PROCUREMENT DOCUMENTS

for the public contract:

**“SELECTION OF AIR CARRIER FOR PROVISION OF SCHEDULED AIR TRANSPORT FROM THE AIRPORT BRNO - TUŘANY TO MUNICH III“**

Reg. No. : XXX

to be awarded in an open procedure pursuant to the Act No. 134/2016 Coll., on public procurement (hereinafter “**PPA**“)

The contracting authority of the public contract:

**JIHOMORAVSKÝ KRAJ /THE SOUTH MORAVIAN REGION**

based at Žerotínovo nám. 449/3, 601 82 Brno

Reg. No. (IČO): 708 88 337

(hereinafter the “**Contracting Authority**“)

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1. Identification data of the Contracting Authority
   1. **Basic data**

Name: **Jihomoravský kraj /South Moravian Region**

Registered office: Žerotínovo nám. 449/3, 601 82 Brno

Reg. No. (IČO): 708 88 337

Contracting Authority profile: <https://zakazky.krajbezkorupce.cz/profile_display_2.html>

**Authorized persons of the Contracting Authority**

The person authorized to act on behalf of the Contracting Authority in legal matters associated with this public contract shall be JUDr. Bohumil Šimek, the regional governor.

* 1. **Contact person of the Contracting Authority**

The contact person in matters associated with awarding of this public contract is the contact person of the Contracting Authority, Mgr. Dana Megová, email: megova.dana@kr-jihomoravsky.cz.

The contact person shall provide for all communication of the Contracting Authority with contractors (this shall in no way affect authorization of the statutory body or other authorized persons of the Contracting Authority), e.g. all requests for clarification of the procurement documents.

* 1. **Type of public contract:** public contract for services
  2. **Type of the procurement procedure:** open procedure

1. Purpose and method of awarding of the public contract
   1. **Preconditions for implementation of the public contract**

This procurement procedure is implemented in agreement with the Regulation of the European Parliament and of the Council (EC) No. 1008/2008 of 24 September 2008, on common rules for the operation of air services in the Community (hereinafter the “**Regulation**“), in which Article 16 states that public service obligation may be imposed in respect of scheduled air services between an airport in the Community and an airport serving a peripheral or development region in its territory or on a thin route to any airport on its territory any such route being considered vital for the economic and social development of the region which the airport serves. That obligation shall be imposed only to the extent necessary to ensure on that route the minimum provision of scheduled air services satisfying fixed standards of continuity, regularity, pricing or minimum capacity, which air carriers would not assume if they were solely considering their commercial interest.

The regional board of representatives decided in its resolution No. 910/17/Z11 of 14 December 2017 to assign a task to the Council of the South Moravian Region to conduct activities necessary to impose a public service obligation in agreement with the Regulation in connection with the scheduled air service on the line between the airport Brno – Tuřany and Franz Josef Strauß airport in Munich (hereinafter the “**Line**“). On 25 October 2019 the Council of the South Moravian Region decided to impose the public service obligation in relation to the scheduled air services from the airport Brno on the route Brno – Munich (hereinafter the “**Public service obligation**“). The Public service obligation shall come into force on 29 March 2020.

Provided no EU air carrier starts, or is able to prove it is planning to start, a sustainable scheduled air service on the route in agreement with the Public service obligation which applies to the given route, the Region will limit access to the scheduled air service on that route to one EU air carrier selected in the procurement procedure for a period of four years pursuant to Article 16, paragraph 9 of the Regulation. The exclusive right will be granted from the beginning of operation of the scheduled air transport by the air carrier selected in the procurement procedure. The selected carrier shall start the scheduled air transport on the given route within 6 months after conclusion of the contract.

* 1. **Purpose of the public contract**

The formal purpose of this above-the-threshold public contract awarded in an open procedure pursuant to provisions of Section (§) 56 of PPA is to conclude a contract for provision of scheduled air service between the airport Brno - Tuřany and the Franz Josef Strauß airport in Munich, within performance of the Public service obligation with the selected participant.

The material purpose of this above-the-threshold public contract awarded in an open procedure, pursuant to provisions of Section (§) 3, letter b) and provisions of Section (§) 56 of PPA, is to ensure a scheduled air service between the airport Brno - Tuřany and the Franz Josef Strauße airport in Munich, within performance of the Public service obligation.

* 1. **Method of awarding the public contract**

This public contract shall be awarded in an open procedure pursuant to provisions of Section (§) 3, letter b) and Section (§) 56 of PPA.

1. Reasons worthy of special consideration in the sense of provisions of Section (§) 127, paragraph 2 , letter d) of PPA

If it turns out in the course of the procurement procedure that conditions for imposing of the Public service obligation have not been met in relation to the scheduled air services between the airport Brno - Tuřany and the Franz Josef Strauß airport in Munich (hereinafter the “**Public service obligation**“) it will be seen as a reason worthy of special consideration pursuant to Section (§) 127, paragraph 2 , letter d) of PPA, and the Contracting Authority will cancel the procurement procedure as a result.

