications of all staff and precisely defined activities they are performing in Service execution, and the Employer shall approve of the list (List of Staff is given in Appendix 3 to this Contract).

If during Service execution the justified need for the replacement of one or several staff occurs, as well as at the Employer’s request without explanation, the Service Provider shall replace member of the staff with the other ones with at least the same expertize and qualifications, with the prior written consent of the Employer.

If the Service Provider must replace any of the staff engaged for the Service during the validity period of this Contract, all costs arising from such replacement shall be borne by the Service Provider.

**Article 9**

Service Provider and staff engaged in performance of activities which are subject of this Contract, shall keep confidentiality of all data and information contained in documentation, reports, technical data and information, obtained in connection with realization of this Contract and to use them strictly for the purpose of contracted work performance, and in accordance with the Confidentiality Agreement given in the Appendix 4, which makes an integral part of this Contract.

Information, data and documentation submitted by the Employer to the Service Provider during performance of the subject of the Contract, the Service Provider may not make available to third persons without previous written consent of the Employer.

Besides, Service Provider shall comply with applicable policies of Employer’s information security during the performance of services that are the subject of this Contract.

 **Article 10**

Authorized representatives for correspondence, written communication and monitoring of Service implementation under Article 1 hereof are the following:

 - for the Employer:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 - for Service Provider: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Powers and responsibilities of the authorized representatives for monitoring of implementation of this Contract are the following:

* for ISSSE maintenance service they shall prepare Monthly Protocols (minutes) on Maintenance Service Acceptance, confirming that ISSSE maintenance service has been performed according to the technical requirements for this service;
* for ISSSE upgrade and integration service, they shall prepare Protocols (minutes) on Service Acceptance for each executed requirement for software change by the Employer.

**SERVICE EXECUTION PERIOD AND HELPDESK**

**Article 11**

Deadline for the execution of the service under Article 1 hereof amounts to 2(two) years from the date of the Contract coming into force, i.e. until \_\_\_\_\_\_\_\_\_\_\_*(final date of execution shall be stated)*.

Service Provider shall start with implementation of activities regarding service provision immediately upon Contract coming into force, by submitting the Performance Bond by the Service Provider.

Service Provider shall provide the technical support office (*Helpdesk*) via internet portal with the user interface in Serbian and English, that has to be available for authorized persons of the Employer, and is used for forming the documents of the Employer’s request and problem solving process monitoring.

*Helpdesk* shall be provided with no time limit and 24/7 availability.

*Helpdesk* will also be used for communication between authorized person of the Employer and Service Provider’s employee responsible for problem solving. *Helpdesk* includes operator coordinating processes.

In the event of circumstances under which *Helpdesk* is unavailable, back-up communication system has to be available to the Employer for communication with Service Provider via e-mail.

**FINANCIAL SECURITY INSTRUMENT**

**Article 12**

Service Provider shall deliver to Employer at Contract signing and within 8 (eight) days at the latest from the day of mutual Contract signing by the legal representatives of Contracting Parties, as a suspensive condition of the Article 74, paragraph 2 of the Law on Contract and Torts (Official Gazette of the SFRY, No. 29/78, 39/85, 45/89 – decision of Constitutional Court of Yugoslavia and 57/89, Official Gazette of the FRY, No. 31/93 and Official Gazette of the SCG, No. 1/2003 – Constitutional Charter), (hereinafter referred to as: LCT), as a financial security instrument in the amount of 10% of the total contract value as per the Article 2, paragraph 1 of the Contract, amounting \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ /note: to insert RSD or EUR value/), VAT excluded, an irrevocable, unconditional (without right of objection) bank guarantee payable at first demand, which must be valid no less than 30 days longer than the deadline for Contract execution, while potential extension of such deadline shall cause the extension of the bank guarantee validity period as well, by the same number of days the deadline for performance of contractual obligations under the present Contract shall be extended by.

Contracting Parties agree that the Employer may, without any prior consent of the Service Provider, collect the financial security instrument as per the paragraph 1 of this Article, in any of the cases of non-performance and/or untimely performance and/or partly non-performance and/or poor quality performance of any of contracted obligations of the Service Provider.

**FORCE MAJEURE**

**Article 13**

 The event of Force Majeure shall be any case releasing from liability for performance of all or some of contracted obligations and for compensation of damages for partial or total non-performance of contractual obligations, for such Contracting Party affected by the event of Force Majeure occurrence, or both Contracting Parties when they are both affected by the event of Force Majeure occurrence, and the execution of obligations prevented by the effect of Force Majeure shall be postponed for the time period of its duration.

