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Represented by: Tomáš Hebelka, MSc, CEO
(hereinafter referred to as „Contracting Authority“)

EXPLANATION AND CHANGE OF TENDER DOCUMENTATION – VI.

The Contracting Authority of the over-threshold public contract called „**Supply of Contact Chip Modules // Dodávky kontaktních čipových modulů**” being awarded in an open procedure pursuant to Act No. 134/2016 Coll., On Public Procurement¹, as amended (hereinafter referred to as “Act”), hereby explains and changes the tender documentation in accordance with Sec. 98 and 99 of the Act.

Question No. 1: Request for clarification regarding Article 9 of the tender documentation
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Article 9 of the tender documentation governs the evaluation criteria and the method of evaluation.

According to paragraph 9.1 of the tender documentation the basic evaluation criterion for the award of the Public Contract is the economic advantage of the bid. In paragraph 9.3, the Contracting Authority has set out two partial evaluation criteria, namely:

- (A) Unit price for one piece of Chip in EUR excl. VAT in accordance with Art. V (1) of the Draft Contract with a weight of 89.5 %
- (B) Chip type offered - IAS Classic v5.2 on MultiApp V5.0 with a weight of 10.5 % (hereinafter also referred to as "Criterion B").

Paragraph 9.5 of the tender documentation states that the Contractors shall be obliged to provide the relevant information in their bids, specifically in Description of offered technical solution required in accordance with Art. 13.5 (1) thereof, from which it will be evident whether the solution offered by the Contractor in its bid is identical to the “IAS Classic v5.2 on MultiApp V5.0” solution or not. Paragraph 9.5 further provides that: “Within Criterion B the points shall be awarded as follows:

- The Contractor offering “IAS Classic v5.2 on MultiApp V5.0” shall be awarded by full number of points within this sub-criterion, that means 10.5 points. This technical solution is preferred by the Contracting Authority.
- The Contractor not offering “IAS Classic v5.2 on MultiApp V5.0” shall be awarded by zero points within this sub-criterion, that means 0 points. Receiving zero points within this sub-criterion does not mean that the Contractor has not fulfilled the technical specification stipulated by the Contracting Authority. A technical solution other than the use of “IAS Classic v5.2 on MultiApp V5.0” Chips imposes extra financial costs for the Contracting Authority and

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.

significant time extension associated with the necessary implementation of a new solution than the solution with "IAS Classic v5.2 on MultiApp V5.0" Chips, therefore it is less preferred."

Article 13, paragraph 13.5 of tender documentation states that technical documentation requires the participant's tender to include Description of offered technical solution, i.e. of the Chips, which must be drafted minimally in a detail that the Contracting Authority may verify that all the requirements stated in the Annex 1a of the Draft Contract are fulfilled. According to paragraph 13.5, point 1, it must be evident whether the solution offered by the Contractor in its bid is identical to the "IAS Classic v 5.2 on MultiApp V5.0" solution or not (according to Art. 9.3 and 9.5 hereof).

In view of the above terms of the tender documentation relating to Criterion B:

(a) Do we understand correctly that the Contractor's bid may contain chips of a different type than "IAS Classic v5.2 on MultiApp V5.0", however in that case (i.e. if the Contractor's bid contains other type of chips than "IAS Classic v5.2 on MultiApp V5.0") it will be disadvantaged in the evaluation of tenders by receiving 0 points in Criterion B according to Article 9 of the tender documentation?

(b) Do you admit a Contractor to offer a solution comparable to "IAS Classic v5.2 on MultiApp V5.0" and if so, shall the bid containing such a solution comparable to "IAS Classic v5.2 on MultiApp V5.0" be awarded by 10.5 points in the Criterion B?

In case the answer to the above question (a) is yes and the answer to the above question (b) is no, respectively if the Contractor whose bid contains other type of chips than "IAS Classic v5.2 on MultiApp V5.0" would receive 0 points in Criterion B, even though the Contractor offers a comparable or better solution than "IAS Classic v5.2 on MultiApp V5.0", we consider the Criterion B to be contrary to the Act, in particular to the provisions of Section 6 and Section 36 (3) of the Act [consequently also Section 89(5) of the Act] as it is highly discriminatory, disadvantaging Contractors who are not able to offer "IAS Classic v5.2 on MultiApp V5.0" chips.

