

EXPLANATION OF THE TENDER DOCUMENTATION N. 3

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Overview of Explanations of the Tender Documentation		
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In accordance with Article 14 of the Tender Documentation the Contracting Authority hereby communicates the explanation of the Tender Documentation:

Request by the Participant (hereinafter referred to also as the „Applicant“) for explanation of the Tender Documentation					Explanation of the Contracting Authority
No.	Reference to the Tender Documentation if any			Wording of the request	
	Document title	Page	Relevant text of the document		
1	ANNEX 2 DRAFT CONTRACT FOR WORK.	9	Clause 1.1 Force Majeure (b) the Russian invasion of Ukraine in 2022 and any existing or future related emergency measures, other measures,	Please, delete "or future"	Ok, accepted and incorporated. Please see the modified version of the draft Contract (= Annexes of this Explanation of the Tender Documentation No. 3).
2	ANNEX 2 DRAFT CONTRACT FOR WORK.	9	Clause 1.1 Force Majeure (c) disruption in raw material supplies, production and distribution breakdowns caused due to impacts of an epidemic of coronavirus known as SARS CoV-2, causing COVID-19 disease, as the virus may sometimes be called in practice, and the related applicable emergency or other measures, administrative acts, regulations and/or other interventions by public authorities of the Czech Republic, the state of the Contractor’s registered office and/or other states, as well as the fact that such measures, acts, regulations and/or interventions may evolve in the future,	Please delete " as well as the fact that such measures, acts, regulations and/or interventions may evolve in the future,"	Ok, accepted and incorporated. Please see the modified version of the drfat Contract (= Annexes of this Explanation of the Tender Documentation No. 3).
3	ANNEX 2 DRAFT CONTRACT FOR WORK.	21	Clause 10. EXAMINATION, INSPECTION AND TESTS	Pleawe, add a new Clause 10.21 The terms within this Clause 10. shall not apply to any inspection and tests under Clause 22.	We must insist on the original wording - it is also unclear why you require this change (feel free to provide us with your reasons). If Clause 10 is excluded from tests under Clause 22, then Clause 10 is essentially redundant. Please note that Clause 10 in particular authorises us to carry out examinations, inspections and tests during the performance of the Contract, nothing else.

4	ANNEX 2 DRAFT CONTRACT FOR WORK.	36	22.3 Extension of time	Add new section c): The Contractor shall be entitled to the payment of any additional costs and losses related to the extension of the time, which shall be managed as Change in accordance with Clause 29.	Please be informed that your request is already covered by Clause 29 - all changes must be mutually agreed in advance and subject to such approval is also an agreement on the associated prices, costs, impact to the current price, the Project Time Schedule, etc, Thus, we believe there is no need for incorporating this requested change into the draft Contract.
5	ANNEX 2 DRAFT CONTRACT FOR WORK.	37	Clause 24.3. The Contractor shall, at its sole cost and expense, re-engineer and/or make repairs and/or furnish replacement of the Work, its parts, Materials, Services, Engineering as may be necessary to remedy any and all defects..	Please ammend wording: 24.3 The Contractor shall, at its sole cost and expense, re-engineer and/or make repairs and/or furnish replacement of parts, Materials, Services, Engineering of the Work as may be necessary to remedy any and all defects.	We do not believe it is necessary to make this requested change - the purpose and meaning of this provision would remain the same. This provision only states that in the event of defective performance, the Contractor shall remedy identified and claimed defects at its own cost and expense (by repair, replacement etc.).
6	ANNEX 2 DRAFT CONTRACT FOR WORK.	38	Clause 25.1 Performance Security (a) Not later than fourteen (14) days after signing the Contract, the Contractor shall furnish a good performance security to the Customer in the form of an unconditional and irrevocable first demand bank guarantee by a reputable bank authorized to operate in the EU acceptable to the Customer (the "Performance Security"). The Contractor shall furnish such Performance Security on form attached hereto in Annex 4 (Templates of Bank Guarantees) or other form acceptable to the Customer. The amount of the bank guarantee shall be twenty (20) percent of the Contract Price.	Please, modify the amount of the Performance Security to ten (10) percent of the Contract Price	Given that the First Payment of 20% of the Contract Price, we cannot accept this requested change. The Performance Security is set at 20% to protect our initial investment (the First Payment).