 Contracting Party prevented by the event of Force Majeure to perform its contractual obligations shall inform immediately, without delay, and within 48 (forty-eight) hours from the hour of Force Majeure event occurrence at the latest, in writing, the other Contracting Party about the Force Majeure occurrence and its estimated or expected duration, providing evidence of Force Majeure existence.

 During the Force Majeure event, each Contracting Party shall bear its own costs and none of the costs or losses of one and/or both of the Contracting Parties, accrued during the Force Majeure event, or in connection with the Force Majeure effect, shall be deemed as damage to be indemnified by the other Contracting Party, neither for the time period of Force Majeure, nor after its termination.

 If the Force Majeure event continues over a period longer than 30 (thirty) calendar days, Contracting Parties shall agree on further actions in execution of the provisions of this Contract – performance postponing and shall conclude an Annex to the Contract regarding such postponing, or shall agree the Contract termination, which termination shall not give any Contracting Party hereto the right of indemnity.

 In case as stipulated hereinabove in the previous paragraph of this Article of the Contract, the Employer shall act in accordance with the Article 115 of the Law.

**INTELLECTUAL PROPERTY**

**Article 14**

Compensation for use of intellectual property rights, as well as responsibility for potential violation of protected intellectual rights of third parties, shall be fully borne by the Service Provider.

The Employer is in possession of the right of permanent and unrestricted use of all Services that are subject of the present Contract, without material, spatial and temporal constraints, as well as without any specific charge.

**COMPENSATION FOR DAMAGES**

**Article 15**

According to the LCT, Service Provider is liable for damages suffered by the Employer due to non-fulfillment, partial fulfillment or late fulfillment of obligations under this Contract.

Should the Employer suffer the damages due to the performance or non-performance of the Service Provider and should the Contracting Parties agree on basis and amount of suffered damages, the Service Provider shall agree to indemnify such damages, as the Employer has right to collect the indemnity without particular notification to the Service Provider, by issuing relevant invoice with the payment deadline of 15 (fifteen) days as of the date of its issuance.

No Contracting Pary shall be liable for any indirect damages and/or lost benefit in any form, that would be beyond the scope of direct common damages and which may result from or be in connection with the present Contract, except for the gross negligence or actions out of professional standards for this kind of services on the side of the Service Provider.

The abovementioned liablility reservations/restrictions do not apply to the liability of any of the Contracting Parties regarding breach of confidentiality obligations, as well as breach of obligations related to intellectual property rights safeguard as per the Article 14 of the present Contract.

**LIQUIDATED DAMAGES**

**Article 16**

In the event that Service Provider, by its own fault, fails to perform/to provide within the deadline the contracted Services, the Service Provider shall pay to the Employer contractual penalties to the amount of 0.2 % of the price as per the Article 2, paragraph 1 of the present Contract for each day of delay that has started, to the maximum amount of 10 % of the price as per the Article 2, paragraph 1 of the present Contract, VAT exclusive.

Payment for penalties according to the previous paragraph shall be due within 10 (ten) days as of the date of invoice issuance by the Employer for contractual penalties.

If, due to delay under the paragraph 1 of this Article, the Employer suffer damages greater than the amount of such penalties, then it has the right to compensation for the difference between the damages suffered and the penalties paid.

**EMPLOYER RESPONSIBILITIES**

**Article 17**

Employer undertakes to :

* provide and maintain a production computer-communication infrastructure necessary for operation of ISSSE software with all required licences
* provide a test computer-communication infrastructure through which the Service Provider will submit newly-developped functionalities
* provide access (physical or remote) of authorized persons of the Tenderer to ISSSE test and production environment with appropriate credentials in accordance with the Policies of Security of Information of the Employer in effect
* provide cooperation of its employees with the operators of the Service Provider in eliminating the reported issues in ISSSE operation

**CONTRACT TERMINATION**

**Article 18**

Each Contracting Party may unilaterally terminate the Contract prior to its validity expiry, in the event of non-compliance with the provisions of the Contract by the other Contracting Party, in the event of non-commencement or poor quality performance of the Service which is subject of the Contract, by sending written statement on unilateral Contract termination notice to the other Contracting Party within 15 (fifteen) day as of the date of the submission of written statement.