In view of the above, we therefore request you to remove Criterion B from the tender documentation, or alternatively, we request you to modify Criterion B, so that Contractors who do not offer (dispose) "IAS Classic v5.2 on MultiApp V5.0" chips, but who offer chips that are comparable, are equally awarded under Criterion B.

From our point of view it is absolutely unacceptable (strictly and clearly against the Act) that the manufacturer or supplier of one particular (precisely type-identified) chip should be favored in the procurement procedure (see decision of the Office for the Protection of Competition dated 5/11/2012, Id. No.: ÚOHS-S205/2012/VZ-20793/2012/540/MDI).

Furthermore, in our opinion, the inclusion of such a criterion (if it should favor the suppliers of "IAS Classic v5.2 on MultiApp V5.0" type of chip, only) in the tender documentation can be considered as circumvention of the law, specifically the provision of Section 89 (5) of the Act, which prohibits Contracting Authorities from setting technical conditions by direct or indirect reference to certain products.

Answer No. 1:

The Contracting Authority confirms the above, that the Contracting Authority prefers the „IAS Classic v5.2 on MultiApp V5.0” type of chip, based on a time-consuming and financially demanding analysis with an approximate calculation of the **additional costs** associated with the implementation of a different type of chip than the existing solution, i.e. “IAS Classic v5.2 on MultiApp V5.0” as well as considering the **technical and technological impacts**.

In the evaluation in criterion B, the supplier offering an “IAS Classic v5.2 on MultiApp V5.0” type of chip will receive the full number of points for that criterion, i.e. exactly 10.5 points. A supplier offering different type of chip with costs associated with the implementation of another solution shall receive zero points in this criterion B.

The Contracting Authority reached the above decision regarding the evaluation of the tenders and the percentage number of points in the individual criteria after careful consideration and a thorough, demanding analysis.

Please find below the particular answers:

- a. Yes, you understand correctly that a supplier’s tender may include chips of a type other than “IAS Classic v5.2 on MultiApp V5.0”, but will be disadvantaged in the evaluation of tenders by receiving zero points in criterion B according to Art. 9 of the Tender Documentation.
- b. No, the Contracting Authority insists that points for the criterion B shall be awarded only if the particular solution is offered. No comparable solutions is allowed to be offered in order to receive the points within the criterion B.

The Contracting Authority proceeded in accordance with the basic principles according to Sec. 6 of the Act, precisely because of the decision to favour a financially and time-effective solution in the evaluation of tenders, not by limiting the competition in the case of defining this technical condition directly in the requirements in the technical specification.

With this course of action, the Contracting Authority enabled the larger scope of suppliers to attend the tender, but in the same time the Contracting Authority is obligated to proceed with diligence (*the care of a good housekeeper/manager*).

The Contracting Authority does not understand why such a course of action could be in contrary Section 36 (3) of the Act. The Contracting Authority laid down the tender conditions and provided them to suppliers in such detail that is necessary for the participation of suppliers in the tender procedure. The Contracting Authority did not transfer its responsibility for the accuracy and completeness of the tender conditions to the suppliers.

The suppliers could participate in this tender procedure even if they do not have the existing solution (“IAS Classic v5.2 on MultiApp V5.0” type of chip) of the Contracting Authority and the criteria for evaluation of tenders are set appropriately to calculate the additional costs and technical impacts incurred by the Contracting Authority when implementing a solution other than existing one.

When the type of chip is changed compare to the existing infrastructure, there will be necessary changes (understand cost relevant influences) on the part of Contracting Authority in the systems where the chip is processed in the different process steps. These additional costs must be offset by a more favourable price (taking into account the context of the impacts). The Contracting Authority must proceed with diligence and should not be forced to bear the additional costs associated with the change in input material.

The financial impacts were recognized and quantified in the area of modifications of the system (specifically system integrators 2 and 4) as well as an area of technical support. The economic analysis also includes costs induced on the side of Contracting Authority related to the change of the existing solution in the form of the need to hire additional work capacity.

