

EMPLOYER

JAVNO PREDUZEĆE

‘ELEKTROPRIVREDA SRBIJE’

BEOGRAD

ULICA CARICE MILICE BROJ 2

**TENDER DOCUMENTS**

**FOR THE PUBLIC PROCUREMENT**

**OF SERVICES**

**FINANCIAL ADVISOR FOR ACQUISITIONS** -

(No 12.01. 2621/12-15 dated 21.07.2015)

**- UNDER AN OPEN PROCEDURE -**

**PUBLIC PROCUREMENT 46/15/DEFP**

**Belgrade, July 2015**

Pursuant to Article 32 and 61 of the Public Procurement Law (“Official Gazette of RS” no. 124/2012 and 14/2015, 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 Fulfillment of Requirements (“Official Gazette of RS” no. 29/2013 and 104/2013), Decision on Initiating Public Procurement Procedure (JP EPS number 2621/2-15 dated 11.06.2015.) and Decision on Forming Public Procurement Committee (JP EPS number 2621/3-15 dated 11.06.2015) we have prepared the following:

**TENDER DOCUMENTS**

**FOR THE PUBLIC PROCUREMENT OF SERVICES**

**Financial advisor for acquisitions**

**OPEN PROCEDURE**

**PUBLIC PROCUREMENT 46/15DEFP**

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1. **GENERAL DATA ON PUBLIC PROCUREMENT**
2. Name, address and the website of the Employer: JAVNO PREDUZEĆE “ELEKTROPRIVREDA SRBIJE” Beograd, Carice Milice 2, [www.eps.rs](http://www.eps.rs/)
3. Type of procedure: Open procedure in accordance with Article 32 of Public Procurement Law («Official Gazette of RS» no. 124/12 and 14/15)
4. Subject of public procurement procedure: services – Financial advisor for acquisitions
5. Reserved procurement: no
6. E-Auction: no
7. Purpose of the procedure: procedure is conducted for the purpose of conclusion of public procurement contract

1. Contact: Sanja Alikalfić, e-mail: [sanja.alikalfic@eps.rs](mailto:sanja.alikalfic@eps.rs%20)

Petar Stanišić, е-mail: petar.stanisic@eps.rs

1. **DATA ON PUBLIC PROCUREMENT SUBJECT**
2. Description of procurement subject, name and designation in the Common Procurement Vocabulary (CPV): **Financial advisor for acquisitions; advisory services for business operation and management and similar services, designation 79400000.**
3. Description of lots, name and designation from Common Procurement Vocabulary (CPV): none
4. Information on framework agreement: none

1. **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 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 Public Procurement Law (hereinafter referred to as: 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 Tender Documents.

**3.1 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 annexes 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 annexes is not prepared in Serbian and/or English, it shall be rejected as unacceptable.

**3.2 TENDER PREPARATION METHOD AND THE TENDER FORM FILLING INSTRUCTIONS**

Tenderer shall prepare the tender in such a way to, clearly and unambiguously by hand, type on the computer or typewriter without typing mistakes, fill in Forms with required data or according to Forms which make the integral part of tender documents and certify it with seal and the signature of the legal representative, other representative registered at the register of the competent body or person authorized by legal representative along with submission of power of attorney in the tender.

Tenderer shall state in the Tender Form: 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 bound in some other way, thus preventing additional insertion, removal or replacement of individual sheets of paper, i.e. annexes, without visible damage to the sheets or the stamp.

The Tenderer shall number each tender page on both sides (including blank pages, if any) by hand, computer and a typewriter. Evidence attached to the tender, which cannot be damaged, numbered due to its importance (e.g. promissory notes, bank guarantee), shall be put in a special plastic pocket, while this plastic pocket shall be visibly numbered on each tender page on both sides. 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 fulfillment 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, Balkanska 13, PAK 103101 - Records Division – labeled with: “**Tender for the public procurement of** **services** - **„** **Financial Advisor for Acquisitions** – **Public Procurement number** 46/15/DEFP - **DO NOT OPEN**“.

Tenderer shall in a closed and sealed envelope, together with the tender in writing submit a CD or USB containing the tender in PDF format.

The back of the envelope shall contain the exact name and address of the Tenderer. In case the Tender is submitted by the Group of tenderers, it should be stated on the back of the envelope that it is submitted by the Group of tenderers with names and addresses of all Group members.

**3.3 TENDER SUBMISSION, AMENDMENT, 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 participate in the joint tender may not simultaneously participate as subcontractor in another tender. 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, labeled with ‘AMENDEMENT – ADDITION – the Tender for the public procurement of services – Financial Advisor for Acquisitions – Public Procurement number 46/15/DEFP – 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, labeled with: ‘CANCELLATION – Tender for the public procurement of services- Financial Advisor for Acquisitions - Public Procurement number 46/15/DEFP – 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 Bid Bond.

**3.4 LOTS**

Subject Public Procurement is not divided into several separate lots.

**3.5 TENDER WITH VARIANTS**

Tender with variants is not permitted.

**3.6 TENDER SUBMISSION DEADLINE AND TENDER OPENING**

Preliminary notification PE EPS number 2470/1-15 regarding subject procurement was published on 28.04.2015.

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 12:00 h, 40 (in words: forty) days 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 21.07.2015. on the Public Procurement Portal, the deadline for Tender submission is **31.08.2015. 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.

Public Procurement Committee shall open timely submitted tenders publicly on 31.08.2015. at 12:30h at the premises of Javno preduzeće “Elektroprivreda Srbije“, Beograd, Balkanska 13.

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 legal representative, other representative registered at the register of the competent body or person authorized by legal representative along with submission of power of attorney in the tender.

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

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

The Employer shall within 3 days after the Tender opening procedure has been finalized send the tender opening Minutes by post or e-mail also to the tenderers who did not participate in the tender opening procedure.

**3.7 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 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 fulfillment of conditions.

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

Additional requirements regarding capacity the Tenderer shall submit individually, regardless of the engagement of the Subcontractor.

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

Tender of the Tenderer engaging a subcontractor shall be evaluated according to the criterion elements only on the basis of the indicators and evidence relating to the Tenderer.

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

Tenderer may not engage as a Subcontractor person not indicated in tender, otherwise, Employer shall collect security instruments 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 fulfills all requirements defined for Subcontractor and if it obtains previous consent by Employer.

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

**3.8 GROUP OF TENDERERS (JOINT TENDER)**

In the case that several tenderers submit a joint tender, they need to submit a Joint Service Execution Contract as the integral part of the tender, commit between themselves and towards Employer to joint execution of public procurement, which has to contain information stipulated by Article 81 paragraphs 4, 5 and 7 of Public Procurement Law:

1. 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;
2. on the Tenderer that shall on behalf of the Group of Tenderers sign the contract;
3. on the Tenderer that shall on behalf of the Group of Tenderers give security instruments;
4. on the Tenderer that shall issue the bill;
5. on the account to which the payment shall be executed;
6. on the obligations of each Tenderer from the Group of Tenderers for contract execution;
7. on unlimited joint and several liability of Tenderer from Group of Tenderers in accordance with the Law.

Also, names of the persons, separately for each Tenderer, that shall be responsible for procurement execution need to be stated in this Contract.

Each Tenderer from the Group of Tenderers that submit a joint tender needs to fulfill the requirements under Article 75 paragraph 1 items 1) to 4) of the Law, and prove it by submitting evidence stated in the Section Requirements for participation under Article 75 and 76 of the Law and Instruction how to prove the fulfillment of requirements. Requirements regarding capacities, in accordance with Article 76 of the Law, the Tenderers from the group shall fulfill jointly, based on the submitted evidence defined by 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 Contract of the members of the Group of Tenderers, except for Form 1 and Form 3 filled in, signed and certified by each member of the Group of Tenderers on its own behalf.

Joint tender by the Group of Tenderers shall be evaluated according to the criterion elements on the basis of the indicators and evidence relating to the all members of the Group of Tenderers.

**3.9 MANNER AND CONDITIONS OF INVOICING AND PAYMENT**

The Employer accepts the payment under the following conditions:

* 90% (ninety percent) – based on the correct invoice issued based on the approved and accepted monthly reports,
* 10% (ten percent) – after the finalization of activities based on the correct invoice issued after the Final Report has been approved and accepted by the authorized representative of the Employer;

Calculation and payment of services shall be performed by the Employer by means of a Dinar/foreign currency bank order within 45 days as of the acceptance of correct, endorsed invoice for each individual accepted and approved periodical report by the authorized representative of the Employer. Periodical report contains: overview of activities during the given period, indicative timeline for activities for the remainder of the contract, and detailed overview of staff engagement.

The final payment shall be executed 45 days at the latest after the Final Report has been received and endorsed, and the correct and endorsed invoice accepted by the authorized representative of the Employer.

In the event of contracting price in EUROS for domestic Tenderer the invoicing shall be performed in dinars by calculating it according to the middle exchange rate of the National Bank of Serbia on turnover date, and payment in dinar countervalue of euro according to middle exchange rate of NBS on payment date.

The contracted value of the executed services shall be paid if the price was quoted in Euros to the domestic tenderer (as well as to the domestic member of the group of tenderers, unless the Joint Service Execution Contract stipulates that the payment will be made through the Leader) under the middle Euro exchange rate of the National Bank of Serbia valid on the payment date.

**3.10 SERVICE EXECUTION PERIOD**

Minimum acceptable service execution period is four calendar months and maximum acceptable execution period is seven calendar months. If the Tenderer offers a service execution period shorter than four calendar months or longer than seven calendar months, the tender shall be rejected as incorrect.

Deadline for initiation of service execution is seven days as of the date of contract signing.

**3.11 SERVICE EXECUTION TIME SCHEDULE**

Tenderer shall submit service execution Time Schedule in accordance with the given service execution period as a separate annex to the tender (Form 4 in Tender documents). All main activities determined within Terms of Reference should be indicated in view of reaching objectives of Terms of Reference and individual modules, including the submission of reports and other activities.

If the Tenderer does not submit Time Schedule within the Tender, the tender shall be rejected as unacceptable.

**3.12 APPROACH TO THE PROPOSED PROCESS AND PROPOSED STRUCTURE**

The Tenderer shall submit in the tender the proposal of the Approach to the proposed process and proposed transaction structure.

Requirements of general description of the Approach are given within the criterion element C2 Technical Aspect.

If the Tenderer does not submit in the tender the proposal of the Approach the tender shall be rejected as unacceptable.

Content of the submitted Approach is the subject to evaluation within the criterion element C2 Technical aspect.

**3.13 PRICE**

The price shall be expressed in Dinars, VAT excluded.

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

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

Offered price shall be fixed.

The ‘Price Structure’ form (Form 5 of the Tender Documents) should contain the price structure, while the Tender Form (Form 2 of the Tender Documents) shall contain the total offered price.

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

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

The price is anticipated as a tender evaluation criteria element in the subject public procurement.

**3.14 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 theamount of 5% of the total value of the Tender, VAT excluded. Bank guarantee shall be irrevocable, unconditional (without protest) and payable at first demand, with a validity period of 60 (sixty) days from the date of Tender opening.

In the event that the Tenderer does not fulfill its obligations in the public procurement procedure, the Employer shall realize the bank guarantee. The Employer shall realize the bank guarantee submitted with the Tender if:

* 1. Tenderer withdraws, revokes or amends its Tender after the deadline for submission of Tenders, or
  2. Tenderer who is awarded the contract fails to sign in a timely manner or refuses to sign the contract on public procurement or
  3. Fails to submit performance bond no later than 8 days from the date of conclusion of the contract.

In the event that the main office of the guarantor bank is in the Republic of Serbia in case of a dispute under this Guarantee, the jurisdiction of the Court in Belgrade and the application of the substantive law of the Republic of Serbia shall be determined. In the event that the main office of the guarantor bank is outside the Republic of Serbia in case of a dispute under this Guarantee, the jurisdiction of the International Commercial Arbitration with the Chamber of Commerce of Serbia, place of arbitration in Belgrade, with the application of the Rules of Chamber and the procedural and substantive law of the Republic of Serbia shall be determined.