If another air carrier starts operating, or proves the intention to start, a sustainable scheduled air service between the airport Brno - Tuřany and Franz Josef Strauß airport in Munich in agreement with the Public service obligation that applies to the given route before the exclusive right is granted to the Carrier (start of the scheduled air service on the line by the Carrier), based on conclusion of a similar contract without entitlement to the Compensation (see Article 7, paragraph 7.1. of the contract draft), such a situation will be considered a reason worthy of special consideration for which the Contracting Authority will cancel this procurement procedure.

1. Subject matter of public contract performance and other information
   1. **Subject matter of public contract performance:**

**Selection of an air carrier for provision of scheduled air transport from the airport Brno - Tuřany to the airport in Munich.**

### The subject matter of the public contract is to select an air carrier for provision of scheduled air transport on the route between the airport Brno – Tuřany to the Franz Josef Strauß airport Munich and back within performance of the Public service obligation. The air carrier shall start operation on the line within 6 months after conclusion of the contract and operate it until 28 March 2024.

A complete specification of the subject matter of the public contract performance is contained in Annex No. 1 to these Procurement documents – Binding sample of the public contract and its appendices.

* 1. **Classification of the subject matter of the public contract:**

### Code CPV: 60400000-2;

### Code CPV: 60410000-5.

* 1. **Expected value of the public contract and the maximum tender price**

The expected value of the public contract shall be the maximum amount of compensation throughout the whole time of performance of the Public service obligation, i.e. from the start of operation (within 6 months after conclusion of the contract) until 28 March 2024, i.e. 8 800 000.- EUR excl. VAT.

The tender price in the procurement procedure is specified as the maximum amount of financial compensation for one rotation. The maximum tender price is 4 166.- EUR. The maximum tender price is specified as the maximum permissible. If the tender price (the amount of the maximum financial compensation for one rotation) exceeds 4 166.- EUR it will be seen by the Contracting Authority as a failure to meet the award criteria, the participant will be excluded from participation in the procurement procedure by the Contracting Authority, the participant’s tender will be excluded and no longer evaluated.

1. Time and place of performance of the public contract
   1. **Time of public contract performance**

The Contracting Authority expects the public contract performance to start within 6 months after conclusion of the public procurement contract, while the contract will be concluded for a period until 28 March 2024.

* 1. **Place of public contract performance**

The place of the public contract performance shall be the Czech Republic, Federal Republic of Germany and related countries, depending on the nature of the subject matter of the public contract.

1. Requirements of the Contracting Authority for qualification of contractors

Pursuant to Section (§) 73 of PPA, the Contracting Authority requires the participants in the procurement procedure to submit documents and information to prove their qualification.

* 1. **Qualification criteria**

A qualified contractor for performance of the above-identified public contract shall be a contractor that:

1. has proved its basic qualification pursuant to Section (§) 74 of PPA (see item 6A),
2. has proved its professional qualification pursuant to Section (§) 77 PPA (see item 6B),
3. has proved its technical qualification pursuant to Section (§) 79 PPA (see item 6C).
   1. **The form of proving the qualification**

In order to prove the qualification the Contracting Authority preferably requires documents registered in the system that identifies documents to prove the qualification (system e-Certis).

A contractor may replace submission of qualification documents with a statutory declaration. A contractor may also replace the required documents with the European Single Procurement Document for public contract in the sense of Section (§) 87 of PPA. An example of the European Single Procurement Document is defined in the Commission Implementing Regulation (EU) 2016/7 of 5 January 2016, establishing the standard form for the European Single Procurement Document for public contract (available e.g. at the Internet address:

<http://eur-lex.europa.eu/legal-content/CS/TXT/?uri=uriserv%3AOJ.L_.2016.003.01.0016.01.CES>).

A contractor shall not have the obligation to submit to the Contracting Authority documents proving facts contained in the European Single Procurement Document for public contract provided the Contracting Authority communicates that the documents had been submitted to it in a preceding procurement procedure, subject to the condition that it identifies the concerned procurement procedure.

The obligation to submit a document (in the tender and also before contract conclusion) can be also complied with by the contractor through a reference to appropriate information in the information system of public administration in the sense of the Act No. 365/2000 Coll., on public administration information systems, as amended, or in a similar system maintained in another member state which allows unlimited remote access. Such a reference shall include an Internet address and data to log in and to search the required information, if such data are necessary. In the Czech Republic they include particularly an extract from the Commercial Register, extract from a public section of the Trade Register or an extract from a list of qualified contractors.

A contractor shall submit documents proving meeting of its qualification in the form of simple copies. Before contract conclusion the Contracting Authority shall always request from the selected contractor originals or authenticated copies of the qualification documents, unless the documents were submitted earlier in the procurement procedure.

Documents proving the basic qualification pursuant to Section (§) 74 of PPA and professional qualification pursuant to Section (§) 77, paragraph 1 of PPA shall prove meeting of requested qualification criteria 3 months at the latest before the starting date of the procurement procedure.

In those cases where the Contracting Authority requests submission of a statutory declaration to prove the qualification such a declaration shall include data requested by the Contracting Authority and it shall be signed by a person authorized to represent the contractor. If the contractor is represented by an attorney based on a power of attorney the tender shall also include the power of attorney as an enclosure.