The Contracting Authority also had to take into account the technical and technological aspects and risks when defining the tender conditions.

The eOP contact chip is a key component of the so-called identity scheme of the Czech Republic from the perspective of the state's eGovernment architecture, which is an electronic identification system built in accordance with the requirements of EU Regulation 910/2014 (eIDAS), which introduces the obligation for EU Member States to build and operate mutually interoperable trusted electronic identification systems. Thanks to this system, it is possible to use the eOP contact chip as an identification means at the HIGH level (eIDAS) and thus use eGovernment services within the ecosystem of identity schemes of individual Member States.

The implementation of the contact chip has a significant technological overlap into the eGovernment environment of the Czech Republic.

Identified systems concerned within the particular case-study used in the analysis:

- Personalisation system PSeP
- Client middleware for supported desktop systems
- Client middleware for supported mobile platforms
- Server middleware
- Key Proof of Origin module
- Central CDBP system - contact chip management module
- CKA Certification Authority
- ASCA Certification Authority
- Certification Authority eIDCCA
- Certification Authority eIDTCA
- Terminal application

The list of affected systems does not have to be exhaustive; it is an example resulting from the analysis commissioned by the Contracting Authority.

Further, in case of implementation of an unknown solution, the Contracting Authority cannot exclude the risk of having to undergo an audit of the identity scheme of the Czech Republic with an uncertain result.

The fact the Contracting Authority operates the existing solution within a particular infrastructure (system) is an **objective state of affairs**. The Contracting Authority favours the

particular solution based the impacts and connotations in case of changing the solution compared to the existing solution.

In the same time expressing of the favoured solution with a different way than stating the exact name (direct reference to certain products) is not possible.

In this context, however, the Contracting Authority first of all states that it did not use the specific trade name referred to by the questioner at the level of the definition of the technical conditions and **therefore did not set out the technical conditions by direct or indirect reference within the meaning of Section 89(5) of the Act. All solutions that meet the stipulated technical specification as part of the tender documentation will be accepted by the Contracting Authority, not only those which offer “IAS Classic v5.2 on MultiApp V5.0” type of chip.**

The direct reference was used **for the purpose of the evaluation** and serves to define the economic advantageousness according to Section 114 of the Act, i.e. the degree of economic advantageousness of the evaluated solution. **In this context, the Contracting Authority emphasizes once again that, for financial, technical and technological reasons, the individual solutions on the market are not equally economically advantageous for the Contracting Authority, and therefore, in accordance with the 3E principle, it chose the given evaluation criteria, which, in addition to the tender price, also take into account the technical solution.**

For the purposes of the emergence of financial, technical and technological impacts (as described above), it is really decisive whether the supplier will offer the "IAS Classic v5.2 on MultiApp V5.0" solution. **Enabling a comparable solution is possible at the level of the subject of the offered solution (as long as it fulfils the stipulated technical specification as part of the tender documentation), but not for the purpose of obtaining points according to criterion B.**

Therefore, the Contracting Authority leaves the text in Art. 9 of the Tender Documentation, i.e., the conditions for the evaluation of tenders, in its original wording.

Question No. 2: Request for explanation of the tender documentation - Annex 1 "Framework Agreement for the Supply of Contact Chip Modules" (furthermore referred to as "Draft Contract")

Question No. 2.1: The nature of the Draft Contract

Both the title and the content of the Draft Contract indicate that it is intended to be a framework contract within the meaning of Section 131 et seq. of the Act, since specific deliveries of contact chip modules are to be made only on the basis of orders placed by the Contracting Authority and partial contracts between the Contracting Authority and the supplier, with a minimum number of chips that the Contracting Authority is obliged to purchase (namely 1.4 million units per year – as stipulates the Article IV of the Draft Contract). However, the nature of the contract



as a framework contract is not apparent from other parts of the tender documentation or from the notice of initiation of the tender procedure.

In connection with the above-mentioned ambiguity regarding the nature of the Draft Contract, can you please clarify whether the Contracting Authority intends to conclude a framework contract within the meaning of Section 131 et seq. of the Act?