The submitted bank guarantee cannot include additional conditions for payment, shorter deadlines, reduced amount or amended place of jurisdiction for dispute settlement.

If the Tenderer submits a guarantee of the foreign bank, such bank shall at least have credit rating of credit of quality 3 (investment rank).

The Tender Bond shall be returned to the Tenderer directly after the contract has been signed with the selected tenderer.

OR

***Bill of Exchange (for domestic Tenderers)***

Tenderer shall submit blank single bill of exchange with validity period 60 days longer than tender opening which it states in the bill of exchange authorization, irrevocable and unconditional bill of exchange authorization that the bill of exchange is payable in the event that:

1. Tenderer withdraws, revokes or amends its Tender after the deadline for submission of Tenders, or
2. Tenderer who is awarded the contract fails to sign in a timely manner or refuses to sign the contract on public procurement or
3. Fails to submit performance bond no later than 8 days from the date of conclusion of the contract.

Tenderer shall also submit pay slip form, confirmation of the bank on registration of bill of exchange with the Register of Bill of Exchange and authorization of the National Bank of Serbia and copy of specimen signatures certified by the commercial bank specified in bill of exchange authorization on the date of issuance of bill of exchange and bill of exchange authorization, in the amount of 5% of the value of the tender, VAT excluded.

The Bill of Exchange shall be returned to the Tenderer directly after the contract has been signed with the selected tenderer.

OR

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

The Tenderer shall ensure payment for tender bond against the amount of 5% of the tender value, VAT excluded to the account of the Employer (for payment in dinars, account No.160-700-13 with Banka Intesa AD Beograd; and for payment in euros, account IBAN No. RS35160005030000152939 with Banka Intesa AD Beograd) and to submit evidence on effected payment in the Tender.

Paid amount shall be returned to the Tenderer directly after the contract has been signed with the selected tenderer.

Tenderer shall bear all costs related to stated financial security instruments. In case the Tenderer makes payment to the account of the Employer, the sum received on the Employer’s account has to correspond to 5% of the tender value, VAT excluded.

Costs related to obtaining financial security instruments can be stated in Form 10 of Tender documents.

All financial security instruments may be issued to the member of the Group of Tenderers (stated in Joint Service Execution Contract) or Tenderer, but not to the Subcontractor.

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

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

The selected tenderer shall at the moment of Contract conclusion and no later than eight days from the date of Contract conclusion, submit to the Employer the **Performance Bond** in amount of 10% of the contracted values excluding VAT. Bank guarantee has to be irrevocable, unconditional (without protest) and payable on first demand, with duration of at least 30 (thirty) days longer that the date of acceptance of Final report.

The Employer shall realize a Performance Bond in the event that the selected Tenderer does not perform its contractual obligations under the terms and in the manner stipulated by the contract.

Submitted bank guarantee cannot contain additional conditions for payment, shorter deadlines, reduced amount or altered territorial jurisdiction for settlement of disputes.

In the event that the business seat 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 business seat of the guarantor bank is outside the Republic of Serbia, in case of a dispute under this Guarantee, jurisdiction of the International Commercial Arbitration within Chamber of Commerce of Serbia shall be determined, place of arbitration in Belgrade, with the application of Rulebook of the Chamber and procedural and substantive law of the Republic of Serbia

If Tenderer submits guarantee from the foreign bank, that bank has to have level 3 of credit rating (investment rank).

If during Contract period deadlines for execution of contractual obligations are changed, validity period of bank guarantee has to be extended.

**3.15 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 expiry date, at the address of the Employer, with the label: “ADDITIONAL CLARIFICATION – Public procurement number 46/15/DEFP“ or via e-mail address: [sanja.alikalfic@eps.rs](mailto:sanja.alikalfic@eps.rs) or [petar.stanisic@eps.rs](mailto:petar.stanisic@eps.rs) during business days (Monday -Friday) from 08:00-16:00h. Any request that is received after the mentioned working hours or during weekend/public holiday will be registered as received on the first working day after the actual receipt.

Employer shall within 3 days upon the receipt of request send a reply in written form to the applicant and it shall publish this information on the Public Procurement Portal and its website.

Communication in the public procurement procedure is performed in a manner stipulated by the Article 20 of the Law.

**3.16 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.

**3.17 NEGATIVE REFERENCES**

Employer shall reject the tender if it has the evidence that tenderer in the previous three years 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 fulfill its obligations under previously concluded public procurement contracts referring to the same subject of procurement, for the period of three previous years. 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 fulfillment of obligations in public procurement procedure or fulfillment 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 fulfill essential contractual elements, given in the manner and under conditions prescribed by the law governing contracts and torts;
* evidence on having engaged the persons not named in tender as subcontractors i.e. members of the group of tenderers to implement public procurement contract;

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.

Based on the adopted conclusions in accordance with Article 83 of the Law, Public Procurement Office keeps the list of negative references published on Public Procurement Portal.

Employer shall reject the tender of the tenderer that is on the list of negative references as unacceptable if the subject of public procurement is of the same type as the subject for which the tenderer got negative reference.

If public procurement subject is not of the same type as subject for which tender got negative reference, the Employer shall request additional guarantee for the fulfillment of contractual obligations.

As additional guarantee, in this case, selected tenderer shall, at the moment of contract conclusion and no later than eight days as of the date of Contract conclusion, submit to the Employer original, irrevocable, unconditional Performance Bond that is payable at first demand, in the amount of 15% of the tender (contract) value, without VAT, with the validity period of at least 30 (thirty) days longer than the date determined for final work execution (approval of Final report).

## 3.18 CONTRACT AWARDING CRITERIA

## Decision on contract awarding shall be adopted by the Employer using the criteria “economically most favorable tender.

**Elements of criteria are the following:**

**C1 Offered Price 25 weights**

**C2 Technical aspect 20 weights**

**C3 Overview of announced transactions 20 weights**

C3.1. Overview of announced transactions in

the countries in region 10 weights

C3.2. Overview of announced transactions in

the European countries 10 weights

**C4 Staff quality 35 weights**

C4.1. References and experience of team leader 10 weights

C4.2. References and experience of key team members 18 weights

C4.2.1 Reference and experience of Sovereign expert 10 weights

C4. 2.2 Reference and experience of transaction experts 8 weights

C4.3. Number of the years of relevant experience of

key team members 7 weights

**Evaluation Method**

Tenders shall be ranked based on each criterion element. The final shortlist of tenderers shall be formed based on the sum of weights obtained on the basis of each individual criterion element.

If two or more tenders at the end of weighting have the same total number of weights, at two decimals, and thereby are the best (with the highest total number of weights), the procurement shall be awarded to the tenderer whose tender has more weights for element of the criteria C3.- Overview of announced transactions. However, if those tenders have equal number of weights for element of the criteria C3- Overview of announced transactions, procurement shall be awarded to the tenderer whose tender has more weights within elements of the criteria C1.-Offered Price.

**Definition of terms used in the criterion elements:**

„Transaction“ implies:

* acquisition, direct or indirect of the capital, i.e. share of target company by the acquiring company with the aim of establishing control over management of the company that is subject to acquisition;
* acquisition, direct or indirect of the entire or the part of asset of target company by the acquiring company with the aim of establishing control over management of the company that is subject to acquisition
* merger, association or other transaction which as a result gives combination of business operation of two or more companies

„Relevant experience“– implies:

* working and/or consulting experience in the field of: business and advisory services including services during financial transactions, merger, acquisition and sale of the company, financial and business analysis of business operation, capital valuation and negotiation, as well as services of creating strategy regarding stated services.

**C1 Offered price maximum 25 weights**

The price shall be determined according to the total offered value of all services requested by the Tender Documents. Maximum number of weights for the tender with the lowest price is 25.

Other tenderers shall be scored and ranked according to the following table:

|  |  |
| --- | --- |
| **Rank** | **Number of weights** |
| **1** | **25** |
| **2** | **21** |
| **3** | **17** |
| **4** | **13** |
| **5** | **9** |
| **6** | **5** |
| **7** | **1** |
| **others** | **0** |

**C2 Technical aspect maximum 20 weights**

The Tenderer shall submit in the tender the proposal of Approach to the proposed process and proposed transaction structure.

The Tenderer shall describe the approach to the proposed process and proposed transaction structure required to achieve the given objectives in Terms of Reference (ToR). Description should include sequence, management approach and logical structure of project steps in time to reach project objectives (including objectives of separate modules), to describe the proposed transaction structure and to define its role in implementation process of each segment of transaction separately. The following elements need to be defined:

* Level of relevance of proposed approach and transaction structure for current situation of EPS
* Ability of proposed approach to reach project objectives in given time and desired quality
* Logic of project steps and transaction implementation as such and in time
* Relevance / impact of each project step on EPS
* Project management approach
* Approach to transaction, analysis during transaction estimation and structuring, as well as the phases in transaction implementation and the role of Tenderer in each phase of transaction
* Expertise and capacity of the Tenderer during implementation of transaction which according to scope and structure correspond to the proposed transaction structure, with the special overview of specific characteristics that occur during implementation of the proposed transaction in the field of energy and/or public sector
* Approach of the Tenderer to leverage the know-how from their similar projects
* Assessment of risks and the proposal to overcome them.

**Scoring:**

**20 weights:**

Tenderer presented consistent and appropriate approach, both in overall project and for each module of ToR and proposed transaction structure with detailed activity plan. Applied approach is appropriate regarding scope and complexity of the task in terms of successful completion of the objectives as stated in ToR. Clarifications of the logic of steps are appropriate and based on real examples, and applied approach is relevant and corresponds to current situation in EPS and environment in which it operates, and is based on the shown excellent understanding of the structure of EPS and expert experience in the relevant field. The role of Tenderer in each phase of transaction is defined clearly and in details. Tenderer has shown the most relevant understanding of the most important and critical issues and the best way for their solving. Tenderer has shown excellent understanding of the specific characteristics of transactions in the field of energy.

**12 weights:**

Tenderer presented appropriate approach, but the description itself does not include sufficient level of details, both in terms of overall project and/or also for each module of ToR and the approach of proposed transaction structure. Applied process approach and proposed transaction structure is not continuously harmonized with the scope and complexity of ToR. The role of Tenderer in all and/or separate phases of transaction is partially defined. Applied approach is relevant and corresponds to current situation in EPS and environment in which it operates, and is based on the shown good understanding of the structure of EPS and expert experience in the relevant field. Tenderer has shown good understanding of the specific characteristics of transactions in the field of energy.

**4 weights:**

Tenderer presented the approach that is not sufficiently precise, elaborated nor can the final result be expected as foreseen in ToR.The Role of Tenderer in all and/or each phase of transaction is not clearly defined. Proposed approach may be applied with difficulties in the current situation of EPS and the environment in which it operates.

**C3 Overview of announced transactions maximum 20 weights**

Tenderer shall submit the list with the number of announced transactions within the period defined in the text below and the rank among international investment banks regarding announced transactions, without including double counting of consecutive acquisitions. Regarding the above stated, it is necessary to use leading international sources Bloomberg and Dealogic and include only advisory services, excluding services where Tenderer provided financing acquisitions or any other service except advisory service to customer or seller.

Realized number of weights according to criteria sub-element C3.1 and C3.2 is summed in order to determine total number of weights for criterion element C3 Overview of announced transactions.

**C3.1. Overview of announced transactions in the countries in region - Serbia, Croatia, Bosnia and Herzegovina, Slovenia, Macedonia and Montenegro in the period 2011-2014 maximum 10 weights**

Tenderer with the best rank in the number of transactions according to the sourceBloomberg and Dealogic shall obtain 5 weights for the best rank according to each of the stated sources, i.e. maximum 10 weights for total best rank.