* 1. **Proving of qualification through other persons**

A contractor may prove a certain part of its technical qualification or professional qualification requested by the Contracting Authority, with the exception of the criterion pursuant to Section (§) 77, paragraph 1 of PPA, through other persons. In that case the contractor shall submit to the Contracting Authority:

* 1. documents proving professional qualification pursuant to Section (§) 77, paragraph 1 of PPA of another person,
  2. documents proving fulfillment of missing parts of qualification through another person,
  3. documents proving basic qualification pursuant to Section (§) 74 of PPA through another person and
  4. a written commitment of another person to provide certain performance for the public contract or to provide things or rights which the contractor will be authorized to use for the public contract performance, at least in the scope in which the other person proved the qualification on behalf of the contractor. It is assumed that the requirement under the letter d) has been met if the written commitment provided by the other person indicates joint and several liability of that person for the public contract performance. However, if the contractor proves the qualification through another person and submits documents pursuant to Section (§) 79, paragraph 2, letter a), b) or d) of PPA relating to such a person, then the document under letter d) shall include a commitment that the other person will provide those services to which the proved qualification criterion relates.

The contractors and other persons prove (may prove) the qualification jointly.

The Contracting Authority points out that the obligation to submit all documents mentioned above in this chapter shall apply also in case that a part of the qualification is proved by a subcontractor to a subcontractor (sub-subcontractor).

* 1. **Joint proving of qualification**

If the subject matter of the public contract is to be performed jointly by several contractors and they have submitted or are planning to submit a joint tender for the purpose then each of the contractors shall prove meeting of the basic qualification requirements pursuant to Section (§) 74 and Section (§) 75 of PPA and the professional qualification requirements pursuant to Section (§) 77, paragraph 1 of PPA in the full scope. Meeting of the qualification requirements pursuant to Section (§) 79 of PPA shall be proved by all contractors jointly.

If the subject matter of the public contract is to be performed jointly by several contractors they shall submit to the Contracting Authority, in addition to documents proving meeting of the qualification requirements in the sense indicated above, a written commitment to the effect that all the contractors shall be bound jointly and severally in respect of the Contracting Authority and third parties from any legal relations arising in connection with the public contract, throughout the duration of the public procurement contract.

* 1. **Proving of qualification acquired abroad**

If the qualification was acquired abroad it shall be proved with documents issued under the law of the concerned country and in the scope required by the Contracting Authority.

* 1. **Changes in qualification of a procurement procedure participant**

If the qualification of a participant in the procurement procedure changes in the course of the procurement procedure after submission of the documents or declaration about the qualification the participant shall report the change to the Contracting Authority within 5 workdays and within 10 workdays after reporting the change the participant shall submit new documents or new declaration about its qualification; the Contracting Authority may extend the deadlines or condone their exceeding. The obligation under the first sentence shall not arise for the participant in the procurement procedure if the qualification changes in a manner that

* 1. the qualification requirements continue to be met,
  2. the criteria have not been affected for reduction of the number of participants in the procurement procedure or the number of tenders and
  3. the criteria for evaluation of tenders were not affected.

If the Contracting Authority finds out that the contractor failed to meet the above-mentioned obligation the Contracting Authority shall immediately exclude the contractor from the procurement procedure.

* 1. **Extract from a list of qualified contractors**

Submission of a document about registration of the contractor in the list of qualified contractors maintained by the Ministry for Regional Development pursuant to Section (§) 226 through Section (§) 232 of PPA shall replace, pursuant to Section (§) 228 of PPA, a document proving professional qualification pursuant to Section (§) 77 of PPA in the scope in which the data in the extract from the list qualified contractors prove meeting of professional qualification requirements and basic qualification requirements pursuant to Section (§) 74 of PPA in the full scope. As on the last day on which the basic qualification or professional qualification shall be proved the extract from the list of qualified contractors shall not be older than three months.

* 1. **Submission of a certificate**

Pursuant to Section (§) 234 of PPA, a valid certificate issued within an approved system of certified contractors can be used to prove qualification in the procurement procedure. It is assumed that the contractor is qualified in the scope indicated in the certificate.

* 1. **Consequences of a failure to meet qualification requirements**

Provided a participant fails to meet qualification requirements under PPA and these Procurement documents in a required or permitted way it may be excluded from participation in the procurement procedure by the Contracting Authority. If this is the case with the selected contractor then it shall be excluded from the procurement procedure pursuant to Section (§) 48, paragraph 8 of PPA for such reasons.

6A) Basic qualification

The Contracting Authority, in agreement with Section (§) 73 of PPA, requires proving the basic qualification pursuant to Section (§) 74 of PPA as follows:

1. A contractor shall not be qualified if he was convicted by final judgement in the country of its registered seat of a crime specified in Annex No. 3 to PPA or another similar crime pursuant to the law of the country of its registered office in the past five years preceding the commencement of the procurement procedure; expunged convictions are disregarded,

***In this criterion the contractor shall prove meeting of basic qualification requirements in relation to the Czech Republic by submission of an extract from the Register of Criminal Records.***

1. A contractor shall not be qualified if he has outstanding tax arrears registered in tax records in the Czech Republic or in the country of its registered office.