Employer may unilaterally terminate the Contract prior to its deadline expiry, due to termination of need to engage Service Provider, by sending written statement on unilateral Contract termination notice to the Service Provider within 15 (fifteen) day as of the date of the submission of written statement.

Should any of the Contracting Parties terminate this Contract without reasonable, ie. objective and proven reason, the other Contracting Party is entitled to collect, on behalf of unjustified termination, the liquidated damages as per the Article 16 of the present Contract, to the amount of 10 % of total value of the Contract as per the Article 2, paragraph 1 of the present Contract, without VAT, all this in accordance with the LCT.

**FINAL PROVISIONS**

**Article 19**

None of the Contracting Parties has right to assign, sell or pledge any of its rights and obligations under this Contract to the third party without previous written consent of the other Contracting Party.

**Article 20**

Invalidity of any of provisions hereof shall not influence validity of other provisions of the Contract, unless significantly effects the realization of this Contract.

**Article 21**

This Contract shall be deemed concluded under suspensive condition, when signed by authorized legal representatives of the Contracting Parties, and shall become effective when the Service Provider fulfils suspensive condition and submits within contracted period bank performance guarantee from Article 12 of this Contract, in accordance with requirement of the Appendix 1 and this Contract.

**Article 22**

For all issues not regulated by this Contract, provisions of the Law on Contracts and Torts and provisions of other positive legal regulations shall apply, applicable with regard to the subject of the Contract.

**Article 23**

Contracting Parties shall endeavour to amicably settle all disputes potentially arising from this Contract. If Contracting Parties fail to amicably settle all possible disputes arising from this Contract, they agree to form a Committee consisting of the representatives of both Contracting Parties and of one common representative, and if even then the possible dispute is not settled within 45 days from the forming of the Committee, the competent court for dispute settlement shall be the actually competent court in Belgrade. (International Commercial Arbitration with the Chamber of Commerce of Serbia, venue of arbitration in Belgrade, with the application of the Rules of Chamber [note: final text of the Contract depends on whether the local or foreign Service Provider is selected])

The Contracting Parties agree that this Contract contains all arrangements made between them. All additional arrangements between them shall be only in writing, and oral arrangements shall not be valid.

**Article 24**

Within the time period of this Contract, the Contracting Parties may, due to changed circumstances determined in detail in the Article 115 of the Public Procurement Law, amend in writing this Contract through Annex.

Upon Contract concluding, Employer may enlarge the scope of procurement subject up to the limit prescribed by the Article 115, paragraph 1 of the Public Procurement Law without enforcement of public procurement procedure.

In the above case, the offered unit price for ISSSE upgrade and integration services, i.e. the offered unit price for maintenance services, given in the Appendix 2 of this Contract, shall be deemed to be the price of additional man/day, i.e. the price of additional month of ISSSE maintenance.

Accordingly, Employer shall make Decision on contract amendment comprising data in accordance with Appendix 3L of the Public Procurement Law and within three days from the date such decision is made, publish it on the Portal of Public Procurements, as well as submit Report to Public Procurement Office and State Audit Institution.

**Article 25**

The following appendices make an integral part of this Contract:

|  |  |
| --- | --- |
| Appendix 1 | Tender Documents for the Public Procurement of “Support and Maintenance of Information System to Support the Sale of Electricity”, public procurement number for the current year PP No. 1000-0152-2016, code \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, link \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  |
| Appendix 2 | Tender \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[name of the Tenderer to be noted down],* Tender No. \_\_\_\_\_\_\_\_ dated \_\_\_\_\_\_\_\_, registered with PE EPS under number \_\_\_\_\_\_\_\_\_\_\_ dated \_\_\_\_\_\_\_\_\_ |
| Appendix 3 | List of engaged persons that shall be resposible for contract performance |
| Appendix 4 | Confidentiality Agreement  |
| Appendix 5 | Performance Bond |
| Appendix 6 | (Joint Service Execution Contract, *[note:* *it will be noted in the text of the Contract in case of joint tender]).* |

**Article 26**

 This Contract is made in 6 (six) copies in Serbian and English, each of them being the original contract. Each Contracting Party keeps 3 (three) copies of this Contract in Serbian and 3 (three) copies of this Contract in English. In case of any discrepancy, Serbian version shall prevail.