Other Tenderers shall be scored and ranked according to the following table:

|  |  |  |  |
| --- | --- | --- | --- |
| Rank | Bloomberg | Dealogic | Total number of weights |
| 1 | 5 | 5 | 10 |
| 2 | 4 | 4 | 8 |
| 3 | 3 | 3 | 6 |
| 4 | 2.5 | 2.5 | 5 |
| 5 | 2 | 2 | 4 |
| 6 | 1.5 | 1.5 | 3 |
| 7 | 1 | 1 | 2 |
| others | 0 | 0 | 0 |

If the Tenderer did not participate in announced transactions in the countries in region (Serbia, Croatia, Bosnia and Herzegovina, Slovenia, Macedonia and Montenegro) in the period 2011-2014 shall obtain 0 weights.

In the event of joint tender by the Group of Tenderers the subject of evaluation under this criterion sub-element shall be rank of only one Tenderer which is the best ranked member of the Group for which required evidence are submitted in the Tender.

**Evidence:** for the purpose of tender evaluation under this criterion sub-element it is necessary to submit Bloomberg and Dealogic tables used for ranking.

**C3.2. Overview of announced transactions in the European countries in 2014 maximum 10 weights**

Tenderer with the best rank in the number of transactions according to the source Bloomberg and Dealogic shall obtain 5 weights for the best rank according to each of the stated sources, i.e. maximum 10 weights for the total best rank.

Other Tenderers shall be scored and ranked according to the following table:

|  |  |  |  |
| --- | --- | --- | --- |
| Rank | Bloomberg | Dealogic | Total number of weights |
| 1 | 5 | 5 | 10 |
| 2 | 4 | 4 | 8 |
| 3 | 3 | 3 | 6 |
| 4 | 2.5 | 2.5 | 5 |
| 5 | 2 | 2 | 4 |
| 6 | 1.5 | 1.5 | 3 |
| 7 | 1 | 1 | 2 |
| others | 0 | 0 | 0 |

If the tenderer did not participate in announced transactions in the European countries in 2014, it shall obtain 0 weights.

In the event of joint tender by the Group of Tenderers the subject of evaluation under this criterion sub-element shall be rank of only one Tenderer which is the best ranked member of the Group for which required evidence are submitted in the Tender.

**Evidence:** for the purpose of tender evaluation under this criterion sub-element it is necessary to submit Bloomberg and Dealogic tables used for ranking.

**C4 Staff Quality maximum 35 weights**

Basis for valuating Tenderer’s staff quality regarding references and experience of team members presents participation in completed transactions, and the years of relevant experience.

Required number of weights according to criterion sub-element C4.1, C4.2 and C4.3 is summed in order to determine total number of weights for criterion element C4 Staff Quality.

**C4.1 References and experience of team leader maximum 10 weights**

It is necessary to submit the number and list of transactions in the field of energy concluded by the team leaders in the last 10 years until the date for the submission of tenders.

Team leader should have at least 15 years of relevant experience in order to be the subject of evaluation under this criterion element.

Tenderer whose team leader has the highest number of performed transactions shall obtain 10 weights. Other Tenderers shall be scored and ranked according to the following table:

|  |  |
| --- | --- |
| Rank | Number of weights |
| 1 | 10 |
| 2 | 8 |
| 3 | 6 |
| 4 | 5 |
| 5 | 4 |
| 6 | 3 |
| 7 | 2 |
| others | 0 |

Tenderer whose Team Leader does not have 15 years of relevant experience shall obtain 0 weights.

Tenderer whose Team Leader does not have transactions in the field of energy for the

stated period shall obtain 0 weights.

**Evidence:** Evaluation of tendersaccording to this criterion sub-element is done on the basis of the List; Tenderer is responsible for its truthfulness under full substantive and criminal liability, submitted in accordance with the Form 8 and CV submitted in accordance with the Form 9 of this Tender Documents that has to be supported by the Statement of the given person and the Tenderer that the CV is true.

**C4.2. References and experience of key team members**

**maximum 18 weights**

.

Key team members regarding this criterion sub-element are defined as:

* 1 Sovereign Expert
* 2 Transaction Experts

Realized number of weights according to criterion sub-element C4.2.1 and C4.2.2 is summed in order to determine the total number of weights for criterion sub-element C4.2 References and experience of key team members

**C4.2.1. References and experience of Sovereign expert**

**maximum 10 weights**

It is necessary to submit the number and the list of performed services of sovereign advisory in which Sovereign expert participated In order to become the subject of evaluation under this criterion element it is necessary that the Sovereign expert has at least 10 years of relevant experience.

Tenderer whose Sovereign expert has the highest number of performed advisory services shall receive 10 weights. Other tenderers shall be scored and ranked according to the following table:

|  |  |
| --- | --- |
| Rank | Number of weights |
| 1 | 10 |
| 2 | 8 |
| 3 | 6 |
| 4 | 4 |
| 5 | 3 |
| 6 | 2 |
| 7 | 1 |
| Others | 0 |

Tenderer whose Sovereign expert does not have 10 years of relevant experience shall receive 0 weights.

**Evidence:** Evaluation of tenders according to this criterion sub-element is done on the basis of the List; Tenderer is responsible for its truthfulness under full substantive and criminal liability, submitted in accordance with the Form 8.1. of this Tender Documents and the CV submitted in accordance with the Form 9 of this tender documents that has to be accompanied by the Statement of the given person and Tenderer that the CV is true.

**C4.2.2. References and experience of Transaction Experts**

**maximum 8** **weights**

It is necessary to submit the number and the list of closed transactions in which 2 (two) transaction experts participated**.**

Tenderer whose 2 stated key team members have the highest number of performed transactions jointly shall receive 8 weights. Other Tenderers shall be scored and ranked according to the following table:

|  |  |
| --- | --- |
| Rank | Number of weights |
| 1 | 8 |
| 2 | 6 |
| 3 | 5 |
| 4 | 4 |
| 5 | 3 |
| 6 | 2 |
| 7 | 1 |
| Others | 0 |

Tenderer that does not have key team members in its team shall receive 0 weights.

**Evidence:** Evaluation of tenders according to this criterion sub-element is done on the basis of the List; Tenderer is responsible for its truthfulness under full substantive and criminal liability, submitted in accordance with the Form 8.2 of this Tender Documents

**C4.3. Number of years of working experience of key team members**

**maximum 7 weights**

Basis for evaluation of team members of the Tenderer shall be relevant experience for 3 (three) key team members.

Key team members regarding this criterion sub-element are defined as:

* 1 Sovereign Expert
* 2 Transaction experts

Tenderer whose 3 stated key team members have the highest number of years of working experience jointly shall receive 7 weights. Other tenderers shall be scored and ranked according to the following table:

|  |  |
| --- | --- |
| Rank | Number of weights |
| 1 | 7 |
| 2 | 6 |
| 3 | 5 |
| 4 | 4 |
| 5 | 3 |
| 6 | 2 |
| 7 | 1 |
| others | 0 |

Tenderer that does not have key team members in its team shall receive 0 weights.

**Evidence:** evaluation of tender under this criterion sub-element shall be performed based on the CV submitted in accordance with the Form 9 of this Tender Documents that has to be accompanied by the Statement of the given person and the Tenderer that the CV is true.

## 3.19 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 as that the Tenderer guarantees that it is the holder of intellectual property right (Form 3. from the Tender documents)

## 3.20 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.

## 3.21 TENDER VALIDITY PERIOD

The tender shall be valid at least 60 (in letters: sixty) 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.

## 3.22 CONTRACT SIGNING DEADLINE

After receiving the decision on contract award and after expiry of the deadline for submission of the request for protection of rights, the selected Tenderer shall be invited to conclude the contract within 8 days at the latest.

If the Employer does not submit the signed contract to the Tenderer within the deadline from paragraph 1, the Tenderer shall not be obliged to sign the contract and that shall not be considered as declining from the Tender and may not bear any consequences, unless request for protection of rights is timely submitted.

If the Tenderer whose tender was selected as the most eligible one does not sign the contract within the stated deadline, the Employer shall decide whether it will sign the contract with the next shortlisted tenderer.

During Contract signing, the selected Tenderer is obliged to submit to the Employer following forms: Service Execution Time Schedule, Qualification structure, function and team member engagement time, Price Structure and Joint Service Execution Contract (in case group of Tenderers has been selected), translated into Serbian by an authorized translator, since the above forms are annex to the service execution contract.

Also, the Tenderer and Employer shall conclude the Non-Disclosure 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 fulfillment of conditions from Article 112 paragraph 2 item 5 of the Law, when the selected Tenderer shall be invited to conclude the contract within 8 days at the latest.

## 3.23 AMENDMENT TO THE PUBLIC PROCUREMENT CONTRACT

Amendment to the Public Procurement Contract shall be possible in accordance with Article 115 of the Public Procurement Law in the part of contracted execution period, as an important element of the Contract, due to the objective reasons that can be seen in the need to extend the provision of assistance and support to Employer in dialogue with relevant state/local (including also international) bodies in terms of selected acquisition project(s), and which did not occur as a result of action or omission at the side of selected Tenderer.

## 

## 3.24 CONFIDENTIAL DATA LABELLING METHOD

Data appropriately labeled 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 or later.

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 regard as confidential the documents labeled in capital letters with CONFIDENTIAL in the upper right corner.

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

If certain information is labeled 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 fulfillment 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

## 3.25 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.

If the public procurement procedure is cancelled for reasons caused by Employer, the Employer shall reimburse costs of sample or model development to the Tenderer, if developed in accordance with the Technical specifications of the Employer as well as the costs of acquiring security instruments, provided that the Tenderer asked for reimbursement of these costs in its tender.

## 3.26 PRICE STRUCTURE FORM

The Tender shall indicate the price structure by filling in, signing and stamping Form 5 of the Tender Documents.

## 3.27 MODEL CONTRACT

Tenderer is obliged to submit signed and stamped Model contract. The Model Contract provided in these Tender documents cannot be amended or added. Therefore, the tenderers shall submit it unchanged in their tender signed and stamped.

In accordance with given Model Contract (Form 6 from Tender Documents) and elements of the most favorable Tender, Public Procurement Contract shall be concluded.

## 3.28 INFORMATION ON THE COMPETENT AUTHORITY WHERE TIMELY AND CORRECT INFORMATION ON TAX LIABILITIES, ENVIRONMENTAL PROTECTION AND EMPLOYMENT PROTECTION AND WORKING CONDITIONS COULD BE PROVIDED

Tenderers may timely obtain correct data on taxes, environmental protection, employment protection and working conditions at the following addresses:

* Tax liabilities: Ministry of finance – Tax Administration, Save Maškovića 3-5, Belgrade; [www.poreskauprava.gov.rs](http://www.poreskauprava.gov.rs)
* Environmental protection: Ministry of Agriculture and Environmental Protection of Republic of Serbia, Nemanjina 22-26, Belgrade, [www.mpzzs.gov.rs](http://www.merz.gov.rs)
* Agency for environmental protection, Ruže Jovanovića 27а, 11160 Belgrade, Republic of Serbia, <http://www.sepa.gov.rs>
* Employment protection and working conditions: Ministry of labor, employment and social policies, Nemanjina 22-26, Belgrade; [www.minrzs.gov.rs](http://www.minrzs.gov.rs\)
* Institute for social insurance: Bulevar umetnosti 10, 11070 Novi Belgrade, Republic of Serbia, <http://www.zso.gov.rs>

## 

## 3.29 REASONS FOR REJECTION OF THE TENDER AND CANCELLATION OF THE PROCEDURE

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.

## 3.30 DATA ON CONTENT OF THE TENDER

Content of the Tender, apart from Tender Form, includes all other evidence on fulfillment of conditions from Article 75 and 76 of the Public Procurement Law, stipulated in Article 77 of the Law, that are listed in the Tender Documents, as well as all required annexes 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 of “Service Execution Time Schedule“
* Filled in, signed and stamped form of “Price Structure“
* Signed and stamped form “Model Contract”
* Filled in, signed and stamped form “ Qualification Structure and Team Member Position”
* Filled in, signed and stamped form “Overview of Staff Engagement”
* Filled in, signed and stamped form of “List of transactions in the energy field concluded by team leader“
* Filled in, signed and stamped form of “List of experience of key team member“
* Filled in, signed and stamped form of “List of transactions of key team member“
* Filled in, signed and stamped form of “Form of Costs for Tender Preparation”, if needed
* Signed and stamped form “Model Confidentiality Agreement”
* Proposal of the Approach to proposed process and proposed transaction structure
* Forms, statements and evidence defined in item 3.7 or 3.8. of this instruction in the event that the Tenderer submits the Tender with subcontractor or joint Tender is submitted by the group of Tenderers
* Financial security instruments for the Tender Bond in accordance with item 3.14 of this instruction
* Evidence and forms for the purpose of tender evaluation in accordance with the criteria elements under item 3.18 of this instruction
* Evidence on fulfillment from Article 75 and 76 of the Law in accordance with Article 77 of the Law and Section 4 of the Tender Documents.

