

STÁTNÍ TISKÁRNA CENIN, státní podnik
Prague 1, Růžová 6, House 943, Postal Code 110 00, Czech Republic
Represented by: Tomáš Hebelka, MSc, CEO
(hereinafter referred to as „Contracting Authority“)

In Prague, dated *as per the electronic signature*

EXPLANATION OF TENDER DOCUMENTATION - V.

The Contracting Authority of the below-threshold public contract „**Supply the Hot Stamping Foil with Diffractive Optically Variable Image Devices for the Commemorative Banknote**“ being awarded in simplified below-threshold procedure pursuant to Act No. 134/2016 Coll., On Public Procurement¹, as amended (hereinafter referred to as “Act”), hereby explains the tender documentation in accordance with Sec. 98 of the Act.

Question No. 1:

Acc. to I. 5c. INTRODUCTORY PROVISIONS and

■ will use ■ for the creation of the Master. For this purpose the design has to be provided to ■ in ■ is a 100% daughter company of ■.

Q: Will the draft purchase contract be revised accordingly if ■ wins the tender?

Q: Do we have to list involved daughter companies as subcontractors in Annex 5?

Answer to the question No. 1:

The Contractor shall be aware that the contract itself may not be changed after the tender submission and especially not based on the identification of the winning supplier. According to the Art. 124 (4) of the Act, “*The contracting authority shall conclude the contract in accordance with the tender submitted by the selected economic operator*”.

Thus, the published tender conditions, including the business and payment conditions, are **binding for all Contractors** in the same extent, among others mainly due to the main principle of ensuring a comparability of all submitted tenders.

Regarding the given question the Contracting Authority stated the following.

Daughter companies are separate entities in the legal sense and are therefore considered subcontractors for the purposes of the public contract.

Obligations regarding the list of subcontractors are explicitly stated in Art. 8.10 of the Tender Documentation:

¹ Please find the English version of the Act under this link: https://portal-vz.cz/wp-content/uploads/2019/06/Zakon-c-134_2016-Sb-o-zadavani-verejnych-zakazek-EN.pdf Please note that unfortunately it is not the final version of the Act, which has been amended afterwards.

“Requirement to specify subcontractors:

In accordance with the provision of Section 105(1) of the Act, the Contracting Authority demands that the participants specify in their tenders any parts of the public contract they intend to assign to one or more subcontractors.

In their tender, the participant shall present a list of subcontractors along with information on the parts of this public contract that will be implemented by each of the subcontractors, specifying the type of supplies, services or construction works and the share (%) of such supplies, services and works in the financial amount dedicated to the public contract (Annex 5 to this TD). In case the Contractor replaces a subcontractor originally specified in the tender during the performance of the contract, the replacement shall be subject to approval by the Contracting Authority.

If the participant does not want to subcontract any part of the public procurement project, they are liable to submit an affidavit stating this as part of their tender (Annex 5 to this TD).”

The list of subcontractors shall not be an Annex to the Draft Purchase Contract. The Contracting Authority considers it is important to emphasize that **the Draft Purchase Contract and its Annexes shall not be amended due to the use of subcontractors**. The Contractor will be a party to the Draft Purchase Contract, not the subcontractor. The Contractor is responsible for the proper and timely performance of the subject of the Draft Purchase Contract, regardless of whether he uses a subcontractor or not.

Question No. 2:**Acc. to III. 2. PLACE AND TERMS OF PERFORMANCE AND DELIVERY**

Additionally the approval of the Master will take place at ■■■ in ■■■.

■■■ is a 100% daughter company of ■■■.

Q: Will the draft purchase contract be revised accordingly if ■■■ wins the tender?

Answer to the question No. 2:

The Contractor shall be aware that the contract itself may not be changed after the tender submission and especially not based on the identification of the winning supplier. According to the Art. 124 (4) of the Act, *“The contracting authority shall conclude the contract in accordance with the tender submitted by the selected economic operator”*.

Thus, the published tender conditions, including the business and payment conditions, are **binding for all Contractors** in the same extent, among others mainly due to the main principle of ensuring a comparability of all submitted tenders.

Regarding the given question the Contracting Authority states the following.

About the daughter company, the Contracting Authority refers to its answer to the question No. 1.

Question No. 3:**Acc. to VI. 6. OTHER RIGHTS AND OBLIGATION OF PARTIES**

Acc. to II. 3. the design of the DOVIDs is based on design templates provided by the Buyer.