***In this criterion the contractor shall prove meeting of basic qualification requirements in relation to the Czech Republic by submission of an acknowledgement of the respective tax authority and by a written statutory declaration in relation to the consumer tax.***

1. A contractor shall not be qualified if he has outstanding arrears in respect of payments and penalties of public health insurance in the Czech Republic or in the country of its registered office.

***The contractor in this criterion shall prove meeting of basic qualification requirements in relation to the Czech Republic by submission of a written statutory declaration.***

1. A contractor shall not be qualified if he has outstanding arrears in respect of payments and penalties of social security contributions and contribution to the national employment policy in the Czech Republic or in the country of its registered office.

***The contractor in this criterion shall prove meeting of basic qualification requirements in relation to the Czech Republic by submission of an acknowledgement of the respective district social security administration.***

1. A contractor shall not be qualified if he is in liquidation, has been declared insolvent, in respect of whom the receivership has been imposed under another legal regulation or it is in a similar situation pursuant to the law of the country of its registered office.

***The contractor in this criterion shall prove meeting of basic qualification requirements in relation to the Czech Republic by submission of an extract from the Commercial Register or, if not registered in the Commercial Register, by submission of a written statutory declaration.***

If the contractor is a legal person the requirement indicated above under letter a) shall be met by the legal person and, at the same time, by each member of its statutory body. If a member of the contractor´s statutory body is a legal person, the requirement mentioned above under letter a) shall be met by

* 1. that legal person,
  2. each member of that legal person´s statutory body and
  3. a person representing that legal person in the contractor´s statutory body.

If the participant in the procurement procedure is a branch of an enterprise

1. of a foreign legal person the requirement mentioned above under letter a) shall be met by that legal person and by the head of the branch,
2. of a Czech legal person the requirement mentioned above under letter a) shall be met by persons indicated in paragraph I and by the head of the branch.

The Contracting Authority shall have no obligation in the sense of Section (§) 75, paragraph 2 of PPA to apply the reason for exclusion of a participant from the procurement procedure, even if the basic qualification requirements are not met, if

1. the exclusion of the participant would make it impossible to award the public contract in the concerned procurement procedure and
2. an urgent public interest, particularly public health or environmental protection, requires performance of the public contract.

A participant in the procurement procedure may prove, in agreement with Section (§) 76 of PPA, despite its failure to meet the basic qualification requirements pursuant to Section (§) 74 of PPA or despite meeting the reason for unsuitability pursuant to Section (§) 48, paragraphs 5 and 6 of PPA, it has renewed its qualification for participation in the procurement procedure, if the participant in the course of the procurement procedure provides evidence to the Contracting Authority that it has adopted sufficient corrective actions. This shall not apply for the period of time during which the participant in the procurement procedure was convicted by a final judgement to be banned from performance of public contracts or from participation in the licensing procedure.

Provided the Contracting Authority comes to the conclusion that the qualification of the participant in the procurement procedure has been renewed, the Contracting Authority will not exclude the participant from the procurement procedure or will reverse the previous exclusion of the participant from the procurement procedure.

6B) Professional qualification

The Contracting Authority, in agreement with Section (§) 73 of PPA, requires the professional qualification to be proved pursuant to Section (§) 77 of PPA as follows:

1. The contractor shall prove meeting of the professional qualification requirements in relation to the Czech Republic by submission of an extract from the Commercial Register or another similar register, if another legal regulation requires entering into such a register.

***The contractor in this criterion shall prove meeting of professional qualification requirements in relation to the Czech Republic by submission of an extract from the Commercial Register, if registered therein, or an extract from a similar register, if registered therein.***

1. The Contracting Authority requires the contractor to submit a document about business authorization in the scope necessary for the subject matter of the public contract, if other legal regulations require such an authorization.

***The contractor in this criterion shall prove meeting of professional qualification requirements by submission of an operating license to operate commercial air transport with specification of type of transport international and intrastate, scheduled and chartered air transport issued in agreement with the Regulation.***

1. The Contracting Authority requires the contractor to submit documents that prove professional qualification of the contractor, or of the persons through which the professional qualification is met, if this is necessary for performance of the public contract under special legal regulations.

***The contractor in this criterion shall prove meeting of the professional qualification requirements by submission of :***

* ***An Air Operator Certificate under JAR OPS-1/ Commercial air transport (airplanes) / with the operating specification for the required type of operation*** ***or with a similar certification authorizing to operate passenger air traffic.***
* ***An approval certificate from an organization authorized for maintenance under PART 145 based on the valid Commission Regulation (EU) No. 1321/2014 of 26 November u 2014 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organizations and personnel involved in these tasks, or a similar certificate issued by an aviation authority outside EU.***
* ***An Authorization from the European Aviation Safety Agency about meeting the requirements according to Part-TCO.***

The contractor is not required to submit documents proving its professional qualification if legal regulations in the country of its registered office do not require such similar professional qualification.

6C) Technical qualification

The contractor shall meet technical qualification requirements pursuant to Section (§) 79 of PPA in agreement with the requirements of the Contracting Authority as provided below.

In agreement with provisions of Section (§) 79, paragraph 2, letter e) of PPA the Contracting Authority requires to prove the technical qualification by description of technical equipment, i.e. at least 3 (three) aircrafts with pressurized cabin and the minimum capacity of 50 seats to serve on the line.