## 3.31 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.

Request for safeguard of rights shall be submitted to the Republic Commission and it is submitted to the Employer, labeled “Request for safeguard of rights PP. No.46/15/DEFP“.

Provisions of the manner of submitting the decision from Article 108 paragraph 6 to 9 of the Law shall be applied to submission of request for safeguard of rights.

The claimant shall simultaneously submit a copy of the request for the protection of rights to Republic Commission for the Protection of Rights in Public Procurement Procedures; address: 11000 Belgrade, Nemanjina 22-26.

Request for the safeguard of rights challenging the type of procedure, the contents of the invitation for the submission of tenders or tender documents, shall be considered timely if received by Employer at latest seven days before the expiry of the deadline for the submission of Tenders, regardless of the manner of delivery.

After adoption of the decision on awarding contract and decision on cancelling the procedure, the deadline for submitting request for the safeguard of rights shall be ten days from the day of the decision.

The claimant for the safeguard of rights is obliged to pay the tax to the account of the budget of the Republic of Serbia (№ 840-30678845-06; payment code 153 or 253; number reference: 46-15-DEFP; remittance purpose: Request for safeguard of rights, JP EPS, PP. No. 46/15/DEFP“; Beneficiary: the budget of the Republic of Serbia) as follows:

* If the request for the safeguard of rights is disputing the type of public procurement, the contents of the Invitation to Tender, or the contents of the Tender Documents or other actions taken by Employer prior to the expiry of deadline for submission of bids, the fee is RSD 80,000.00 regardless of the estimated value of public procurement;
* If the request for the safeguard of the rights is disputing the actions of Employer taken after the deadline for submission of bids, except for decisions on the award of public procurement contracts, amount of the fee is determined by the assessed value of public procurement (*which bidders learn in the process of tender opening*), and if that value does not exceed RSD 80,000,000.00 the fee is RSD 80,000.00 and if the value exceeds RSD 80,000,000.00 tax is 0,1% of the estimated value of procurement;
* If the request for safeguard of rights is challenging the Decision on the award of public procurement contracts, the amount of the fee is determined according to the price offered by the Tenderer who was awarded the contract, and if the price does not exceed RSD 80,000,000.00 the fee is RSD 80,000.00, and if the price exceeds RSD 80,000,000.00, the fee is 0.1% of the price offered by the Tenderer who was awarded contract.

Payment of the fee for submission of request for the protection of rights from abroad may be made to the foreign currency account of the Ministry of Finance - Treasury Administration

BANK’S NAME AND ADDRESS:

National Bank of Serbia (NBS)

11000 Belgrade, Nemanjina no. 17

Serbia

SWIFT CODE: NBSRRSBGXXX

NAME AND ADDRESS OF THE INSTITUTION:

Ministry of Finance

Treasury Administration

Pop Lukina no. 7-9

11000 Belgrade

IBAN: RS 35908500103019323073

NOTE: During the payment it is necessary to state the following information on the payment - “details of payment“(FIELD 70: DETAILS OF PAYMENT): – number in the public procurement procedure to which the request for the protection of rights refers to and name of the employer in public procurement procedure.

Please find attached the instructions for payments in the following currencies: EUR and USD.

PAYMENT INSTRUCTIONS

|  |  |
| --- | --- |
| SWIFT MESSAGE MT103 – EUR | |
| FIELD 32A: | VALUE DATE – EUR- AMOUNT |
| FIELD 50K: | ORDERING CUSTOMER |
| FIELD 56A:  (INTERMEDIARY) | DEUTDEFFXXX  DEUTSCHE BANK AG, F/M  TAUNUSANLAGE 12  GERMANY |
| FIELD 57A:  (ACC. WITH BANK) | /DE20500700100935930800  NBSRRSBGXXX  NARODNA BANKA SRBIJE (NATIONAL  BANK OF SERBIA – NBS BEOGRAD,  NEMANJINA 17  SERBIA |
| FIELD 59:  (BENEFICIARY) | /RS35908500103019323073  MINISTARSTVO FINANSIJA  UPRAVA ZA TREZOR  POP LUKINA7-9  BEOGRAD |
| FIELD 70: | DETAILS OF PAYMENT |

|  |  |
| --- | --- |
| SWIFT MESSAGE MT103 – USD | |
| FIELD 32A: | VALUE DATE – USD- AMOUNT |
| FIELD 50K: | ORDERING CUSTOMER |
| FIELD 56A:  (INTERMEDIARY) | BKTRUS33XXX  DEUTSCHE BANK TRUST COMPANIY  AMERICAS, NEW YORK  60 WALL STREET  UNITED STATES |
| FIELD 57A:  (ACC. WITH BANK) | NBSRRSBGXXX  NARODNA BANKA SRBIJE (NATIONAL  BANK OF SERBIA – NB BEOGRAD,  NEMANJINA 17  SERBIA |
| FIELD 59:  (BENEFICIARY) | /RS35908500103019323073  MINISTARSTVO FINANSIJA  UPRAVA ZA TREZOR  POP LUKINA7-9  BEOGRAD |
| FIELD 70: | DETAILS OF PAYMENT |

# 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. A binding court or administrative measure prohibiting the performance of activities has not been pronounced against the Tenderer, which was effective at the time the public invitation was published;
4. 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

## Has required financial capacity:

* revenues of minimum EUR 40,000,000.00 in previous accounting year 2014 (if value is stated in Serbian dinars, calculation is being made based on the average middle exchange rate, determined by the National Bank of Serbia, which is valid on the last day of business year 2014 for which financial statement is prepared)
* in the last 12 months preceding the day of tender announcement has not recorded any restrictions on its current accounts
  + 1. **Has required business capacity:**
* that at the moment of tender submission does not cooperate with any person and/or legal entity, which represents power company in the region (Croatia, Bosnia and Herzegovina, Slovenia, Macedonia and Montenegro), and which has engaged the Tenderer for performing services which at it substance correspond to the subject of this public procurement; stated condition has to be fulfilled by the Tenderer, each member of the Group of Tenderers, as well as Subcontractor

## INSTRUCTIONS ON HOW TO PROVE THE FULFILMENT OF CONDITIONS

The Tenderer shall attach to the tender evidence indicating that it meets the mandatory public procurement participation conditions pursuant to the Law, 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 competent 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 (certificate of the Municipal Court , which includes information from criminal records for crimes within the jurisdiction of the regular Criminal Division of the High Court, whose jurisdiction is the seat of the local legal entities , or the seat of a branch or branches of foreign legal entities; If the certificate of the Municipal Court does not include information from criminal records for crimes within the jurisdiction of ordinary criminal department of the High Court , it is necessary, in addition to certificate of the Municipal Court, to submit a certificate of the High Court in whose jurisdiction the registered office of the domestic legal entity or headquarters office or branch of a foreign legal entity is , certifying that the bidder has not been convicted of crimes against the economy and the crime of accepting bribes*)
* *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 for each the certificate from criminal records shall be submitted. If there are several legal representatives, for each representative it is necessary to provide certificate from criminal recordsof competent state authority of Tenderers registered seat, as well as from the competent state authority of the country of citizenship of legal representative, if different from the country where the Tenderer’s registered seat is.

For foreign Tenderers certificate of the competent state authority of its registered seat;

1. Certificate of Commercial and Magistrates Court that measure prohibiting the performance of activities, or certificate of the Business Registers Agency that it has not been registered with this authority, that the measure prohibiting the performance of activities has not been pronounced against the Tenderer, which was effective at the time the Invitation to Tender was published;

For foreign Tenderers certificate of the competent state authority of the state of its registered seat;

1. Certificate issued by the Tax Authority of the Serbian Ministry of Finance and the competent local government authority indicating that it has settled all due taxes and other public duties;

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

Evidence from item 2) and 4) cannot be older than two months before Tender opening.

Evidence from item 3) hereof must be issued after publishing the invitation for submission of Tenders.

**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 member 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 i.e citizenship;

1. Certificate of Magistrates Court that measure prohibiting the performance of activities, or certificate of the Business Registers Agency that is has not been registered with this authority, that the measure of prohibiting the performance of activities has not been pronounced against the Tenderer, which was effective at the time the Invitation to Tender was published;

For foreign Tenderers certificate of the competent state authority of the state of its registered seat;

1. Certificate issued by the Tax Authority of the Serbian Ministry of Finance and the competent local government authority indicating that it has settled all due taxes and other public duties.

For foreign Tenderers certificate of the competent state tax authority of the state of its registered seat

Evidence from item 2) and 4) cannot be older than two months before Tender opening.

Evidence from item 3) hereof must be issued after publishing the invitation for submission of Tenders.

**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 member 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 registered seat;

1. Certificate of Magistrates Court that measure prohibiting the performance of activities has not been pronounced against the Tenderer, which was effective at the time the Invitation to Tender was published;

For foreign Tenderers certificate of the competent state authority of the state of its registered seat;

1. Certificate issued by the Tax Authority of the Serbian Ministry of Finance and the competent local government authority indicating that it has settled all due taxes and other public duties.

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

Evidence from item 1) and 3) cannot be older than two months before Tender opening.

Evidence from item 2) must be issued after publishing the invitation for submission of Tenders.

## Tenderer is obliged to submit evidence that meet additional requirements for participation in the procurement process in accordance with the Law as follows:

1. Evidence of necessary financial capacity:

For Domestic Tenderers:

* + Balance sheet and Profit and Loss statement for previous accounting year, 2014, with the certified auditor opinion, if there is such opinion

or

Credit Report, Form BON JN for the previous accounting year 2014 issued by the Serbian Business Registry Agency

and

* + certificate of the data on liquidity issued by the National Bank of Serbia– Department of collection enforcement, for the period of previous 12 months prior to publishing invitation (21.07.2014. to 21.07.2015)

For Foreign Tenderers:

* + Balance sheet and Profit and Loss statement for previous accounting year, 2014, with the certified auditor opinion, if there is such opinion

and

* + Certificate or opinion or statement of the bank or other specialized institutions in accordance with the regulations of the country in which Tenderer has seat concerning blocked accounts for the period of previous 12 months prior to publishing invitation (21.07.2014. tо 21.07.2015.)

2. Evidence of necessary business capacity:

* Statement on non-existence of conflict of interest (Form no. 11 of Tender Documents). The Employer has the right to examine the accuracy of the content of given statement in every available and verifiable manner

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

Every subcontractor has to fulfill the conditions from Article 75 paragraph 1 item 1) to 4) of the Law, which it proves by submitting the evidence stated in this section. Conditions related to capacities under Article 76 of the Law, the Tenderer shall fulfil individually regardless of the engagement of Subcontractor.

Every Tenderer from the group of tenderers that submits joint tender has to fulfill the conditions from Article 75 paragraph 1 from item 1) to 4) of the Law, which it proves by submitting the evidence stated in this section. Conditions related to the capacities stipulated in the Article 76 of the Law Tenderers from the Group of Tenderers shall meet together, on the basis of the evidence submitted in accordance with this Section of the Tender Documents.

* 1. **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 the Tenderer guarantees that it is the holder of intellectual property rights.

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

This statement has to be submitted, i.e. has to be also given by every member of the Group of Tenderers or sub-contractor, on its behalf.

* 1. **MANNER OF EVIDENCE SUBMISSION**

Evidence on fulfillment of conditions may be submitted as uncertified copies, and Employer may, before decision on awarding the contract, demand from the Tenderer, whose tender was evaluated as most favorable on the grounds of the Report of Public Procurement Committee, to submit the original documents or certified copies of all or of only some of evidence.