The Seller cannot be made responsible if any infringement of third party rights results directly from such design templates provided by Buyer.

We would therefore suggest the following changes **highlighted in red**:

VI. 6. The Seller warrants to the Buyer that it is not aware of any violation of third-party rights by the subject of this Contract at the date of the Contract signature. If a third party raises a legitimate claim because of an infringement of industrial property rights, copyrights or any other rights by the DOVIDs' design supplied by the Seller, the Seller shall be liable, at its expense, to secure a right of use to the DOVIDs design for the Buyer. **This shall not apply if the violation of third party rights results from the use of the design templates provided by the Buyer.**

Q: Will the draft purchase contract be revised accordingly if ■ wins the tender?

Answer to the question No. 3:

The Contractor shall be aware that the contract itself may not be changed after the tender submission and especially not based on the identification of the winning supplier. According to the Art. 124 (4) of the Act, *"The contracting authority shall conclude the contract in accordance with the tender submitted by the selected economic operator"*.

Thus, the published tender conditions, including the business and payment conditions, are **binding for all Contractors** in the same extent, among others mainly due to the main principle of ensuring a comparability of all submitted tenders.

Regarding the given question the Contracting Authority states the following.

Regarding the text of Article VI (6) of the Draft Purchase Contract, the Contracting Authority states that a person whose industrial property rights or copyrights relate to or could relate to **design templates** was not meant by the third party in this provision. The text of paragraph 6 refers to the industrial property rights to the results of the performance of the Draft Purchase Contract – **i.e. the design of DOVIDs, Master and its copies**.

The Contracting Authority considers it is important to assure all potential Contractors that **the Contracting Authority (Buyer)** would bear the responsibility for any infringement of copyrights or industrial property rights resulting from the design template. **The Contractor (Seller) would not be responsible for any infringement of the copyrights or industrial property rights resulting from the design template.**

The Contracting Authority hereby informs that Article VI (6) of the Draft Purchase Contract shall not be amended, since there are no changes made to the content of the Draft Purchase Contract.

Question No. 4:

Acc. to VII. 4. INTELLECTUAL PROPERTY RIGHTS AND RIGHT TO USE DESIGN AND MASTER OF THE DOVIDS

It is a legal practice to obtain official owner approval for the rights of the draft proposal provided.

We would therefore suggest the following changes **highlighted in red**:

The Seller states and **warrants** that the design of the DOVIDs in the form of the Master does not interfere with, or violate rights of third parties, in particular, does not infringe copyrights, trademarks protection rights, patent rights or other property rights applicable to the design or to the Master. However the Seller shall have responsibility for any interference with or violation of third parties rights to the extent, the infringing or violating part of the design of the DOVIDs **was created by the Seller**. Further, the Seller states that these rights were not provided without consent and approval of the relevant entities or authors. The Seller is aware about the fact that he is fully and legally liable for consequences due to failure to observe this statement **in accordance with the regulations of this Contract. In case Seller manufactures the DOVID design, Master and the DOVIDs on the basis of a supply (e.g. logos, design, registered design, design template) provided by Buyer, Buyer represents and warrants, that it is fully entitled to grant the rights required by Seller in relation to such supply in any respect necessary for the execution of this Contract. For this purpose, Seller shall provide the Buyer with the official authorization issued by the respective owner of the rights to use such rights for manufacture of the DOVID design, Master and/or the DOVIDs. The authorization is an unconditional requirement for the start of production of the DOVID design, Master and/or the DOVIDs and needs to be supplied to Seller beforehand.**

Q: Will the draft purchase contract be revised accordingly if ■ wins the tender?

Answer to the question No. 4:

The Contractor shall be aware that the contract itself may not be changed after the tender submission and especially not based on the identification of the winning supplier. According to the Art. 124 (4) of the Act, *"The contracting authority shall conclude the contract in accordance with the tender submitted by the selected economic operator"*.

Thus, the published tender conditions, including the business and payment conditions, are **binding for all Contractors** in the same extent, among others mainly due to the main principle of ensuring a comparability of all submitted tenders.

Regarding the given question the Contracting Authority states the following.

About an infringement of the copyrights or industrial property rights resulting from the design template, The Contracting Authority refers to its answer to the question No. 3.

The Contracting Authority assures all potential Contractors that the Contracting Authority (Buyer) has the consent of the author of design template provided by the Buyer according to the Draft Purchase Contract.