7	ANNEX 2 DRAFT CONTRACT FOR WORK.	39	25.2 General Warranty Bond (a) As of the delivery of a co-signed copy of the Project Closing Certificate to the Contractor co-signed by the Customer, the validity of the Performance Security shall end and a new good performance security shall be delivered by the Contractor, such new good performance security covering all warranties resulting from Clause 24 (Liability for Defects of Work and Warranty) of this Contract and being issued in the amount of ten percent (10%) of the Contract Price, whereas the amount shall be denominated in the types and proportions of currencies in which the Contract Price is payable (the "General Warranty Bond").	Please, modify the amount of the General Warranty Bond to five (5) percent of the Contract Price	We cannot accept this requested change and must insist on the original wording. We consider the Warranty Bond of 10% of the Contract Price to be standard. Further, the Warranty Bond shall be furnish against the Final payment amounting to 10% - thus, it is reciprocal and balanced.
8	ANNEX 2 DRAFT CONTRACT FOR WORK.	42	Clause 27.4 Dependent on the nature of the defect the Contractor shall rectify the invoice/billing request, including its supplements, or issue new ones. The justifiable return of the invoice/billing request shall cause the running of the original maturity period to stop. The new period of maturity shall start running on the day the Customer receives completed, rectified or newly issued invoice/billing request with respective requirements meeting the terms of this Contract.	Please ammend wording: 27.4 Dependent on the nature of the defect the Contractor shall rectify the invoice/billing request, including its supplements, or issue new ones. The justifiable return of the invoice/billing request shall not cause the running of the original maturity period to stop.	As a compromise, we suggest that if the justified returned invoice is rectified/corrected within 5 days of the return, the original due date will apply and continue to run after we have received the rectified/corrected invoice. Please see the newly added wording in Clause 27.4 in the modified version of the draft Contract (= Annexes of this Explanation of the Tender Documentation No. 3).
9	ANNEX 2 DRAFT CONTRACT FOR WORK.	44	29. CHANGES	Please add new Clause 29.9: If the Customer does not approve and or authorize to proceed with a change resquestred by the Customer, the Contractor shall be entitled to the	Understood, but we cannot accept the requested change without additional further changes. However, we propose incorporating a compromise wording - the Contractor will cover 50 man-hours (in

				payment of the costs incurred to conduct feasibility checks and prepare the documentation referred in Clause 29.1	each case), and we will pay for any time in excess of this limit (in each case). Please see the newly introduced wording in the current Clause 29.9 of the draft Contract (= Annexes of this Explanation of the Tender Documentation No. 3).
10	ANNEX 2 DRAFT CONTRACT FOR WORK.	44	29. CHANGES	Please add new Clause 29.10: The Customer shall not be entitled to diminish the Work to be carried out by a third party .	We cannot agree with the proposed change - therefore we respectfully reject it.
11	ANNEX 2 DRAFT CONTRACT FOR WORK.	44	29. CHANGES	Please add new Clause 29.11: Changes in Laws and or regulations that happen after the signature of the Contract shall be considered as a Change pursuant Clause 29.	We believe there is no need for this change - your concerns (additional costs) are already covered in Clause 4.4 of the Contract, where are expressly mentioned changes in laws and/or regulations after signing the Contract.
12	ANNEX 2 DRAFT CONTRACT FOR WORK.	46	33.2 A delay by the Contractor in its performance and/or its delivery obligations shall render the Contractor liable to any or all of the following potential sanctions described in the specific clauses elsewhere in this Contract: usage of its Performance Security, General Warranty Bond, imposition of the contractual penalty provided for in this Contract, compensation of damages, and/or termination of the Contract for default.	Please ammend wording: 33.2 A delay by the Contractor in its performance and/or its delivery obligations by reasons attributable to the Contractor shall entitle the Custome to imposition of the contractual penalty provided for in this Contract as well as any other rights described in this Contract.	We consider this change redundant since it only refers to potential claims that are stipulated more in detail in other provisions within the Contract. It is only a provision for better understanding and orientation within the Contract. Thus, we respectfully reject this requested change since its incorporation would have no effect from our perspective.
13	ANNEX 2 DRAFT CONTRACT FOR WORK.	46	Clause 34.3: The Contractor's maximum aggregate liability for all its obligations and undertakings under the Contract or generally binding legal regulations applicable in connection with this Contract will not exceed fifty percent (50%) of the Contract Price.	Please, modify Contractor's maximum aggregate liability to fifteen percent (15%) of the Contract Price	Please note that we cannot lower the liability limitation as it was set at the lowest acceptable level from the beginning. Thus, we respectfully reject this proposed change and insist on the original wording.