Answer No. 2.1:

Indeed, the Contracting Authority did not classify the contract in question under the so-called Framework Agreement pursuant to Section 131 of the Act. This corresponds to both the heading of the contract and the information in the Public Procurement Bulletin (notice of initiation of the tender procedure).

Result of the tender procedure is not a conclusion of the framework agreement in the sense of Section 131 of the Act, but a framework contract as so-called untitled contract within the meaning of Section 1746 Paragraph 2 of Act No. 89/2012 Coll., Civil Code, as amended.

Question No. 2.2: Duration of the Draft Contract

According to Article XIII (2) of the Draft Contract, the contract is to be concluded for a period of 11 years from the moment of its entry into force.

Could you please inform us for what reason(s) did the Contracting Authority set the duration of the contract at an excess period of 11 years?

If the Draft Contract is to be a framework agreement within the meaning of Section 131 et seq. of the Act, can you please provide us with reasons for setting the duration of the Draft Contract at 11 years, taking into account the provisions of Section 131(3) of the Act, which states that the duration of the relationship under a framework agreement shall not exceed 4 years, except in exceptional and duly justified cases related to the subject matter of the framework agreement?

Answer No. 2.2:

The Contracting Authority states that the reason for the duration of the contract beyond 4 years, is a qualified and reasonable expectation that the follow-on contract with the Ministry of the Interior for the production and supply of travel documents with biometric elements will again be for 10 years.

The Contracting Authority is a state-owned enterprise, which was established primarily to provide state services in the field of the delivery of valuables, which includes eOP. The Contracting Authority is obliged to comply with contractual obligations towards its clients, which



include the Ministry of the Interior. In a situation where the Ministry of the Interior is entrusted by the government of the Czech Republic with the production of eOP, it "transfers" this task further to the Contracting Authority, as its contractual partner. The Contracting Authority is then indirectly obliged to comply with the relevant resolutions of the government of the Czech Republic.

As it was described above, the financial and technical and technological risks **are significant** when it comes to implement a new / different solution. It could not be in accordance with the principle of a good householder, or principle 3E, if the Contracting Authority was to purchase the solution **for a shorter period of time (than the contract with the client)** and thus expose itself to the risk of incurring significant costs without a due reason, which could not be by that time include to the prices to the customer at the same time.

The Contracting Authority hereby states as well, the implementation of a new / different solution induces also the time demands, the technological integration of the new contact chip will require approximately 12 months, while this period applies only to systems that are managed within the CDBP Project. For any affected external systems, the implementation time cannot be estimated with the current knowledge of the situation.

The stated 12 months assumes a standard implementation time in the event that there are no significant technical complications. Based on historical experience and taking into account the technological complexity, a number of technical complications can be expected, which can significantly extend the implementation time and thus jeopardize the planned date of deploying the required change into production.

The Contracting Authority cannot jeopardize such a fundamental delivery of eOP documents to its contractual customer during the contract period.

Question No. 2.3: Contractual penalties set in the Draft Contract

Article X. of the Draft Contract contains the following sanctions:

1. In the case of Seller's delay with the delivery of the Chips within the term according to Article IV Paragraph 2 of the Draft Contract the Seller is obliged to pay a contractual penalty to the Buyer in the amount of 0.5 % of the price (excluding VAT) of delivery of the Chips or its part with the delivery of which the Seller is in delay, for each started day of such delay, up to the maximum of 20 % of the price of the delayed Chips or its part.
2. In the case of the Seller's delay in settling a warranty claim within the period specified in Article VII Paragraph 4 or 5 hereof, the Seller is obliged to pay a contractual penalty to the Buyer in the amount of 0.5 % of the price (excluding VAT) of the defective Chips, for each started day of such delay, up to the maximum of 20 % of the price of the defective Chips.
3. In the case that Implementation and successful completion of tests/verification shall not be completed within the term pursuant to Article II Paragraph 9 hereof, the Seller is obliged to pay a contractual penalty to the Buyer in the amount of EUR 1.000 for each started day of such delay.



4. In the case of violation of the obligations resulting from Article VIII hereof, the Seller is obliged to pay a contractual penalty to the Buyer in the amount of EUR 7 850 for each discovered case of violation of these obligations.