If the Tenderer fails to submit original or certified copies of requested evidence within the given adequate deadline, which cannot be less than five days, the Employer shall refuse its tender as unacceptable.

Tenderers that are registered with the Business Registers Agency do not need to submit evidence from Article 75, paragraph 1 item 1) Extract from Business Registers Agency, which is public and published on the webpage of the Business Registers Agency.

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

Tenderer registered in Bidders Register is not obliged to prove the fulfillment of mandatory conditions when submitting tender. Bidders Register is available on the web page of Business Registers Agency.

If the evidence on fulfillment 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, unless it shall submit the Tender in e-form when the evidence is submitted in original e-form.

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

If the evidence under Article 77, paragraph 1, from item 1) to 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 could not 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’ fulfillment 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 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 considered unacceptable and shall be rejected.

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

## 5.1 SUBJECT OF INVITATION

**Subject of Invitation** for tender submission is services – Financial Advisor for Acquisitions

## 5.2 TERMS OF REFERENCE:

Terms of reference for subject public procurement of services is included in this part of Tender Documents.

**А. Introduction**

Public Enterprise Electric Power Industry of Serbia (hereinafter referred to as: PE EPS), a state-owned power company, which is undertaking major reorganization effort to transform itself into an efficient regional market player able to compete in the Serbian electricity market. PE EPS is a parent company to which in accordance with status change foreseen by the Reorganization Program of Electric Power Industry of Serbia, from July 1. 2015, subsidiaries for electricity generation and coal production “Hydro Power Plants Djerdap”, “Drinsko-Limske HPPs”, “EPS Renewable Sources”, “Thermal Power Plants Nikola Tesla”, “Thermal Power Plants-Open Cast Mine Kostolac”, “Panonske Combined Heating Plants” and Mine Basin Kolubara were merged.

From July 1, 2015 parent company PE EPS is the founder of subsidiary EPS Distribution, comprised of former subsidiaries Elektrovojvodina, Elektrodistribucija Beograd, Elektrosrbija, Jugoistok and Centar. Subsidiary EPS Supply, whose founder is also PE EPS, is in charge of public and commercial electricity supply.

Regulatory reforms together with increased competitiveness and integration of EPS on regional market present significant challenge for EPS. On the other hand, organizational restructuring and significant improvement of performances enables EPS to become one of the leading power companies in the region.

As internally generated development of the new production and distribution capacities currently seems less optimal due to long period of construction and high costs of capital investments, external development would enable EPS grow faster and at lower costs.

Aims of potential acquisition of power companies in the region are consistent with the aims of the Government of the Republic of Serbia as the founder of EPS and EPS itself, and refer to establishing regional leader on the energy market after full market liberalization, sending positive signals to European Union and international financial institutions especially in the context of entry of private investors, and also strengthening business and financial profile of EPS and increase of operational efficiency.

**B. Company Overview**

EPS is currently the only electricity producer in Serbia, if one disregards relatively small electricity generation primarily of industrial plants for their own needs and small renewable producers. Since according to the Energy Law electricity generation represents market-competitive activity, it is expected that with the market liberalization, other companies would enter the production market in Serbia in the future (in accordance with Energy strategy until 2015).

EPS has installed capacity of 7,124 MW, excluding Kosovo and Metohija:

1. Coal fired thermal power plants (18 units of various capacity)…………………………… 3,936 MW

2. Gas and liquid fuel fired combined heat and power plants (CHPs) (6 units)…………… 353 MW

3. Run - of - river hydro power plants (HPPs) (31 units) …………………………………….. 1,850 MW

4. Reservoir HPPs (17 units) ……………………………………………………………..…….. 371 MW

5. Pumped-storage HPPs (2 units) …………………………………………………………….. 614 MW

During 2014, EPS produced around 31.963 GWh of electricity and 29.2 million tons of coal, which was mainly spent in own power plants. In addition to electricity generation and production, EPS performs the activities of electricity supply and distribution for around 3.5 million customers, and deals with electricity trading.

As of 31.12.2014 PE EPS with its subsidiaries has 36.381 employees.

In November 2012, Serbian Government adopted a Framework for Reorganization of EPS, which among other things, foresee:

* Change of legal form of PE EPS into a joint stock company whose only shareholder at the time of legal form transformation would be the Republic of Serbia (currently PE EPS is 100% state owned)
* Clear legal, organizational and functional unbundling of EPS activities between market activities (electricity generation and sales) and activities of public interest (to be organized through one Distribution System Operator (DSO) and one Public Supplier (PS) of electricity)
* Centralization of activities such as finance, legal, IT, and other shared activities for all subsidiaries of EPS with the aim of cost and revenue optimization at the level of EPS as the Group
* EPS to obtain ownership rights over the distribution network assets as well as production assets

Reorganization Program of Public Enterprise Electric Power Industry of Serbia, Belgrade, which was accepted by the Conclusion of the Government of the Republic of Serbia in November, 2014, determines how the initiated process of reorganization shall be implemented, in which status changes implemented on July 1, 2015 represent the completion of the first phase of reorganization.

**C. Goals of the Project “Financial Advisor for Acquisitions“**

1. Strengthening position of PE EPS and its establishment as a regional market leader upon full liberalization of the SEE Energy market,
2. Strengthening business and financial capacity, as well as PE EPS, operational efficiency increase.
3. Implementation of the capital acquisition, according to the decision of PE EPS, in a timely manner and in accordance with best international standards.
4. Assessment of strategic options for PE EPS regarding potential acquisitions of power companies in the region

In course of preparation of potential capital acquisition, the Tenderer shall take into consideration the following:

* The development of the energy sector in line with international trends,
* current strategy of the Republic of Serbia in energy field for preparing the country for accession to European Union,
* national and international business environment,
* existing and required legal and regulatory framework,
* the necessity of PE EPS expansion, through M&A transactions of the companies from the energy sector that operate in SEE.

**D. Scope of services for the Project “Financial Advisor for Acquisitions“**

Selected Tenderer shall:

1. Provide assistance and advise the Employer on the identification and selection of the potential acquisition opportunity(-ies) for PE EPS, which shall also include the assistance and advisory services on the definition of the global time table and necessary steps for the selected acquisition project(s), including the allocation of the responsibilities and tasks
2. Provide assistance, advisory services and coordination in process of implementation of the required analysis (economic, financial, legal) that would be performed on the selected companies for acquisition, and to perform analysis of valuation of target companies for acquisition based on the available information
3. Assess the impact analyses of the merger of PE EPS and the selected target company(/ies), including the valuation of potential synergies
4. Advise on and recommend the most appropriate transaction structures (and potential alternatives), including the most appropriate financing source for the selected acquisition project(s)
5. Assist the company in the discussions with the relevant local and international authorities in relation to the selected acquisition project(s)

***Note:*** Numbers in front of modules do not necessarily imply the sequence of the project deliverables out of which many are executed at the same time. It is expected that the Tenderer suggests the best manner for project deliverables execution.

Selected Tenderer shall deliver all deliverables defined in the following tables to PE EPS in 3 (three) copies each, both in Serbian and English, and both in hardcopy and softcopy in Microsoft Excel, Microsoft Word or Microsoft PowerPoint format depending on PE EPS requirements. The following tables show the description of modules and work packages, as well as appropriate milestones by which each module is finalized. Certain tasks are found within several modules/work packages in slightly different form, so that there is a possibility that they could be done only once taking into consideration the different aspects which refer to certain task.

**Module 1 Current and potential position analysis**

|  |  |
| --- | --- |
| **1.** | **Identification and selection of the potential acquisition opportunity(/ies), global time table definition including the allocation of the responsibilities and tasks** |
| **Objectives and task description** | * Analysis of energy market conditions in the SEE region and analysis including a review on PE EPS market position as well as its market potential. Detail description of PE EPS position on domestic and also regional energy market. Analysis include predictions of regional market development of the countries in region. * Detailed analysis of potential acquisition opportunities identification * Clear and substantiated recommendation of the best target companies for potential acquisitions by PE EPS * Risk analysis regarding potential acquisitions |
| **Deliverables** | * Review on energy market conditions in the SEE region * Analyses of PE EPS market position and market potential * Review on potential acquisition opportunities with detailed overview on legal framework of M&A and key processes in each SEE country separately |

**Module 2 Selection of target companies for acquisitions and valuation analysis of target companies for acquisitions based on available information**

|  |  |
| --- | --- |
| **2.** | **Assistance and coordination in the process of implementation of necessary analysis (economic, financial, legal etc.) that should be performed regarding selected target companies for acquisition. Valuation analysis of the selected target company(ies) for acquisition, based on the information that will be made available and on the most relevant valuation methodologies** |
| **Objectives and task description** | * Assistance in analyzing economic basis for acquisition of potential target company(-ies) * Determination of the financial and legal feasibility of the project i.e. determination of the required legal steps necessary for such acquisition, assessment of potential risks * Preparation and coordination of future Due diligence Process with specialized advisers * Valuation analysis of the selected target company(ies) for acquisition, based on the information that will be made available and on the most relevant valuation methodologies * Presentation of Analysis, Reviews and other documentation to the management of PE EPS |
| **Deliverables** | * Detailed valuation and analysis of key economic, financial and legal aspects in course of acquisition including the Consultant’s proposal of the best target company for acquisition * Detailed review in all legal and administrative aspects of proposed transaction, including an overview on all terms and regulations to be applied in course of subject acquisition * High-level cost-benefit overview of selected target acquisition * High-level transaction plan to reach the selected model |

**Module 3 Comparison of selected scenarios of potential acquisitions and valuation of synergies as the results of acquisition**

|  |  |
| --- | --- |
| **3.** | **Impact analyses of the merger between PE EPS and the selected target company(ies), including the valuation of each potential synergy as the result of acquisition** |
| **Objectives and task description** | * Presentation of the potential merger between PE EPS and selected target company(ies) * Assessment of the financial impact of the potential merger with selected target company(ies) for acquisitions * Overview of legal impacts and conditions of potential merger with selected target company(ies) for acquisitions * Introduction of PE EPS management with financial impacts of potential synergies |
| **Deliverables** | * Comparative analysis of financial impacts of proposed mergers and synergies * Comparative analysis of legal impacts of proposed mergers and synergies * Presentation of comparative analysis of financial and legal impacts of proposed mergers and synergies to PE EPS management |

**Module 4 Recommendation for the most appropriate transaction structures (and potential alternatives), including the most appropriate financing source**

|  |  |
| --- | --- |
| **4** | **Advise and recommend the most appropriate transaction structures (and potential alternatives), including the most appropriate financing source(s) for the selected project** |
| **Objectives and task description** | * Review and identification of the various potential financing structures for each of potential selected scenarios/target company (-ies) for acquisition. * Identification of all pros and cons for each transaction structure in terms of feasibility, costs and timing |
| **Deliverables** | * Recommendation on the most appropriate structure and financing sources for the selected acquisition project * Presentation /report on Recommendation to the management of PE EPS |

**Module 5** **Assistance in dialogue and negotiations with stakeholders**

|  |  |
| --- | --- |
| **5** | **Participation and assistance in the dialogue and negotiations between PE EPS and stakeholders** |
| **Objectives and task description** | * Pre-assessment of the situation of a potential transaction regarding relevant state and local authorities, procedures and regulations * Discussions with relevant state/public authorities and stakeholders |
| **Deliverables** | * Assistance and support to the PE EPS in process of discussions with the relevant state/local (including international) authorities regarding the selected acquisition project(s) |

1. **FORMS**

***FORM 1***

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

**STATEMENT ON INDIVIDUAL TENDER**

as a \_\_\_\_\_\_\_\_\_\_\_\_\_

(*to write: tenderer, holder of the work/member of the group in joint tender*)

WE S T A T E

under full substantive and criminal liability that

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

(*full name and seat*)

shall submit (joint) Tender in open procedure of public procurement No.46/15/DEFP, Employer – Public Enterprise Electric Power Industry of Serbia, submit independently, without agreement with other Tenderers or interested persons.