Further, the Contracting Authority requires a document proving that the participant has ensured, through contractual codeshare or interline cooperation with at least 1 (one) codeshare or interline partner on departures from and arrivals at the Airport Brno operating at the Munich airport, specifically, either through sharing of flights or connecting flights, with a transfer in both directions, connections to at least 10 destinations in at least 5 countries (hereinafter the “Codeshare Cooperation“ and “Interline Cooperation“), or the participant operates connections to such destinations on its own or another operator operates connections to such destinations under the participant´s code. The participant shall document the Codeshare Cooperation or the Interline Cooperation with a copy of a concluded agreement about Codeshare Cooperation or Interline Cooperation or with a confirmation of the Codeshare partner or Interline partner (i.e. an entity authorized to grant the Codeshare Cooperation or Interline Cooperation), about its preparedness to conclude an agreement about Codeshare Cooperation or Interline Cooperation with the participant. If the participant operates connections to the indicated destinations on its own or the connection is operated by another air carrier under the participant´s code it shall be documented with a statutory declaration.

The Contracting Authority also requires the participant to have a contracted substitute aircraft/aircrafts which shall be used in case of an operating irregularity.

6D) Information to prove the qualification

The participant shall provide information decisive to prove the qualification in the Tender form (Annex No. 2 to the Procurement Documents). The participant shall be also authorized to prove meeting of the qualification requirements with documents according to PPA.

1. Requirements for the method of tender price specification
   1. **Method of tender price specification**

The Contracting Authority requires participants to fill out the maximum amount of the financial Compensation for one rotation in the Tender form (see the sample in Annex No. 2 to the Procurement Documents). The maximum amount of the financial Compensation for one rotation shall be the tender price. If the tender price (the maximum amount of the financial Compensation for one rotation) exceeds 4 166.- EUR it will be evaluated by the Contracting Authority as a failure to meet the award criteria, the participant will be excluded by the Contracting Authority from the procurement procedure, the participant´s tender will be excluded and no longer evaluated.

The tender price will be determined as the maximum permissible price for due performance of the subject matter of the public contract.

The Contracting Authority does not permit variant solutions of the tender price.

1. Other requirements

**The tender price shall be indicated in EUR excluding VAT.**

* 1. **Abnormally low tender price**

The tender price shall include all costs incurred in connection with performance of the public contract. The agreed price shall include all works, supplies, services, fees and costs of the contractor necessary for proper and complete performance of the subject matter, including reasonable profit, unless the award criteria expressly establish otherwise.

Pursuant to Section (§) 113 of PPA, before sending a notice about selection of the contractor the Contracting Authority will evaluate **abnormally low tender prices**. The Contracting Authority will request a participant in the procurement procedure to provide a written substantiation of the method used to determine the abnormally low tender price if any such price is identified. The request for substantiation of an abnormally low tender price will be considered a request pursuant to Section (§) 46 of PPA and it can be amended and made repeatedly. The Contracting Authority may exclude a participant from the procurement procedure provided the tender of the participant in the procurement procedure contains an abnormally low tender price that has not been substantiated by the participant in the procurement procedure.

1. Contract draft, commercial and payment terms

A binding sample of the Contract forms the Appendix No. 1 hereto.

Detailed specifications of binding commercial and payments terms are provided in the contract sample.

1. Other requirements of the Contracting Authority for public contract performance
   1. **Use of a subcontractor**

The Contracting Authority requires participants in the procurement procedure to provide in their tenders a list of subcontractors, if they are known to the participant in the procurement procedure, indicating which part of the public contract will be performed by each of the subcontractors and their identification data (Section (§) 28, paragraph 1, letter g) of PPA) and contact data of each such subcontractor.

The participant shall provide the information in the respective enclosure of the binding sample of the Contract and identify individual subcontractors along with the information which part of public contract will be performed by that particular subcontractor (e.g. by indicating the type of subcontracts and percentage (%) financial share on the public contract).

If a participant in procurement in the procedure intends to subcontract a particular part of the public contract to another person (subcontractor) but at the time of tender submission such a person or persons is/are not known then the participant in the procurement procedure shall create a list of subcontractors (see its sample in Annex No. 6 hereto) as a part of the tender, however for the purposes of the procurement procedure the list will remain blank.

If the participant does not intend to subcontract a particular part of the public contract to another person (subcontractor) then the participant shall specify that in its tender ( in the list of subcontractors, a sample of which is provided in Annex No. 6 hereto).

1. Requirements of the Contracting Authority for Contract conclusion

If the selected contractor is a legal person the Contracting Authority shall find out, pursuant to Section (§) 122 paragraph 4 of PPA, information about its beneficial owner under the Act No. 253/2008 Coll., on selected measures against legitimization of proceeds of crime and financing of terrorism, as amended (hereinafter the "beneficial owner").

The selected contractor shall, on a written request made by the Contracting Authority pursuant to Section (§) 122, paragraph 3, letter a) of PPA, submit documents proving its qualification under chapter 6 of these Procurement documents (i.e. **submission of originals or authenticated copies or documents about the qualification)**.