 **EMPLOYER SERVICE PROVIDER**

 **Javno preduzeće Name**

**“Elektroprivreda Srbije” Beograd**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 Milorad Grčić Name and surname

 Acting Director Position

**APPENDIX 4 TO THE CONTRACT**

**MODEL CONFIDENTIALITY AGREEMENT**

Concluded in Belgrade on \_\_\_\_\_2016 between

1. Public Enterprise "Electric Power Industry of Serbia", Belgrade, Carice Milice 2, Company ID Number: 20053658, TIN 103920327, Current Account Number: 160-700-13 Banka Intesa ad Beograd, represented by the legal representative Milorad Grčić, Acting Director (hereinafter: “Employer”)

and

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, registration number: \_\_\_\_\_\_\_\_\_\_\_, TIN \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Current Account Number: \_\_\_\_\_\_\_\_\_\_\_\_ represented by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as: Service Provider),

Group members /subcontractors \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, collectively referred to as the Contracting Parties.

**Article 1**

Contracting Parties have agreed, related to procurement of services for „Support and Maintenance of Information System to Support the Sale of Electricity (ISSSE)“ – Public Procurement No. JN 1000-0152-2016 to allow an access to and exchange of information which constitute Business Secret, as well as personal information, and to protect their confidentiality in the manner and under the terms and conditions established by this Agreement, Law and internal acts of the Contracting Parties.

This Agreement makes an appendix to the basic Contract No. \_\_\_\_\_ dated \_\_\_\_.

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**Article 2**

Contracting Parties agree that the terms used, i.e. arose from this contractual relationship shall have the following meaning:

**Business Secret** is any information that has a commercial value because it is not generally known or available to third parties who may have an economic benefit by using or disclosing it and which is protected by appropriate measures by its holder in accordance with the law, business logic, contractual obligations or relevant standards in order to maintain its confidentiality, and whose disclosure to third party can harm the holder of business secret.

**Business Secret Holder** – entity controlling the use of business secrets under the law

**Information Carriers** – are material and electronic media, voice-speech, signals, physical field and information data bases in which the Business Secret is contained or through which it is being transmitted

**Level of classification markings** – requisites (markings and descriptions), which testify about the confidentiality of data on the information carrier and which are placed on the carrier and (or) its supporting documents;

**Disclosing Contracting Party** – Contracting Party, holding Business Secret and disclosing to Receiving Contracting Party such information which represent Business Secret.

**Receiving Contracting Party** – Contracting Party receiving from Disclosing Contracting Party information which represents Business Secret and thus becoming the Business Secret Holder.

**Personal data** is any information concerning a natural person, regardless of the form in which it is expressed and the information carrier (paper, tape, film, electronic medium and the like), under whose mandate, in whose name or for whose account the information is stored, the date when information originated, the place where the information is stored, the mode of learning the information (directly, by listening, watching and the like, or indirectly, by insight into documents containing the information and the like), and regardless of other characteristics of the information.

**Natural person** is an individual to whom the personal data relates, who is identified or identifiable by reference to personal name, personal identification number, address code or other mark of his physical, psychological, mental, economic, cultural or social identity

**Article 3**

Business Secret and confidential information relate to: professional knowledge, innovation, research, techniques, processes, programs, charts, original documents, software, production plans, business plans, projects, business opportunities, all information designated in writing as "Business Secret" or "confidential", information which, under any circumstances, may be interpreted as a Business Secret or confidential information, terms and circumstances of all negotiations and any contract between the Employer and Service Provider, as well as all data on employees and third parties engaged on any ground at the Employer.

Each Contracting Party acknowledges that business secret or confidential information of the other Contracting Party is of essential importance to the other Contracting Party, whose importance would be reduced if such information is disclosed to the third party.

Each Contracting Party while processing confidential information related to personal data, regarding Business activities, shall act in accordance with the valid Law on Personal Data Protection in Serbia.

Unless otherwise explicitly provided,

1. Neither Contracting Party shall use business secret or confidential information of the other Contracting Party,
2. Neither Contracting Party shall disclose these information to the third party, except to employees and advisors of each Contracting Party that need such information (and are subject to limited use and limitations in disclosing that are at least restrictive as those performed by employees and advisors in writing); and
3. Each Contracting Party shall try to keep business secret/confidential information of the other Contracting Party confidential in the same manner it keeps its business secret and/or confidential information of the same importance, but never less than reasonable.

**Article 4**

The Receiving Contracting Party shall keep the Business Secret of the Disclosing Contracting Party in the extent as if it were its own, and undertake all economically justifiable preventive measures for the purpose of keeping the received Business Secret confidential.