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

***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 to tender in an open procedure of public procurement of the services “**Financial Advisor for acquisitions**-, published on 21.07.2015. 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 of the services.

|  |  |
| --- | --- |
| **PUBLIC PROCUREMENT NUMBER** | 46/15/DEFP |

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

|  |  |
| --- | --- |
| **NAME AND SURNAME OF CONTACT PERSON** |  |

|  |  |
| --- | --- |
| **PHONE NUMBER** |  |

|  |  |
| --- | --- |
| **FAX NUMBER** |  |
| **E-MAIL** |  |
| **TIN** |  |
| **CURRENT ACCOUNT OF THE TENDERER AND BANK NAME** |  |

**TOTAL SERVICE PRICE \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (in letters: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_) VAT excluded.**

**PAYMENT METHOD AND CONDITIONS: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

*(indicate the payment method, deadlines and conditions)*

**SERVICE EXECUTION PERIOD: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

*(indicate the completion period)*

**TENDER VALIDITY PERIOD: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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

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

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

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| PLACE AND DATE: | L.S. | TENDERER: |
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**FORM 3**

In accordance with Article 75 paragraph 2 of Public Procurement Law (“Official Gazette of RS” no. 124/12 and 14/15) we give the following

## STATEMENT

as a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(*to write: tenderer, holder of the work/member of the group of tenderers, subcontractor*)

WE STATE

under full substantive and criminal liability that

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

(*full name and seat*)

shall follow all obligations arising from valid regulations about safety at work, employment and work conditions, environmental protection and it guarantees that it is a holder of intellectual property.

|  |  |  |
| --- | --- | --- |
| DATE: | L.S. | TENDERER/SUBCONTARCTOR: |
|  |  |  |
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**FORM 4**

## SERVICE EXECUTION TIME SCHEDULE

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **N°** | **Activity**1 | **Months** | | | | | | |
| **1** | **2** | **3** | **4** | **5** | **6** | **7** |
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1 indicate all main activities determined in the ToR, including reporting and other activities

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

***FORM 5.***

## PRICE STRUCTURE

|  |  |  |
| --- | --- | --- |
| **Description of service** | **Offered price VAT excluded** | **Offered price VAT included** |
| **Module 1**  Analysis of current and potential position |  |  |
| **Module 2**  Selection of target companies for acquisition and analysis of valuation of target companies for acquisition based on available information |  |  |
| **Module 3**  Comparison of selected scenarios of potential acquisitions and estimation of synergies as acquisition results |  |  |
| **Module 4**  Recommendations for the most appropriate structures of transaction (and potential alternatives) including the most appropriate source of financing |  |  |
| **Module 5**  Assistance in the dialogue and negotiations with stakeholders |  |  |
| **TOTAL OFFERED PRICE VAT EXCLUDED** | |  |
| **TOTAL VAT** | |  |
| **TOTAL OFFERED PRICE VAT INCLUDED** | |  |

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

***Instruction****:*

Tenderer shall clearly and unambiguously fill in all required data in the Form Price Structure.

Given price structure proves that the price covers all costs the Tenderer shall have in procurement implementation.

**FORM 6**

## MODEL CONTRACT

*In accordance with the given Model Contract and elements of the most favorable tender Contract on Public Procurement shall be concluded. Tenderer is obliged to in submit in the tender the given Model Contract signed and stamped.*

**CONTRACTING PARTIES**:

1. Javno preduzeće “Elektroprivreda Srbije” - EPS, 11000 Beograd, Carice Milice 2, Identification number 20053658, Tax Identification Number 103920327, Current account 160-700-13 Bank Intesa represented by legal representative Aleksandar Obradović, Director (hereinafter referred to as: the Employer)

and

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, St. \_\_\_\_\_\_\_\_\_\_\_\_, Identification number: \_\_\_\_\_\_\_\_\_\_\_\_, Tax Identification Number \_\_\_\_\_\_\_\_\_\_\_\_\_, Current account \_\_\_\_\_\_\_\_\_\_\_\_\_\_, represented by legal representative \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, *(*as a Leader for and on behalf of the group of Tenderers *[note: this will be stated in the text of the Contract in the event of joint Tender])* (hereinafter referred to as ‘The Service Provider’**)**

(hereinafter jointly referred to as: contracting parties)

signed in Belgrade on \_\_\_\_\_\_\_\_\_\_\_\_\_.

**CONTRACT ON SERVICE PROVISION**

**WHEREAS:**

* The Employer has executed an open public procurement procedure for the services –**Financial Advisor for Acquisitions**, pursuant to Article 32 of the Public Procurement Law, No. 46/15/DEFP;
* Invitation to Tender concerning subject public procurement was published on 21.07.2015. on the Public Procurement Portal as well as on the Portal of Official Gazette and legislation database and the website of the Employer;
* The Service Provider’s tender under an open procedure that is filed in PE EPS under No. \_\_\_\_\_\_\_\_\_ dated \_\_\_\_\_\_\_\_ fully corresponds to the Employer’s requirements stated under the Invitation and the Tender documents;
* The Employer has on the basis of the Service Provider’s tender and the Decision on contract awarding, selected the Service Provider to implement the services: **Financial Advisor for Acquisition**.

**article 1.**

The Service Provider shall for the needs of the Employer perform the services ”**Financial advisor for acquisitions”** fully in accordance to the Tender Documentation indicated under Annex 1, according to the type, description and specification of activities indicated in detail under Annex 2 (hereinafter referred to as: deliverables), Service Execution Time Schedule indicated under Annex 3, constituting an integral part of this Contract, and Service Provider’s Tender, while the Employer shall pay the agreed price for the services executed to the Service Provider.

**Article 2**

Total value of contracted services stipulated under Article 1 hereof amounts to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (in letters: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_) \_\_\_\_\_\_\_\_ (*RSD/EUR*) without VAT.

Appertaining amount of the tax in accordance with relevant regulations shall be calculated to the value under paragraph 1 of this Article.

Price includes all costs related to implementation of contracted services.

The price is fixed, i.e. it may not be changed throughout the service execution period

.

**Article 3**

This Contract and its Annexes 1-9 are made out in Serbian and English, while in the case of interpretation disputes the Serbian text shall prevail.

This Contract shall be governed by the laws of the Republic of Serbia. In the event of dispute, laws of the Republic of Serbia will be applied.

**Article 4**

Addresses of Contracting Parties are as follows:

The Employer: **Public Enterprise ‘Electric Power Industry of Serbia’**

Address: Carice Milice St. № 2

11000 Belgrade

The Service Provider: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

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

*[note: in the event of joint Tender, leader and members will be listed here]*

Subcontractor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*[note in the event of the Tender with subcontractor, subcontractor/s will be listed here]*

Representatives authorized to monitor the service implementation stipulated under Article 1 hereof are:

* For the Employer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* For the Service Provider: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Project Secretary: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ e-mail: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Contracting Parties shall have correspondence through Project Secretary, otherwise, the correspondence shall be deemed invalid.

**Article 5**

Service Provider shall submit to the Employer:

* Periodical reports and corresponding invoices,
* Final Report on realization of all activities and corresponding invoice.

Service Provider shall provide dynamics of activities execution during service provision as follows:

* up to **90%** of total value of services shall be included in periodical reports, accepted by the Employer.
* no less than **10%** of total value of services shall be included in Final Report on realization of all activities, accepted by the Employer.

**Article 6**

Service Provider shall periodically issue reports on executed services i.e. within the period of two days after expiry of the period for which periodical report is being prepared.

Periodical report is being prepared for the period starting from the beginning of service provision pursuant to Article 11 of this Contract and expiring on the day which by its number corresponds to the day in the next month. If such day does not exist in the following month, period for which the periodical report is being issued ends on the last day of that month.

Periodical report under paragraph 1 hereof shall include: overview of activities executed in the given period; status of deliverables – submitted/accepted; general overview of the remaining activities until the end of Contract execution according to Annex 2; detailed overview of staff engagement.

Employer is entitled to submit comments in writing to the periodical report to Service Provider within three days from the date of receipt of periodical report or to accept and approve submitted report with no comments.

In the event when the Employer submits comments to Service Provider regarding the received periodical report it shall simultaneously determine the deadline for Service Provider within which the Service Provider shall act upon given comments.

**Article 7**

After realization of all activities Service Provider shall submit Final Report on realization of all activities to the Employer.

Final Report on realization of all activities shall include: project name, Service Provider name, contract conclusion date, project duration, reporting period, date of report, management summary, service execution time schedule, status of deliverables – submitted/accepted, time of engagement of team members during reporting period, amount that will be invoiced for the reporting period, conclusion, list of realized meetings, approved deliverables from terms of reference as well as the overview of all submitted and approved periodical reports with the reporting structure given in the previous Article of this Contract.

Employer is entitled to submit comments in writing to the Final Report on realization of all activities to Service Provider within seven days from the date of receipt of Final Report on realization of all activities or to accept and approve submitted Final Report in writing, with no comments.

In the event when the Employer submits comments to Service Provider regarding the received Final Report it shall simultaneously determine the deadline for Service Provider within which the Service Provider shall act upon given comments.

**Article 8**

Service Provider shall submit to the Employer invoices upon accepted periodical report under Article 6 hereof and Final Report under Article 7 hereof within three days from the date of receipt of the approval of Employer in writing.

Invoicing of contracted value, i.e.performed services for the price expressed in euros domestic Tenderer shall perform in dinars by calculating it according to middle exchange rate of the National Bank of Serbia on turnover date *[note: final text of the Contract depends of the fact whether the Tenderer is domestic or foreign, of the status of members of the Group of Tenderers and the manner which defines payment according to Joint Service Execution Contract]*

**Article 9**

Employer shall pay Service Provider for the executed services in RSD/by foreign transfer, [*note: final text in the Contract depends on whether Service Provider is domestic or foreign, on status of members of the group of tenderers, as well as on the manner of payment determined by Joint Service Execution Contract]* within up to 45 days from the date of receipt of correct invoice for accepted and approved periodical/Final Report.

Payment of contracted value i.e. executed services for the price expressed in EUR to domestic Service Provider (as well as domestic member of the group of tenderers, *[note: unless defined by Joint Service Execution Contract that the payment shall be made through the Leader])* shall be in RSD at middle exchange rate of EUR of the National Bank of Serbia on the day of payment. *[note: final text in the Contract depends on whether Service Provider is domestic or foreign, on status of members of the group of tenderers, as well as on the manner of payment determined by Joint Service Execution Contract]*

The total of all payments under thisContract cannot exceed the amount of \_\_\_\_\_\_\_\_ RSD which corresponds to the estimated value of public procurement of the services.

**Article 10**

Employer shall pay the Service Provider the price of services in accordance with executed activities under Annex 2 and 3 hereof, within the deadline determined in Article 9 hereof.

All payments related to this contract shall be made to the following account:

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

*[note: final text in the Contract depends on whether Service Provider is domestic or foreign, on status of members of the group of tenderers, as well as on the manner of payment determined by Joint Service Execution Contract]*

**Article 11**

Service Provider shall start with realization of the activities related to provision of services upon the invitation of the Employer, no later than seven days as of the date of conclusion of this contract, otherwise, this contract shall be deemed terminated by the fault of Service Provider

**Article 12**

Deadline for execution of services is \_\_\_ consecutive calendar months starting from the date of beginning of implementation of activities in accordance with Article 11 hereof. Dynamics and deadlines for realization of activities defined for certain modules under Annex 2 are defined in Annex 3 hereof.

**Article 13**

The Service Provider shall appoint the executors that shall provide the service. The list of executors containing their qualifications and precisely defined activities related to services approved by the Employer is provided under Annex 4 hereof.

If need for replacement of one or more members arises during the period of providing the services, the Service Provider is obliged to replace the abovementioned member with another, who at the least has equivalent professional qualification and qualities, with prior approval in writing of the Employer.

The list of executors changes from paragraph 1 hereof, as well as any other changes related to executors providing the services shall be previously approved in writing by the Employer.