14	ANNEX 2 DRAFT CONTRACT FOR WORK.	48	Clause 36.1 The Contractor's maximum aggregate liability for the penalties for delay set out in this Clause 36.1 shall not exceed ten percent (10%) of the Contract Price. Once the amount of the contractual penalties for delays equivalent to ten percent (10%) of the Contract Price is reached, the Customer is entitled to withdraw from the Contract in accordance with Clause 39.1.	Please modify The Contractor's maximum aggregate liability for the penalties for delay to five percent (5%) of the Contract Price.	Please note that we cannot lower this limitation either. Again, it was set at the lowest acceptable level from the beginning. Thus, we respectfully reject this proposed change and insist on the original wording.
15	ANNEX 2 DRAFT CONTRACT FOR WORK.	48	Clause 36.1 a) to g)	Please modify percentages proportionally to above modification	Not relevant considering our comments above. Thus, we insist on the original wording.
16	ANNEX 2 DRAFT CONTRACT FOR WORK.	48	Clause 36.5	Please delete clause	Please note that we must insist on the original wording - we need to be sure that the Contractor is motivated to meet the agreed criteria and remedy them in a timely manner. However, we would like to hear your arguments and thoughts as to why you propose deleting this provision.
17	ANNEX 2 DRAFT CONTRACT FOR WORK.	49	Clause 36.8. 36.8: The Contractor's maximum aggregate liability for the penalties set out in Clauses 36.7 and 36.8 shall not exceed two percent (2%) of the Contract Price	Please replace reference to Clause 36.8 by Clause 36.6	We corrected the cross-references in Clause 36.8 as they shall refer to the current Clauses 36.6 and 36.7.
18	ANNEX 2 DRAFT CONTRACT FOR WORK.	49	Clause 36.11 The Contractor's maximum aggregate liability for all contractual penalties under the Contract will not exceed fifteen percent (15%) of the Contract Price. Without prejudice to other rights of the Customer according to this Contract, if, in the aggregate, the contractual penalties under this Contract reach fifteen percent (15%) of the Contract	Please, modify Contractor's maximum aggregate liability for all contractual penalties under the Contract to seven point five percent (7,5%) of the Contract Price. Please modify to to seven poit five percent (7,5%) the contractual penalties in the agregate to be reached that shall	Please note that we cannot lower this limitation either. Again, it was set at the lowest acceptable level from the beginning. Thus, we respectfully reject this proposed change and insist on the original wording.

			Price, the Customer has the right to withdraw from the Contract in accordance with Clause 39.1.	give the right to the Customer to withdraw from the Contract in accordance with Clause 39,1	
19	ANNEX 2 DRAFT CONTRACT FOR WORK.	51	<p>41.1 The Contractor shall be entitled to withdraw from the Contract with thirty (30) days prior notice only and solely in the event of:</p> <p>(a) Customer's delay with an invoice payment not disputed by the Customer, exceeding at least ninety (90) days, provided the Parties have not agreed otherwise and the Contractor has suspended Work; or</p> <p>(b) if the Customer has failed to approve any draft invoice or supporting documents in bad faith without reasonable cause, while at the same time, the aggregate amount of draft invoices so unapproved exceeds fifty percent (50%) of the Contract Price; or</p>	<p>Please, ammend as follows: 41.1</p> <p>The Contractor shall be entitled to withdraw from the Contract with thirty (30) days prior notice only and solely in the event of:</p> <p>(a) Customer's delay with an invoice payment not disputed by the Customer, exceeding at least thirty (30) days, provided the Parties have not agreed otherwise and the Contractor has suspended Work; or</p> <p>(b) if the Customer has failed to approve any draft invoice or supporting documents in bad faith without reasonable cause, while at the same time, the aggregate amount of draft invoices so unapproved exceeds fifteen percent (15%) of the Contract Price; or</p>	<p>As a compromise, we propose (i) 60 days in point a) herein; (ii) 35% in point b) herein; and (iii) pro rata deliveries of individual parts of the Equipment in Clause 26.2 and 6.3.</p>

In view of the changes made and the various comments of the Contracting Authority set out above of this Explanation of the Tender Documentation No. 3, the Contracting Authority attaches an updated version of the Draft Contract for Work as Annex No. 1 of this Explanation of the Tender Documentation No. 3 (in changes mode – compare version) and as Annex No. 2 of this Explanation of the Tender Documentation No. 3 (in clear mode). The Participants are required to submit an updated version of the Draft Contract for Work as part of their offer when preparing and submitting their offer, which is attached as Annex No. 2 to this Explanation of the Tender Documentation No. 3.

The Contracting Authority hereby changes the deadline for submission of Tenders. The deadline for submission of Tenders is now set at 6 September 2024 until 10:00 a.m.

In Břidličná on 21 August 2024

Annex No. 1: Draft Contract for Work – compare *(marked changes from the original version + the Contracting Authority's responses to the Applicant 's comments)*

Annex No. 2: Draft Contract for Work - updated version (21.8.2024)