If the information about the beneficial owner cannot be obtained using the procedure pursuant to Section (§) 122, paragraph 4 of PPA the Contracting Authority shall request the selected contractor to submit the following:

## identification data of all persons who are beneficial owners of the selected contractor pursuant to the Act No. 253/2008 Coll., on selected measures against legitimization of proceeds of crime and financing of terrorism, as amended, and

## documents proving relations of all the persons referred to under letter a) above to the contractor; the documents include particularly:

## an extract from the Commercial Register or from a similar register,

## a list of shareholders,

## a resolution of the statutory body about payment of the share on profit,

## a Memorandum of Association, Deed of Foundation or Articles of Association.

1. Method of tender evaluation
   1. **Evaluation criteria**

The tenders will be evaluated based on their economic advantageousness.

The only criterion for the evaluation shall be the **tender price, i.e. the maximum amount of the financial Compensation per one rotation** in **EUR excluding VAT**, in agreement with chapter 7 of these Procurement documents, as indicated in the Tender form (the sample forming Annex No. 2 hereto).

Within the Tender price criterion the Contracting Authority will evaluate the Tender price in EUR excl. VAT, i.e. the amount in agreement with chapter 7 hereof, as indicated in Tender form (the sample forming Annex No. 2 hereto). The more advantageous tender will be the one with a lower tender price (lower maximum amount of the financial Compensation per one rotation).

Based on comparison of the tender price criterion the evaluating commission will determine the resulting order of tenders.

In case of equality of tenders in terms of the Tender price criterion the decision shall be made by drawing lots.

1. Security

The Contracting Authority, in agreement with Section (§) 41 of PPA, requests that each participant in the procurement procedure shall provide a security within the time limit for tender submission. The amount of the security has been set at 50 000.- EUR.

The security shall be provided by each participant in the procurement procedure pursuant to Section (§) 41, paragraph 3 of PPA in the form of:

a) a payment of the amount to an account of the Contracting Authority,

b) a bank guarantee in favor of the Contracting Authority, or

c) a guarantee insurance in favor of the Contracting Authority.

**Payment of the amount to an account of the Contracting Authority**

In case the security is provided by payment to an account or by a bank transfer a document shall be included in the tender indicating the data about the payment made to the Contracting Authority (e.g. payment order or account statement from the account of the participant in the procurement procedure).

The security shall be paid to the bank account of the Contracting Authority No. 43-3257000237/0100, CZ7001000000433257000237, variable symbol 225 and the specific symbol shall be the contractor´s registration Number (IČ).

In this case the tender shall also include the participant´s statement which shall include the following payment information for returning of the security: account number, code and name of the financial institution/bank, address of the bank branch, variable symbol and specific symbol.

**Bank guarantee, guarantee insurance**

In case the security is provided in form of a bank guarantee or guarantee insurance the participant in the procurement procedure shall ensure its validity throughout the duration of the award period. A document about the provision of a security (an original of the letter of guarantee) shall be submitted as a part of the tender in an electronic form (i.e. the original file provided by the bank, including electronic signatures). The Contracting Authority shall have the obligation to return the original of the letter of guarantee after expiry of the award period or after the participant in the procurement procedure ceases to participate in the procurement procedure before the award period ends.

The Contracting Authority, pursuant to Section (§) 48 paragraph 3 of PPA, will exclude the participant from the procurement procedure if it has failed to prove payment of the required security or failed to ensure the security throughout the entire duration of the award period.

**Returning of the security**

The Contracting Authority shall promptly return the security, in agreement with Section (§) 41, paragraph 6 of PPA, including interest provided by the financial institution, the original of the letter of guarantee or a written statement of the insurer

a) after expiry of the award period,

b) after the participant in the procurement procedure ceases to participate in the procurement procedure before the end of the award period.

**Entitlement of the Contracting Authority to performance from the security**

Pursuant to Section (§) 41, paragraph 8 of PPA, the Contracting Authority shall be entitled to performance from the security, including interest provided by the financial institution, if the participant in the procurement procedure ceases to participate in the procurement procedure after being excluded under:

a) Section (§) 122, paragraph 5 of PPA – i.e. in case that the Contracting Authority has excluded the participant selected as the contractor because it failed to submit data, documents or samples pursuant to Section (§) 122, paragraph 3 of PPA or results of sample tests failed to meet the award criteria or

b) Section (§) 124, paragraph 2 of PPA – i.e. in case that the selected contractor failed to meet the obligation to conclude the contract.

1. Instructions for tender development
   1. **Instructions for tender development**

Each participant may submit only one tender.

The participant in the procurement procedure shall submit only a complete electronic form of the tender, using the electronic tool identified in chapter 19 hereof.

The tenders submitted in the procurement procedure shall be in Czech or in English. The contract draft shall be always prepared in agreement with the binding sample of the contract in Annex No. 1 hereto, which has been prepared both in Czech and English. In case of discrepancy between the Czech and English versions of the contract the Czech version shall prevail.

Documents in Slovak and documents in Latin proving education may be submitted without translations.

The tenders shall not contain any changes or corrections which may mislead the Contracting Authority.