The Receiving Contracting Party shall keep the Business Secret of the Disclosing Contracting Party that is disclosed or received via any information carrier. The Receiving Contracting Party shall not sell, exchange, publish i.e. disclose Business Secret of the Disclosing Contracting Party to third parties in any way without a previous written consent of the Disclosing Contracting Party.

The obligation under the previous paragraph does not apply in the cases:

1. when full or partial submission of Business Secret of the Disclosing Contracting Party to the competent authorities is required from the Receiving Contracting Party, in accordance with the relevant order or any court request, administrative agency or any state body of comparable competence, provided that the Contracting Party disclosing such information shall inform in writing the Disclosing Contracting Party prior to such disclosure in order to enable Disclosing Contracting Party to object to such order or request;
2. when Receiving Contracting Party discloses the Business Secret of the Disclosing Contracting Party to its employees and other authorized entities in order to fulfill the obligations of the Receiving Contracting Party towards the Disclosing Contracting Party provided that Receiving Contracting Party remains responsible for compliance with the provisions of this Confidentiality Agreement;
3. when Receiving Contracting Party discloses Business Secret of the Disclosing Contracting Party to legal entities considered to be its affiliates, provided that Receiving Contracting Party undertakes the full responsibility for the acts of the aforementioned legal entities who obtained the data in compliance with the obligations of the Receiving Contracting Party under this Confidentiality Agreement;
4. when the Receiving Contracting Party discloses Business Secret of the Disclosing Contracting Party to the Receiving Contracting Party’s legal or financial advisors who are obliged to keep the confidentiality of such Receiving Contracting Party.

Besides, aforementioned obligations and limitations do not refer to the information that Disclosing Contracting Party gives to Receiving Contracting Party, so that the Receiving Contracting Party may document that:

1. the Receiving Contracting Party was aware of it at the time of disclosing, independently from the Disclosing Party,
2. it became available to public but not by the fault of Receiving Contracting Party,
3. it was received in legal manner without limitation of use by the third party that is authorized to disclose,
4. it was independently developed by the Receiving Contracting Party without access to or use of Business Secret and/or confidential information of the owner; or
5. written consent for disclosure was given by the Disclosing Contracting Party.

**Article 5**

The Contracting Parties shall exchange Business Secret by using mutually acceptable encryption methods and appropriate procedures which together ensure data confidentiality preservation, when such exchange of information is performed via unsecured means of communication (fax, Internet etc.).

**Article 6**

Each Contracting Party is obliged to determine:

* name and surname of the persons responsible for the exchange of Business Secret (hereinafter: Responsible Person),
* postal address for the exchange of documents in hard copy when information are exchanged in a hard copy
* e-mail address for the exchange of electronic documents, when information are exchanged via Internet

and to inform about that the other Contracting Party by a written document signed by the authorized representative of the Contracting Party sending information.

The exchange of information which represent Business Secret cannot commence before the fulfillment of obligations under the previous paragraph.

All notices, requests and other correspondence during the term of this Agreement, as well as correspondence in the case of court dispute between the Contracting Parties shall be made in written form, as follows: by registered mail with a return receipt or by direct delivery to the particular Contracting Party’s address or by e-mail to the contacts determined in accordance with the paragraph 1 under this Article.

**Article 7**

If the transfer is done by e-mail, the Receiving Contracting Party shall send a message confirming that the message with enclosed Business Secret is received immediately upon the message receipt.

If the Responsible Person of the Disclosing Contracting Party does not receive the confirmation about receipt of message with enclosed Business Secret within two working days including the day of sending the message, the responsible person shall suspend further sending of data and initiate the procedure for determining the reasons for delay in providing the information that the message with the Business Secret attached is received.

Sending data may continue when and if it is established that data confidentiality or the provisions under this Agreement were not violated.

**Article 8**

The submission of Business Secret to the Receiving Contracting Party in a hard copy or by e-mail shall be performed with the following note:” Information contained in this document represent Business Secret of \_\_\_\_\_\_\_\_\_\_\_. The document or its parts cannot be copied, reproduced or disclosed without a prior consent of the ”\_\_\_\_\_\_\_\_\_“.

During the submission of Business Secret in accordance with the previous paragraph, the name of the Contracting Party who is disclosing Business Secret shall be entered in the provided blank space in the previous paragraph.