5. In the case of violation Seller's obligation resulting from Article IX Paragraph 2 point d) hereof or its obligation in Article XIV Paragraph 7 hereof, the Seller is obliged to pay a contractual penalty in the amount of EUR 100 for each started day such a violation.

6. In the event of a breach of any of the obligations in Article IX Paragraph 14 or 15 hereof by the Seller, or if the statement in Article IX Paragraph 13 hereof turns out to be false, the Buyer has the right to impose a contractual penalty in the amount of EUR 4 000 on the Seller, namely for each individual violation.

Article X. paragraph 8 of the Draft Contract further states that stipulating the contractual penalty is without prejudice of the right to compensation of any incurred harm to full extent.

We consider the above contractual penalties to be disproportionately high (excessive). Those contractual penalties do not reflect the importance of the secured obligations and do not correspond to the damages threatening as a result of breach of the respective obligations. According to the decision-making practice of the courts of the Czech Republic as well as the Office for the Protection of Competition, the contractual penalty and its reasonableness must be determined by the Contracting Authority in such a way that it fulfils the function(s) required by the Contracting Authority and does not constitute an excessive, i.e. discriminatory obstacle to a proper competitive environment. According to the decision-making practice of the Office for the Protection of Competition, contractual penalties in an excessive (disproportionate) amount are discriminatory towards smaller suppliers for whom it represents a disproportionate business risk (if excessive contractual penalties may have a liquidating effect on them) and as a result they will not submit a tender; consequently, excessive penalties result in a significantly restricted competitive environment contrary to Article 6 of the Act.

The above is all the more serious because, in addition to (excessive) contractual penalties, damages can also be claimed in full (see Article X paragraph 8 of the Draft Contract).

In view of the above, we respectfully request you to reduce the above contractual penalties to a reasonable amount. In this regard, we kindly ask you to consider the following modification of the contractual penalties:

1. In the case of Seller's delay with the delivery of the Chips within the term according to Article IV Paragraph 2 of the Draft Contract the Seller is obliged to pay a contractual penalty to the Buyer in the amount of 0.1 % of the price (excluding VAT) of delivery of the Chips or its part with the delivery of which the Seller is in delay, for each started day of such delay, up to the maximum of 10 % of the price of the delayed Chips or its part.

2. In the case of the Seller's delay in settling a warranty claim within the period specified in Article VII Paragraph 4 or 5 hereof, the Seller is obliged to pay a contractual penalty to the Buyer in the amount of 0.1 % of the price (excluding VAT) of the defective Chips, for each started day of such delay, up to the maximum of 10 % of the price of the defective Chips.

3. In the case that Implementation and successful completion of tests/verification shall not be completed within the term pursuant to Article II Paragraph 9 hereof, the Seller is obliged to pay a contractual penalty to the Buyer in the amount of EUR 200 for each started day of such delay.



4. In the case of violation of the obligations resulting from Article VIII hereof, the Seller is obliged to pay a contractual penalty to the Buyer in the amount of EUR 1 000 for each discovered case of violation of these obligations.

5. In the case of violation Seller's obligation resulting from Article IX Paragraph 2 point d) hereof or its obligation in Article XIV Paragraph 7 hereof, the Seller is obliged to pay a contractual penalty in the amount of EUR 50 for each started day such a violation.

6. In the event of a breach of any of the obligations in Article IX Paragraph 14 or 15 hereof by the Seller, or if the statement in Article IX Paragraph 13 hereof turns out to be false, the Buyer has the right to impose a contractual penalty in the amount of EUR 1 000 on the Seller, namely for each individual violation.

We also propose to modify Article X. paragraph 8 of the Draft Contract in such a manner that the Contracting Authority is entitled to compensation of incurred harm only to the extent exceeding the agreed contractual penalties referred to in points 1 - 6 above.

In the event that the above amounts of contractual penalties ad 1 - 6 in the Draft Contract are not reduced by the Contracting Authority to an amount that may be considered reasonable and the relation between the contractual penalties and the right to compensation is not modified as proposed above, we respectfully request you to justify your demand to maintain the contractual penalties and their relation to right to compensation as stated in the Draft Contract, respectively, please provide us with reasons for the Contracting Authority's insisting on contractual penalties in the amount currently specified in the Draft Contract and their relation to right to compensation.