The Employer retains the right to request from the Service Provider to replace any of the team members not meeting the conditions and/or not executing conscientiously services assigned, as well as for any other reason, without specific justification, а and which Service Provider shall do in the appropriate deadline, otherwise this Contract shall be deemed terminated for the reasons caused by Service Provider.

In the case that the Service Provider needs to withdraw or replace any of the service providers for the duration of the Contract, all costs incurred by such a replacement shall be borne by the Service Provider.

Written approval by Employer, for the replacement of executors, from paragraph 2 of this Article is integral part of Annex 4 hereof, therefore the Parties shall not conclude separate annex to this Contract in order to change individual executors.

**Article 14**

Service Provider shall at the moment of Contract conclusion and no later than eight days from the date of Contract conclusion, as suspensive condition under Article 74 paragraph 2 of Law on Contracts and Torts submit to the Employer irrevocable, unconditional (without protest) and payable on first demand performance bond in the amount of \_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_ (*RSD/EUR*), which is 10% of contracted value VAT excluded under Article 2 paragraph 1 hereof, with validity period 30 days longer than the date of approval of Final Report, entirely in compliance with the conditions defined in Annex 1 of this Contract..

The Employer may submit a guarantee for collection in any of the cases of non-performance and/or untimely performance and/or partial non-performance and/or poor quality performance of any of the contracted obligations of the Service provider.

If deadlines for execution of contracted services are changed during the validity period of the Contract in accordance with Article 20 and/or 21 hereof the validity of bank guarantee shall be extended.

Bank guarantee under this Article may not include additional payment conditions, shorter deadlines, smaller amount or changed jurisdiction for dispute settlement.

In the event that the bussines seat of the bank guarantor is in the Republic of Serbia in the event of dispute under this Guarantee, the competence of the Court in Belgrade is determined and substantial law of the Republic of Serbia is applicable. In the event that the business seat of the bank guarantor is outside the Republic of Serbia in the event of dispute under this guarantee, the competence of Foreign Trade Arbitration at the Chamber of Commerce in Belgrade, by applying its Rulebook and substantive and procedural law of the Republic of Serbia.

If Service Provider submits guarantee by a foreign bank, such bank shall at least have credit rating of credit of quality 3 (investment rank).

**Article 15**

The Service Provider and its staff engaged on the execution of activities being the subject of this Contract shall preserve the confidentiality of all information contained in documents, reports, financial data, technical data and notices, obtained in the course of implementation of services stipulated under Annex 2 hereof, and they shall use them exclusively for the performance of such services, in accordance with the Confidentiality agreement, which as Annex 7 makes an integral part of this Contract.

Information, data and documents that the Employer has made available to the Service Provider during execution of the subject of this Contract, the Service Provider cannot make available to third parties without prior written consent of the Employer

**Article 16**

The Service Provider shall in all expert activities offer services to the Employer in accordance with its entire knowledge and experience and notify the Employer on advancements and improvements, innovations and technical achievements concerning the subject of this Contract.

The Service Provider shall invest all its expert, technical and technological knowledge and experience, as well as reasonable efforts and diligence in the performance of tasks under this Contract.

The Service Provider shall offer services in accordance with the best professional practice and current scientific and universally accepted standards for this type of activities, observing legal regulations (laws, standards and technical norms) related to this type of services in the Republic of Serbia.

**Article 17**

During the overall period of implementation of the subject of this Contract, the Employer shall provide to the Service Provider all relevant data, documents, and information that it has at its disposal and that are related to execution of this Contract.

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

The Employer has the right of permanent and unlimited use of all delivered deliverables that are the subject of this contract, with no specific fee except for the price foreseen by the contract and it can exercise the same in subsidiaries whose founder it is and companies where it is a member.

**Article 18**

Invalidity of any of the provisions of this Contract shall not have an impact on the validity of other provisions, if it does not significantly affect the execution of this Contract

**Article 19**

Service Provider that uses intellectual property of third persons (regardless of the type of intellectual property), shall guarantee to the Employer that it is the holder of the right or that it has legal right to use such intellectual property.

**Article 20**

In the event of Force Majeure – unforeseen events outside the control of the Contracting Parties, preventing any of the Contracting Parties to perform its obligations under this Contract – contractual obligations shall be suspended to the extent that Contracting Parties are affected by this event and for the duration of the impossibility of performance of contractual obligations caused by this situation, provided that the other Contracting Party has been informed about the cessation of Force Majeure within three working days.

In the event of Force Majeure, contracting parties may agree on extension of deadline for consulting services execution by the time for which delay in execution of contractual obligations occurred as the result of Force Majeure.

In the event under previous paragraph of this Article hereof, the Employer shall act in accordance with Article 115 of the Public Procurement Law.

Each of the Contracting Parties shall bear its expenses incurred during the period of Force Majeure, i.e. for the period of contract dormancy caused by Force Majeure, for which the Contract is extended.

If Force Majeure event continues over a period longer than 90 days, any of the Contracting Parties may terminate this Contract within 30 days, by submitting a written notice on termination, provided that in the case of termination of Contract on this ground none of the Parties is entitled to reimbursement for any damage

**Article 21**

Amendment to this Contract shall be possible only in accordance with Article 115 of Public Procurement Law in the part of contracted deadline under Article 12 hereof, as an important part of the Contract, due to objective reasons that can be seen in the need to extend provision of assistance and support to the Employer in the dialogues with the relevant state/local (including also international) bodies regarding selected acquisition project(s), and which did not occur as the result of action or omission at the side of selected Tenderer.

**Article 22**

In the event that the Service Provider by its own fault does not execute contractual obligations within the deadline, Service Provider shall pay the Employer contractual penalties, in the amount of 0.2% of contracted value under Article 2 paragraph 1 hereof for each day of delay that started, in the maximum amount of 10% of the contracted value under Article 2 paragraph 1 hereof VAT excluded.

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

**Article 23.**

All deliverables defined under Modules 1 tо 5 of Terms of Reference given in Annex 2 hereof, shall be delivered by the Service Provider to the Employer in 3 (three) copies each, in both Serbian and English, and both in hardcopy and softcopy in Microsoft Excel, Microsoft Word or Microsoft PowerPoint format depending on the requirements of the Employer.

**Article 24.**

Within the period of 2 (two) years after the termination of this Contract, the Service provider and its staff engaged in the execution of the Contract, shall neither be engaged (directly and indirectly) in activities to acquire the ownership or managerial rights over the assets of the Employer or its subsidiaries nor engaged as advisors (directly or indirectly) of the potential acquirer of these rights.

**Article 25.**

Service Provider guarantees Employer that during this Contract validity period it shall not be engaged by the third parties regarding Acquisitions.

**Article 26**

Employer agrees to bear all risk and liabilities that arise as a consequence of accepting this Contract regarding contracted services.

Regarding previous paragraph of this Contract, Employer agrees to indemnify and release from liability Service Provider from all losses, claims, liabilities or actions related to or arising from this Contract, or arise from the role of Service Provider accordingly, and to which any third party contributes, and also to remunerate Service Provider all justified costs (including justified legal fees) to which Service Provider is exposed regarding research, preparation or defense of any such action or claim, provided that the provisions of this paragraph shall not apply to any claim, liability, loss, damage or costs that are result of bad intention or gross negligence of Service Provider, due to intentional misuse or breach of existing laws.

**Article 27**

All misunderstandings arising from or related to this Contract shall be settled amicably by the Contracting Parties and in the event of failure, Contracting Parties agree that each dispute arising from this Contract shall be resolved by the competent court in Belgrade (Foreign Trade Arbitration at the Chamber of Commerce of Serbia, arbitration place in Belgrade, by applying its Rulebook *[note: final text of the Contract depends on whether the local or foreign Service Provider is selected])*.

In the case of dispute, the governing law shall be the material and procedural law of the Republic of Serbia and dispute shall be conducted in the Serbian language.

**Article 28**

The Parties agree that to all relations and issues that are not regulated by this Contract, and relating to the execution of this Contract or related to it, apply the relevant provisions of the Law on Obligations and other regulations of the Republic of Serbia, applicable with respect to the subject matter of this Contract

**Article 29**

This Contract shall be deemed concluded under suspensive condition, when signed by legal representatives of the Contracting Parties, and shall become effective when the Service Provider fulfills suspensive condition within the agreed deadline and submits bank guarantee from Article 14 of this Contract.

**Article 30**

Integral parts of this Contract:

Annex 1 Tender Documents;

Annex 2 Description and type of service;

Annex 3 Service Execution Time Schedule;

Annex 4 List of Executors of Service Provider with Statements on Availability;

Annex 5 Price Structure;

Annex 6 Tender Form

Annex 7 Confidentiality Agreement

Annex 8 Performance bond

and

Annex 9 (Joint Service Execution Contract, *(note: it shall be stated in the text of the Contract in the event of joint Tender))*.

**Article 31**

This Contract is made out in 6 (six) counterparts, in Serbian and English, each being the original of the Contract. Each Contracting Party shall retain 3 (three) counterparts in Serbian and 3 (three) counterparts in English. In the case of inconsistencies, Serbian version shall prevail.

**SERVICE PROVIDER L.S. EMPLOYER**

**Name JP EPS**

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

name and surname Aleksandar Obradović

position Director

**ANNEX 1 TO THE CONTRACT**

**TENDER DOCUMENTS**

**ANNEX 2 TO THE CONTRACT**

**DESCRIPTION AND TYPE OF SERVICE**

Terms of Reference in accordance with point 5.2 of the Tender Documents.

**ANNEX 3 TO THE CONTRACT**

**SERVICE EXECUTION TIME SCHEDULE**

**ANNEX 4 TO THE CONTRACT**

**LIST OF SERVICE PROVIDERS EXECUTORS WITH STATEMENTS ON AVAILABILITY OF EXECUTORS**

**4 – А: Project Implementation**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **№** | **Name and surname** | **Team position** | **Qualifications/Title** | **Field covered by the function performed under the subject public procurement** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

**4 – B: Services execution availability statement of the team members**

–“**Financial Advisor for Acquisitions**”

I, the undersigned, hereby confirm that I have accepted as the Service Provider's team member the participation in the performance of the service from Annex 1 of this Contract on provision of services during the time and in the scope specified in the tender.

I hereby confirm that I am not engaged on any other project/activity in the manner which would prevent me from the performance of subject services, and that I am familiar with the provisions on data confidentiality under Article 15 of the Contract on Service Provision.

|  |  |
| --- | --- |
| **Name and Surname:** |  |
| **Team Position:** |  |
| **Signature:** |  |

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

|  |  |
| --- | --- |
| **Name and Surname:** |  |
| **Team Position:** |  |
| **Signature:** |  |

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

|  |  |
| --- | --- |
| **Name and Surname:** |  |
| **Team Position:** |  |
| **Signature:** |  |

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

**4 – C Approval of the Employer for change of executor**

Employer - Javno preduzeće “Elektroprivreda Srbije” Beograd and Service Provider - \_\_\_\_\_\_\_\_\_\_ have concluded on \_\_\_\_\_\_\_\_\_\_ Contract on Service Provision “\_\_\_\_\_\_\_\_\_\_\_\_\_\_”No.\_\_\_\_\_\_\_\_ (hereinafter referred as: Basic Contract), after open public procurement procedure No\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

In accordance with Article 13 of the Basic Contract, Service Provider has submitted to Employer in written form on \_\_\_\_\_\_\_\_ the justified request for change of executors of services.

In the attachment to the request the Provider of Services submitted CVs and certificates on referent experience of newly proposed executors, as well as amended annexes 4A, 4B, 5 and 7 of the Contract, in Serbian and English language.

Authorized representative of the Employer for monitoring of implementation of services has considered the submitted forms and annexes, based on which it gives its consent and approves proposed changes of executors. In relation to this approval and submitted amended annexes of the Basic Contract separate annex in accordance with Article 13item 6 of the Basic Contract shall not be concluded.