The author's consent and the author's obligation to cooperate with the Contracting Authority (Buyer) for the performance of this public contract are contained in a contract concluded between the author of the design templates and the Czech National Bank as the final contractual client of the Contracting Authority. This will also be contractually solved between the Contracting Authority and the Czech National Bank.

The Contracting Authority does not consider it is appropriate to provide the mentioned contracts containing the author's consent to the Contractor.

The Contracting Authority hereby informs that Article VII (4) of the Draft Purchase Contract shall not be amended, since there are no changes made to the content of the Draft Purchase Contract.

Question No. 5:

Acc. to VIII 9. LIABILITY FOR DEFECTS AND QUALITY WARRANTY

It is a legal practice that the seller has to acknowledge a claim. Additionally working days are specified and the time period for replacement is too short.

We would therefore suggest the following changes **highlighted in red**:

The Seller shall deal with the claim of the Buyer within 30 (in words: thirty) **working** days from the day of receiving the claim. If defective DOVIDs are replaced with defect-free DOVIDs in case of an entire partial delivery of the DOVIDs, the Seller shall be obliged to replace such defective DOVIDs within **60 (in words: sixty) working** days from **the day of the Seller's acknowledgment** of the claim. All costs related to defects of the DOVIDs or claiming them, especially the costs of replacement of defective DOVIDs with defect-free ones or costs of delivery missing quantity of the DOVIDs, shall be borne by the Seller.

Q: Will the draft purchase contract be revised accordingly if ■ wins the tender?

Answer to the question No. 5:

The Contractor shall be aware that the contract itself may not be changed after the tender submission and especially not based on the identification of the winning supplier. According to the Art. 124 (4) of the Act, *"The contracting authority shall conclude the contract in accordance with the tender submitted by the selected economic operator"*.

Thus, the published tender conditions, including the business and payment conditions, are **binding for all Contractors** in the same extent, among others mainly due to the main principle of ensuring a comparability of all submitted tenders.

Regarding the given question the Contracting Authority states the following.

The Contracting Authority has planned and chosen time period in the Article VIII (9) of the Draft Purchase Contract with regard to the Contracting Authority's obligation to the Czech National Bank as the final contractual client of the Contracting Authority. The proposed change of time period is not acceptable for the Contracting Authority.

The Contracting Authority hereby informs that Article VIII (9) of the Draft Purchase Contract shall not be amended.

Question No. 6:

Acc. IX. 1. PENALTIES

From our understanding, we do not see the need for an unlimited penalty in case of delay with the production of the design origination and/or the Master. For the other cases of delay (IX 2.+3.), the penalties have a cap at 20 % of the respective price.

Q: Is there a specific reason why there isn't a comparable cap in IX. 1.?

We would therefore suggest the following changes **highlighted in red**:

In the case of the Seller's delay with the production of DOVIDs design origination and/or Master compared to the deadlines specified in the Annex No. 2 hereof, the Seller shall pay to the Buyer a contractual penalty of EUR 1.000, for each started day of such delay. **The contractual penalty shall not in each case of a delay exceed 20 % of the price of the late production of DOVIDs design origination and/or Master.**

Q: Will the draft purchase contract be revised accordingly if ■ wins the tender?

Answer to the question No. 6:

The Contractor shall be aware that the contract itself may not be changed after the tender submission and especially not based on the identification of the winning supplier. According to the Art. 124 (4) of the Act, *"The contracting authority shall conclude the contract in accordance with the tender submitted by the selected economic operator"*.

Thus, the published tender conditions, including the business and payment conditions, are **binding for all Contractors** in the same extent, among others mainly due to the main principle of ensuring a comparability of all submitted tenders.

Regarding the given question the Contracting Authority states the following.

The limitation of the contractual penalty is not intentionally stated in Article IX (1) of the Draft Purchase Contract. The reason is that the Contracting Authority considers the obligation secured by the contractual penalty in Article IX (1) of the Draft Purchase Contract to be more important than the contractual penalties in paragraphs 2 and 3 of the same Article.

The Contracting Authority hereby informs that Article XI (1) of the Draft Purchase Contract shall not be amended.

Question No. 7:

Acc. Annex No. 2 to the Contract No. 097/OS/2020 Time Schedule

Line three: Pilots DOVIDs production (DESIGN 1 + DESIGN 2) Within 30 working days from the Masters approval by the Buyer.

The timing for Pilots DOVID production is too short. It should be revised to **50 working days** from the Masters approval by the Buyer.