* 1. **Requested structure of the tender**

The participants shall use the order of documents as specified in the following instructions for development of tenders:

* **Tender form** containing all information requested in the award criteria **–** the sample form is provided in Annex No. 2hereto.
* **Document about potential joint participation of contractors** which shall indicate that all contractors submitting a joint tender shall be jointly and severally responsible for the public contract performance.
* **Powers of attorney.** Powers of attorney, if any such documents are necessary under the law or these Procurement documents.
* **Documents proving qualification** under chapter 6 hereof. The information to prove the qualification - see chapter 6D hereto.
* **Contract draft** signed by a person authorized to represent the participant. The participant shall use Annex No. 2 hereto.

**•** If the participant is represented by an attorney based on a power of attorney the tender shall also include the respective power of attorney inserted after the Contract draft.

**•** The Contract draft shall contain all the prescribed annexes.

• In Article 7.2. of the Contract the participant shall fill in the Tender price (the maximum amount of the Compensation per 1 (one) rotation) in EUR excl. VAT.

* **Document proving provision of a security** in form of a bank guarantee or guarantee insurance if the participant has provided the security in the form of a bank guarantee or guarantee insurance (original document). In case that the security is provided in form of payment to the account or by a bank transfer the tender shall include a document stating the data about the effected payment to the Contracting Authority (e.g. a payment order or statement from the account of the participant in the procurement procedure).

1. Procurement documents
   1. **Definition of the procurement documents**

The term procurement documents shall include all written documents containing award criteria, communicated or disclosed to participants in the procurement procedure at the opening of the procurement procedure, including any changes in and amendments to the procurement documents pursuant to Section (§) 99 of PPA, with the exception of forms pursuant to Section (§) 212 of PPA and requests indicated in Annex No. 6 to PPA.

* 1. **Provision of the procurement documents**

Pursuant to Section (§) 96, paragraphs 1 and 2 of PPA, procurement documents are made public at the profile of the Contracting Authority at the Internet address: <https://zakazky.krajbezkorupce.cz/profile_display_2.html> for free download, including explanations for, changes in or amendments to the procurement documents of this public contract.

The profile of the Contracting Authority does not contain only Annex No. 4 hereto (Additional information about economic aspects of the line Brno – Munich which contains proceeds from passengers to the individual destinations (i.e. average prices)), the provision of which by the contact person of the Contracting Authority is conditional on signing and handover of the Confidentiality Commitment signed by the contractor in agreement with the binding sample contained in Annex No. 5 hereto.

The Additional information about economic aspects of the line Brno - Munich will be handed over physically to a person authorized to represent the contractor. If the Confidentiality Commitment is not signed by the statutory body of the contractor or by another person authorized by the contractor in agreement with the entry in the Commercial Register the Contracting Authority also requires to receive an original or an officially authenticated copies of the power of attorney or a similar document proving authorization of the signing person to act on behalf of the contractor in the given matter. The Additional information about economic aspects of the line Brno - Munich will be physically handed over to the contractor’s representative.

The Contracting Authority may provide an explanation to the procurement documents provided such an explanation, or documents associated therewith, is made public on the profile of the Contracting Authority, at least **5 workdays before expiry of the deadline for submission of the tenders**.

1. Explanation of the procurement documents and site inspection

If an explanation of the procurement documents is requested in writing by the contractor the Contracting Authority shall make the explanation public, including accurate wording of the request, without identification of the concerned contractor at the profile of the Contracting Authority referred to in chapter 15 hereof. The Contracting Authority shall have no obligation to provide the explanation if the request for explanation is not delivered in time, i.e. at least 3 workdays before expiry of the above-mentioned time limit of 5 workdays. The written request shall be therefore delivered to the Contracting Authority **8 workdays at the latest before the deadline for tender submission**. If the Contracting Authority provides an explanation based on a request that was not delivered in time the indicated time limits do not have to be complied with.

The Contracting Authority points out that in order to comply with the principle of transparency, equal treatment and prohibition of discrimination in the procurement procedure for this public contract all communication with the Contracting Authority shall be conducted exclusively in writing. Any other method, e.g. personal meetings etc., shall be excluded.

A request for explanation of the procurement documents shall be delivered by the contractor to the address of the contact person of the Contracting Authority, i.e. to the address: megova.dana@kr-jihomoravsky.cz. The request for explanation of the procurement documents shall include identification and contact data of the contractor and information to which public contract the request relates.

The Contracting Authority shall be also authorized to make public on its profile a change in or an amendment to the procurement documents subject to Section (§) 99 of PPA.

**With regard to the character of the public contract no site inspection will be performed.**

1. Deadline and method for tender submission

The tenders shall be submitted in an electronic form through the electronic tool for awarding of public contracts in the South Moravian region E-ZAK:

<https://zakazky.krajbezkorupce.cz/profile_display_2.html>

**Deadline for tender submission:**

**Date: [3 February 2020]** **Time: [10:00]**

1. Opening of envelopes

Opening of the envelopes shall be performed after the deadline for submission of the tenders and it will not be public.