**For Employer the authorized representative**

**Team Manager**

**ANNEX 5 TO THE CONTRACT**

**PRICE STRUCTURE**

**ANNEX 6 TO THE CONTRACT**

**TENDER FORM**

**ANNEX 7 TO THE CONTRACT**

**CONFIDENTIALITY AGREEMENT**

**ANNEX 8 TO THE CONTRACT**

**PERFORMANCE BOND**

**MODEL OF**

**Performance Bond**

**Issuance date:**

***(bank name, branch address of the issuer)***

PRINCIPAL: (name and address) TIN, RN

BENEFICIARY:

Public Enterprise Electric Power Industry of Serbia, Belgrade, Carice Milice 211000 Belgrade

Identification number: 20053658

PIB: 103920327

Current account number: 160-700-13 Banca Intesa

**PERFORMANCE BOND NO**. .................................

We have been informed that .......................................... (hereinafter referred to as:

Principal) and Public Enterprise Electric Power Industry of Serbia, Carice Milice 2, Belgrade, (hereinafter referred to as: Beneficiary) have concluded Contract no. ......................dated ................(hereinafter referred to as: Contract) for .......................................................................... (job description) 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 total amount of the Contract VAT excluded.

In accordance with the abovementioned, we .......................................................... (bank name and address) hereby irrevocably and unconditionally guarantee that we will, upon your first request, 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 request 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.

Your payment demand shall also be accepted if it is submitted by coded SWIFT message through your bank which confirms that your demand for payment has been forwarded to us by registered mail and that the signatures on such demand for payment are genuine and legally binding for your company (institution).

This guarantee is valid 30 days longer than the date of approval of Final Report and no later than.................................... (insert date).According to that, we have to receive each demand for payment 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 within Chamber of Commerce of Serbia is determined, place 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 on demand URDG 758, International Chamber of Commerce in Paris.

**Signatures**

**ANNEX 9 TO THE CONTRACT**

**JOINT SERVICE EXECUTION CONTRACT**

**FORM 7**

## QUALIFICATION STRUCTURE AND TEAM MEMBER POSITION

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **No**. | **Name and surname** | **Team position** | **Qualification/ title** | **Field covered by the function performed under the subject procurement** |
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| --- | --- | --- |
| Date: | L.S. | Tenderer: |
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***FORM 7.1.***

## OVERVIEW OF STAFF ENGAGEMENT 1

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **№** | Name | **Team members engagement**  **(bar chart form)2** | | | | | | |
| **1** | **2** | **3** | **4** | **5** | **6** | **7** |
| 1 |  |  |  |  |  |  |  |  |
| 2 |  |  |  |  |  |  |  |  |
| 3 |  |  |  |  |  |  |  |  |
| … |  |  |  |  |  |  |  |  |
| n |  |  |  |  |  |  |  |  |

1 For professional staff input has to be indicated individually; for additional staff according to categories.

2 Months are calculated from the moment of engagement.

Full engagement

Partial engagement

|  |  |  |
| --- | --- | --- |
| DATE | L. S. | THE TENDERER |
|  |  |  |
|  |  |  |

***FORM 8***

## LIST OF TRANSACTIONS IN ENERGY FIELD CONCLUDED BY TEAM LEADER

Under full substantive and criminal liability as an authorized representative of the Tenderer I declare that the data given in the following list are true and authentic

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Previous Employer /Client**  (name, activity, seat) | **Project name and short description** | **Implementation period**  (from day/month/year to day/month/year) | **Contact person at previous Employer**  (Name and surname, position, telephone and e-mail) |
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| --- | --- | --- |
| Date: | L.S. | Tenderer: |
|  |  |  |
|  |  |  |

**FORM 8.1**

## LIST OF EXPERIENCE OF KEY TEAM MEMBER

SOVEREIGN EXPERT

Under full substantive and criminal liability as an authorized representative of the Tenderer I declare that the data given in the following list are true and authentic:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Previous Employer /Client**  (state Government/state institution) | **Project name and short description of performed advisory services** | **Implementation period**  (from day/month/year to day/month/year) | **Contact person at previous Employer**  (Name and surname, position, telephone and e-mail) |
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| Date: | L.S. | Tenderer: |
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**FORM 8.2**

## LIST OF TRANSACTIONS OF KEY TEAM MEMBER

TRANSACTION EXPERTS

Under full substantive and criminal liability as an authorized representative of the Tenderer I declare that the data given in the following list are true and authentic:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **Name and surname of team member** | **Previous Employer /Client**  (name, activity, seat) | **Project name and short description** | **Implementation period**  (from day/month/year to day/month/year) | **Contact person at previous Employer**  (Name and surname, position, telephone and e-mail) |
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| Date: | L.S. | Tenderer: |
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**FORM 9**

## CURRICULUM VITAE OF TEAM MEMBER

**1. Proposed position**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**2. Name of the company**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**3. Legal basis of engagement: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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

**5. Date of birth**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Nationality**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**6. Education**:

|  |  |  |
| --- | --- | --- |
| 6.1 | Degree(s) /Diploma(s) obtained: |  |
| 6.2 | Education Institution(s) - Date: from(months/year) to (months/year): |  |

**7. Membership in professional bodies**:

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

**8.** **Other training** (state the institutions and degrees or diplomas obtained):

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

**9. Countries where professional experience was obtained** (list of countries):

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

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

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

**11. Relevant experience-** working and/orconsulting experience in the field of: business and advisory services including the service during financial transactions, company merger, acquisition and sale, financial and business analysis of business operation, capital valuation and negotiation, as well as the services of developing strategy regarding stated services:

|  |  |
| --- | --- |
| Period:  from (months/year)  to (months/year) |  |
|  |  |
| Company where he was/is employed |  |
| Work position |  |
| Field of work |  |
| Job description |  |

|  |  |
| --- | --- |
| Period:  from (months/year)  to (months/year) |  |
|  |  |
| Client |  |
| Team position |  |
| Field of work |  |
| Performed activities |  |

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

Date: day/month/year

[*signature*]

Full name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Note**: given CV must be followed by the Statement of the given person and the tenderer that the CV is correct.

***FORM 10***

## TENDER PREPARATION COSTS FORM

## 

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

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

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

***FORM 11***

In accordance with the Article 77 paragraph 4 of the Public Procurement Law (“Official Gazette of RS“ no. 124/12 and 14/15) under full substantive and criminal liability, as an authorized representative of the Tenderer (member of the Group of Tenderers, Subcontractor), I give the following

## STATEMENT

**ON NON-EXISTANCE OF THE CONFLICT OF INTEREST**

We, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(state the name and seat)*, at the moment of tender submission in the procedure of public procurement number 46/15/DEFP, Employer PE Electric Power Industry of Serbia, do not cooperate with any person and/or legal entity, which represents power company in the region (Croatia, Bosnia and Herzegovina, Slovenia, Macedonia and Montenegro), and which engaged us for performance of services whose subject corresponds to the subject of public procurement number 46/15/DEFP.

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

***FORM 12***

**MODEL CONFIDENTIALITY AGREEMENT**

Concluded between

1. Javno preduzeće Elektroprivreda Srbije, Beograd, Carice Milice 2, registration number: 20053658, TIN 103920327, current account No.: 160-700-13 Banca Intesa, represented by Aleksandar Obradović, Director (hereinafter referred to as: Employer), on one side

and

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, registration number: \_\_\_\_\_\_\_\_\_\_\_, TIN \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, current account: \_\_\_\_\_\_\_\_\_\_ represented by Director \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as: Service Provider),

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

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

**Article 1**

Parties have agreed, related to public procurement of services – **“Financial advisor for acquisitions**” Public Procurement No. 46/15/DEFP (hereinafter referred to as: Services), to allow an access and exchange of information which constitute Business Secret and to protect their confidentiality in the manner and under the terms and conditions established by this Agreement and internal acts of the Parties.

This agreement makes an integral part of the basic Contract No. \_\_\_\_\_ dated \_\_\_\_.

**Article 2**

Parties agree that the terms used, i.e. arise 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 them 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 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 on the information carrier and which are placed on the carrier and (or) its supporting documents;

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

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

**Personal data** is any information concerning a natural person, regardless of the form in which it is expressed and the data format (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" 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 who are engaged on any basis by the Employer.

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

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

Unless it was not explicitly otherwise agreed,

1. Neither Party shall use business secret or confidential information of the other Party,
2. Shall not disclose these information to the third party, except to employees and advisors of each party that need such information (and are subject to limited use and limitations in disclosing that are at least restrictive in the same manner as those performed by employees and advisors in writing); and
3. Shall try to keep business secret/confidential information of the other 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 Party shall keep the Business Secret of the Disclosing Party in the extent as if it were its own, as well as to undertake all economically justifiable preventive measures for the purpose of keeping the received Business Secret confidential

The Receiving Party shall keep the Business Secret of the Disclosing Party that is disclosed or received via any information carrier. The Receiving Party shall not sell, exchange, publish i.e. disclose Business Secret of the Disclosing Party to third parties in any way without a previous written consent of the Disclosing 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 Party to the competent authorities is required from the Receiving Party, in accordance with the relevant order or any court request, other competent authority or any state body of comparable competence, provided that party disclosing shall inform in writing the Disclosing Party prior to such disclosing in order to enable Disclosing Party to object to such order or request;
2. when Receiving Party discloses the Business Secret of the Disclosing Party to its employees and other authorized entities in order to fulfill the obligations of the Receiving Party towards the Disclosing Party provided that Receiving Party remains responsible for compliance with the provisions of this Confidentiality Agreement;
3. when Receiving Party discloses Business Secret of the Disclosing Party to legal entities considered to be their affiliates, provided that Receiving 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 Party under this Confidentiality Agreement
4. when the Receiving Party discloses Business Secret of the Disclosing Party to the Receiving party’s legal or financial advisors who are obliged to keep the confidentiality of such Receiving Party.

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

1. the Receiving Party was aware of it at the time of disclosing,
2. it became available to public but not by the fault of Receiving 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 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 Party.

**Article 5**

The 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 party is obliged to determine:

• name and surname of the person responsible for the exchange of Business Secret (hereinafter: Responsible Person),

• postal address for the exchange of documents in hard copy when information is exchanged in a hard copy

• e-mail address for the exchange of electronic documents, when information is exchanged via Internet

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

The exchange of information which represents 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 Parties shall be made in a written form, as follows: by registered mail with a return receipt or direct delivery to the contracting party 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 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 Party does not receive the confirmation about receipt of message with enclosed Business Secret within the 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 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 Party who is disclosing Business Secret shall be entered in the provided blank space in the previous paragraph.

Material and electronic media in which the Business Secret is shall possess classification markings of level of secrecy:

On behalf of the Employer:

Business Secret

Javno preduzeće Elektroprivreda Srbije

Carice Milice 2, Beograd

or:

Confidential

Javno preduzeće Elektroprivreda Srbije

Carice Milice 2, Beograd

On behalf of the Service Provider:

Business Secret

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

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

or:

Confidential

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

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

**Article 9**

Obligations under this Agreement shall also apply Business Secret to which the 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 Party which represent Business Secret in terms of this Agreement and to which the Receiving 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 Party remains owner of the submitted Confidential Information that constitute Business secret. Disclosing Party is entitled, at any time, to demand from Receiving Party to return all the original Information Carriers containing Business Secret of the Disclosing Party.

No later than thirty (30) days from the date of receiving such request, the Receiving Party shall return all received Information Carriers which contain Business secret of the Disclosing party and destroy all copies and reproductions of this information (in any form, including but not limiting to electronic media) in possession of Receiving Party and/or 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 Party, Receiving Party shall upon the completion of liquidation procedure return all received originals and destroy all copies and copy forms of received Information Carriers.

**Article 12**

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

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

**Article 13**

The 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, place 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 signed by the authorized representatives of the Parties.

**Article 15**

All the issues not regulated by the provision hereof shall be governed by the applicable legislation of 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 authorized representatives of the 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 signed in four (4) identical copies in Serbian language, of which each Party retains two copies (2).

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

|  |  |  |
| --- | --- | --- |
| **SERVICE PROVIDER** |  | **EMPLOYER** |
| **Name** |  | **PE EPS** |
| **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | L.S. L.S. | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| Name and surname |  | Aleksandar Obradovic |
| position |  | Director |