Answer No. 2.3:

The identity card is a key document for citizens of the Czech Republic and therefore the issuance of this document must not be compromised in any way. The penalties are not only a formal part of the agreement but are intended to be sufficiently motivating for compliance with the contractual arrangements.

The fact that the penalties are limited in amount (at only 20 %) means that they are financially limited and allow a wider range of suppliers to participate.

The Contracting Authority has faced limited supply of this product in recent years and therefore, as a service guarantor to Ministry of Interior is critical to be able to select a quality supplier that will be able to meet all its obligations.

The Contracting Authority therefore leaves the original wording in the Draft Contract, regarding the above-mentioned points 1-6 (quoted penalties).

The Contracting Authority further states that it has made a change in Art. X (8) of the Draft Contract as a reaction to the proposal of the supplier. The Contracting Authority has not fully



accepted the proposal, but the Contracting Authority added the maximum limitation of compensation of incurred harm.

The new wording is stated in the updated Draft Contract (Annex 1 hereof).

The Suppliers are requested to use this amended version of the Draft Contract in their tenders.

Question No. 3: Request for clarification of the tender documentation - Annex 1a to the Draft Contract

Annex No. 1 – part No. 1a to the Draft Contract contains general technical specification and requirements. However some of the requirements are, in our opinion, unclear when the Contracting Authority uses terms such as "preferred functionality", "preferred variant", "optional requirement", "strongly recommended", and it is not clear to us what the impact of meeting or not meeting such requirements will be (when it is not reflected in any way in the evaluation criteria in the tender documentation). Specifically, we refer to the following requirements:

- Paragraph 1.2. "Chip OS requirements" states: "Following the Regulation EU 2019/881 (Cybersecurity Act) and the new EU CC scheme being deployed by ENISA, it is strongly recommended that the card operating system should be able to be patched in documents deployed in the field. STC considers this as a mandatory requirement."

- In Paragraph 1.3. On board applications (applets) states:

- o "The Czech eID implementation hosts two instances of one PKI applet on the chip. The first instance of the PKI applet is configured for the purpose of electronic signature authentication – standard PKI functionality. The second instance of the PKI applet is specifically configured for the purpose of authentication functionality which is used to access e-government services. The possibility to create two instances of PKI applet is preferable functionality."

- o "APPLET 1: Applet for authentication Asymmetric Secure Messaging (preferable with ECC keys)"

- o "APPLET 2: Applet for electronic signature: Support of MS Session PIN (at least for one PIN object) – preferable feature, Asymmetric Secure Messaging (preferable with ECC keys)"

- o "Our ID card solution assumes any cryptographic mechanism, even non-standard, on the basis of which it is clearly demonstrable that the key was generated by card generation (and not import). The preferred variant is based on asymmetric algorithms."

- Paragraph 1.4. CC and SSCD certification requirements includes "OPTIONAL REQUIREMENT: The chip module should be listed in the list of qualified devices: https://esignature.ec.europa.eu/efda/notification-tool/#/screen/browse/list/QSCD_SSCD"

In connection with paragraph 1.2 could you please clarify, if the said requirement is mandatory or recommended? If the requirement is mandatory, what are the consequences if the supplier fails to comply with it?



In connection with paragraph 1.3 could you please clarify what the term “preferable” means, respectively what the impact will be if the "preferred" options are or are not met?

In connection with paragraph 1.4 could you please clarify what it is meant by the term "optional" and what is the impact of meeting or not meeting this requirement?

compensation.

Answer No. 3:

In connection with paragraph 1.2 to the Annex No. 1a of the Draft Contract “General Technical Specification”, the said requirement is mandatory. If the supplier fails to comply with it, it means that the participant has not met the conditions of the Tender Documentation and will be excluded from the tender procedure.

In connection with paragraph 1.3 to the Annex No. 1a of the Draft Contract “General Technical Specification”, term “preferable” means, that the said requirement is not mandatory. There is no impact if the "preferred" options are not met.

In connection with paragraph 1.4 to the Annex No. 1a of the Draft Contract “General Technical Specification”, the term "optional" means, that said requirement is not mandatory. There is no impact if this requirement is not met.