Material and electronic media, in/on which the Business Secret is, shall possess the following markings of level of secrecy:

On behalf of the Employer:

Business Secret

Javno preduzeće Elektroprivreda Srbije, Beograd

Carice Milice 2, Beograd

or:

Confidential

Javno preduzeće Elektroprivreda Srbije, Beograd

Carice Milice 2, Beograd

On behalf of the Service Provider:

Business Secret

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

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

or:

Confidential

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

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

If information are delivered verbally, information shall be considered a Business Secret of the Disclosing Contracting Party if it is specified during the verbal delivery and if within 3 (three) working days as of the verbal disclosure a note in a written form (hard copy or e-mail) is delivered to the Receiving Contracting Party.

**Article 9**

Obligations under this Agreement shall also apply to the Business Secret to which the Contracting Parties have had an access or which they have exchanged up to the moment of conclusion of this Agreement.

Obligations under this Agreement shall also apply to information of the Disclosing Contracting Party which represent Business Secret in terms of this Agreement and to which the Receiving Contracting Party have had an access or have discovered them by accident during the realization of the Business Activities under the Article 1 hereof.

**Article 10**

Disclosing Contracting Party remains owner of submitted information that constitute Business Secret. Disclosing Contracting Party is entitled, at any time, to demand from Receiving Contracting Party to return all the original Information Carriers containing Business Secret of the Disclosing Contracting Party.

No later than thirty (30) days from the date of receiving such request, the Receiving Contracting Party shall return all received Information Carriers which contain Business Secret of the Disclosing Contracting Party and destroy all copies and reproductions of this information (in any form, including but not limiting to electronic media) in possession of Receiving Contracting Party and/or in possession of persons to whom the same were disclosed pursuant to the provisions of this Agreement.

**Article 11**

If during the term of obligations under this Agreement, the Contracting Parties undergo any status changes, the rights and responsibilities shall be transferred to the corresponding legal successor (successors). In the case of possible liquidation of Receiving Contracting Party, Receiving Contracting Party shall, until the completion of liquidation procedure, return to the Disclosing Contracting Party all received originals and destroy all copies and copy forms of received Information Carriers.

**Article 12**

Receiving Contracting Party is responsible for any and all damages suffered by the Disclosing Contracting Party due to the breach of provisions herein, as well as possible disclosure of the Business Secret of the Disclosing Contracting Party by the third parties to whom the Business Secret of the Disclosing Contracting Party was disclosed by the Receiving Contracting Party.

Receiving Contracting Party acknowledges that Business Secret and/or confidential information of the Disclosing Contracting Party contain valuable data of the Disclosing Contracting Party and that any material breach hereof shall cause consequences defined by the law.

Receiving Contracting Party explicitly states that Confidential information will not be used directly or indirectly for commercial purposes to create any product or service provision or use Confidential Information in any other manner not provided by the Basic Contract and this contract.

**Article 13**

The Contracting Parties shall endeavor to settle amicably all disputes arising from, in relation to or due to the breach of the provisions under this Agreement. If no agreement is reached, the subject matter jurisdiction of the court in Belgrade shall be contracted (International Commercial Arbitration with the Chamber of Commerce of Serbia, venue of arbitration in Belgrade, with the application of the Rules of Chamber *[note: final text of the Contract depends on whether the local or foreign Service Provider is selected]*).

**Article 14**

Any amendments to Agreement are effective only in the event if they are made in a written form and duly signed by the authorized representatives/legal representative of each Contracting Party.

**Article 15**

All the issues not regulated by the provisions hereof shall be governed by the Law on Contracts and Torts and the other applicable positive legal regulations of the Republic of Serbia, relevant to the scope of this Agreement.

**Article 16**

This Agreement shall be considered concluded as of the date of signing by the legal representatives of the Contracting Parties, and in case such signing is not executed the same date, then on the latter date of signing.

Obligations of the protection of confidentiality of business secret and confidential information that were previously defined shall be valid permanently.

**Article 17**

This Agreement is made in 6 (six) copies in Serbian and English, each of them being the original Agreement. Each Contracting Party keeps 3 (three) copies of this Agreement in Serbian and 3 (three) copies of this Agreement in English. In case of any discrepancy, Serbian version shall prevail.

Contracting Parties mutually declare that they have read and understood the Agreement and that provisions thereof fully represent expression of their true will.

 **EMPLOYER SERVICE PROVIDER**

 **Javno preduzeće Name**

**„Elektroprivreda Srbije“**

 **Beograd**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ LS LS \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 Milorad Grčić Full name

 Acting Director Title

1. Applicable only to the foreign person, by encircling the ordinal number and filling-in the form [↑](#footnote-ref-1)