1. Electronic tool EZAK, communication between the Contracting Authority and the contractors
   1. Any activities in the procurement procedure shall be performed through the electronic tool E-ZAK, unless the Contracting Authority establishes otherwise in the course of the procurement procedure.
   2. All written documents sent via the electronic tool E-ZAK are considered duly delivered at the time of their delivery to the user´s account of the addressee in the electronic tool E-ZAK. The act of delivery of the document will not be affected by the fact whether the addressee has read it or not or whether the electronic tool E-ZAK has sent a notice to the addressee to its email address about delivery of a new message to the user´s account in the electronic tool E-ZAK.
   3. The Contracting Authority hereby notifies the contractor that for the full use of all possibilities of the electronic tool E-ZAK it is necessary to perform and to complete the so-called registration of the contractor. When the Contracting Authority enters the contractor in the electronic tool E-ZAK the indicated contact data shall be the data available to the public or other suitable contact data. Before completion of registration in the electronic tool E-ZAK each contractor shall check the contact data and, if needed, correct them or provide new ones.
   4. It shall be the contractor´s responsibility to read duly and in time all written materials sent by the Contracting Authority through the electronic tool E-ZAK, as well as to make sure that the contact data indicated for the contractor are correct.
   5. More detailed information on how to use the system is available in the user´s manual: [https://zakazky.krajbezkorupce.cz/data/manual/EZAK-Manual-Contractore.pdf](https://zakazky.krajbezkorupce.cz/data/manual/EZAK-Manual-Dodavatele.pdf).
   6. Communication between the Contracting Authority and the contractor in the course of the procurement procedure may be conducted in Czech or in English.
   7. These procurement documents have been executed in Czech and in English. In case of any discrepancy between the Czech and English versions the Czech version of the procurement documents shall prevail.
   8. Communication between the Contracting Authority and the selected contractor in the course of performance of the contract shall be in Czech.
2. Other requirements and instructions of the Contracting Authority
   1. The Contracting Authority does not permit variant solutions of the tender.
   2. The award period pursuant to Section (§) 40 of PPA shall be 180 days and it shall start running, in agreement with Section (§) 40 of PPA, after the deadline for tender submission.
   3. A contractor which has submitted a tender in the procurement procedure shall not be the same person through which another contractor has proved its qualification in the same procurement procedure. The Contracting Authority will eliminate a participant which has submitted more than one tender individually or jointly with other contractors or a participant which has submitted a tender and, at the same time, is the person through which another participant has proved its qualification in the same procurement procedure.
   4. The costs associated with participation in the procurement procedure shall be borne by each participant.
   5. The Contracting Authority reserves the right to explain, change or amend the terms specified in the procurement documentation, either on request for an explanation of procurement documents made by the participants or on initiation of the Contracting Authority.
   6. The Contracting Authority reserves the right to cancel the procurement procedure in agreement with applicable provisions of PPA.
   7. The Contracting Authority reserves the right to verify the information contained in tenders of the participants with third persons and the participant shall provide all necessary assistance to the Contracting Authority in this respect.
   8. The Contracting Authority shall be authorized to use any information or documents provided by the participants if this is necessary for the procedure according to PPA or if this results from the purpose of PPA.
   9. The information and data indicated in the individual parts of these procurement documents and its annexes define binding requirements of the Contracting Authority for performance of the public contract. When developing the tender these requirements shall be fully and unconditionally complied with. A failure to accept requirements of the Contracting Authority indicated in these procurement documents shall be considered a failure to meet the award criteria with a potential consequence of exclusion of the participant from the procurement procedure.
   10. If the award criteria include references to trade names, names and surnames, specific identifications of goods and services relating to a specific person or its organizational unit, patents of inventions, utility designs, industrial designs, trademarks or appellation of origin, the Contracting Authority hereby explicitly permits the use of other solutions that are similar in terms of quality and technology, which will meet the function requested by the Contracting Authority or function obvious to an expert (possibly also in a different manner).
   11. The selected contractor which fails to conclude a contract with the Contracting Authority promptly in agreement with Section (§) 124 of PPA may be excluded from the procurement procedure by the Contracting Authority.
   12. If the selected contractor is excluded the Contracting Authority may invite another participant in the procurement procedure to conclude the contract, based on the sequence shown by results of the original evaluation of tenders or results of a new evaluation. The new evaluation shall be performed by the Contracting Authority if the exclusion of the selected contractor would mean a significant impact on the original order of the tenders. A participant in the procurement procedure invited to conclude the contract shall be considered the selected contractor.
   13. The Contracting Authority points out that the participant which was selected by the Contracting Authority to conclude the contract (as the first, second or third) violates the obligation to conclude the contract pursuant to Section (§) 124, paragraph 1 of PPA, the Contracting Authority is prepared to recover losses incurred by the Contracting Authority as a result of a failure of the participant.
   14. The Contracting Authority also points out that in case requirements have been met for the obligation or possibility to cancel the procurement procedure by the Contracting Authority pursuant to Section (§) 127 of PPA the Contracting Authority is prepared to decide about cancellation of the procurement procedure for this public contract.
3. List of appendices to the procurement documents

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| Annex No. 1 | Binding sample of the contract |
| Annex No. 2 | Tender form |
| Annex No. 3 | Information about the previous history of the line Brno – Munich |
| Annex No. 4 | Additional information about economic aspects of the line Brno – Munich |
| Annex No. 5 | Sample of confidentiality declaration |
| Annex No. 6 | List of subcontractors |

In Brno, on 25 October 2019