Q: Will the Annex No. 2 of the draft purchase contract be revised accordingly if ■ wins the tender?

Answer to the question No. 7:

The Contractor shall be aware that the contract itself may not be changed after the tender submission and especially not based on the identification of the winning supplier. According to the Art. 124 (4) of the Act, *“The contracting authority shall conclude the contract in accordance with the tender submitted by the selected economic operator”*.

Thus, the published tender conditions, including the business and payment conditions, are **binding for all Contractors** in the same extent, among others mainly due to the main principle of ensuring a comparability of all submitted tenders.

Regarding the given question the Contracting Authority states the following.

The Contracting Authority has planned and chosen dates in the Time Schedule with regard to the Contracting Authority's obligation to the Czech National Bank as the final contractual client of the Contracting Authority. The proposed change of deadline is not acceptable for the Contracting Authority.

The Contracting Authority hereby informs that Annex No. 2 of the Draft Purchase Contract shall not be amended.

Question No. 8:**INVITATION FOR TENDER SUBMISSION****Acc. 16.3 Submitting tenders (excl. Qualification Samples) in electronic form.**

In order to submit the tender, the applicant must register in the electronic instrument (respectively its connected supplier databases “CDD” or “FEN”).

If the Contractor does not dispose of corresponding quality of electronic signature as required during the process of verification the identity, there is another off-line option which includes downloading of the document which must be signed in paper version and sent along with required documents stated above via post. Please follow the given manuals, where everything is described.

■ does not have an electronic signature and should therefore register off-line.

Q: Can you describe where and how we can register off-line and which documents are requested?

Answer to the question No. 8:

The Contractors have been provided with all needed and crucial information and web links, which had to be followed.

As stated in the Art. 16.3 of the Tender Documentation, further details for registration in FEN and verifying identity is available at: <https://sites.google.com/fen.cz/napovedafen/>, English version: <https://sites.google.com/fen.cz/napovedafen-en>.

There are three phases to go through:

1. **Register a contractor (phase no. 1)**
2. **Register a contractor administrator (phase no. 2)**
3. **Verify the contractor (phase no. 3)**

On the above-mentioned link, the Contractor may find the following information as well. **Please note this is a later phase of the whole proceedings of registration and verification (phase no. 3). The Contractor must start the process in the beginning as described.**

„Verifying the Contractor Account: Off-system

4. Download the registration application form and click on **COMPLETE**.
 - The system displays the Confirmation dialog box.
 - The system sends an e-mail to the system administrator informing them about registration completion and the verification method chosen.
5. Send the **application** together **with the relevant documents** to the system administrator.
 - You can send the application to the system administrator in one of the following ways.
 - *By post - the application must be printed, signed by a person authorized to represent the contractor and subsequently sent to the address of the CCD developer headquarters: Spojené nástroje elektronické s.r.o., Nad Hradním vodojemem 1108/53, 162 00 Praha 6 – Střešovice. In the case of registration of a foreign contractor, the developer requires the submission of an officially certified translation of all parts of the application into the Czech language.*
 - *By e-mail - the application must be signed with an electronic signature of a person authorized to act on behalf of the contractor and subsequently sent to the e-mail address podpora@fen.cz*
 - *If the submitted application including the attachment meets the requirements, the system developer's administrator changes the contractor Status to Enabled, and the system sends an e-mail informing to the contractor administrator informing them that the contractor registration has been successfully verified."*

As stated in the Tender Documentation, the application itself shall be annexed by a document proving the subjectivity of the organization (e.g. an extract from the business register, certificate of incorporation or another similar document) and by a power of attorney to act on behalf of the organization (if needed).

The Contractors shall contact the technical support of the system to solve any technical troubles or if having any further questions regarding the procedure of registration and identity of verification.

Technical support contact details:

Phone: +420 515 917 947

podpora@fen.cz

The process of registration and identity of verification is a one-off step, once the Contractor is fully registered then it may submit a tender to any public contract of the Contracting Authority or different entities using the same e-instrument (EZAK) in the future.

The Contracting Authority does not consider this explanation as alteration or supplementation of the tender documentation whose nature would demand extension of the time limit for the tender submission in accordance with Sec. 99 (2) of the Act, since the Contracting Authority does not alter the tender conditions.

Kind regards,

Mgr. Zuzana Šenoldová
Head of Public Procurement
for the contracting authority
STÁTNÍ TISKÁRNA CENIN, státní podnik