From failure to meet the stated requirements, mentioned as “preferred, recommended, etc.” there are no consequences for the supplier.

Question No. 4: Draft Contract - VII. Liability for defects and warranty, IX. – Special provisions

Seller hereby kindly suggests to modify some provisions of the draft Framework Agreement for the Supply of Contact Chip Modules (for the purpose of the present request for clarification hereafter referred to as the “Draft Contract”) in order to clarify certain matters or to agree upon provisions which have already been agreed upon between the Seller and Buyer in past contracts for the supply of chip modules.

Seller kindly suggests to amend the first paragraph of ARTICLE VII. LIABILITY FOR DEFECTS AND WARRANTY of the Draft Contract as following:

“1. The Seller warrants the Chips against design, manufacturing or material defects *which prevent the Chips from functioning in accordance with the Chips' Technical specifications set out in Annex No. 1 to this Framework Agreement* for a period of 11 years following the date of delivery. Termination of the Framework Agreement does not release the Seller from its warranty obligations of the Chips delivered prior to the date of termination of the Framework Agreement. The Warranty shall apply in case the defects are discovered by Buyer, while the Buyer is entitled to perform a more detailed analysis of the defects. The Seller is entitled to perform counter analysis, which proves the cause of Chip defects. In the case that



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it will be proved that the Chips are defective due to a material default, the Seller is responsible for these defects. "Seller kindly suggests to add a paragraph 18. in Article IX. SPECIAL PROVISIONS, OTHER RIGHTS AND OBLIGATION OF PARTIES of the Draft Contract as following:

"18. In no event shall Seller's total cumulative liability resulting from the performance, bad performance or non-performance of its contractual obligations under the Agreement, for whatever reason, exceed in aggregate the total sums paid to the Seller during the last twelve (12) months preceding the event leading to the claim for damages."

Answer No. 4:

The Contracting Authority further states that it has made a change in Art. VII (1) of the Draft Contract in a similar sense to the wording proposed by the supplier.

The Contracting Authority further states that it has made a change in Art. IX of the Draft Contract in a similar sense to the wording proposed by the supplier, by adding paragraph 18.

The Contracting Authority accommodates the supplier and it added the proposed limitation of liability (Seller's total cumulative liability). However, to avoid any future doubt or disputes when calculating the sum of the limitation, the wording proposed by the supplier was clarified. Regarding the second sentence of the newly added paragraph 18, the Contracting Authority explicitly explains that this sentence was added for case there would be no partial contracts in the previous 12 months (and therefore it would not be possible to calculate the sum according to the first sentence of Paragraph 18). The Contracting Authority further states that the stated amount of 1 008 000 EUR is set as 1/11 of the total estimated value of this public contract, i.e. the amount for 1 year of the estimated value.

The new wording is stated in the updated Draft Contract (Annex 1 hereof).

The Suppliers are requested to use this amended version of the Draft Contract in their tenders.

Question No. 5: Draft Contract - II. Subject matter of the framework agreement

Seller kindly suggests to amend the second paragraph of II. SUBJECT MATTER OF THE FRAMEWORK AGREEMENT of the Draft Contract as following:

"2. The Buyer undertakes to accept the Chips, duly delivered as regards the required quantity, type and quality of the Chips ***in accordance with the Chip's Technical specifications set out in Annex No.1 to this Framework Agreement***, and pay for the Chips the price specified under Article V hereof."



Answer No. 5:

The Contracting Authority states that it has made a change in Art. II (2) of the Draft Contract in a similar sense to the wording proposed by the supplier.

The new wording is stated in the updated Draft Contract (Annex 1 hereof).

The Suppliers are requested to use this amended version of the Draft Contract in their tenders.

Addition:

With the above changes in the Draft Contract, the Contracting Authority informs that the business name and registered office of the Contracting Authority was updated in the Draft Contract due to change of registration in the commercial register during the tender procedure.

Conclusion:

The Contracting Authority does consider above mentioned answers as alteration or supplementation of the tender documentation by which the scope of possible participants may be extended, **mainly due to alteration of the contractual terms**, the Contracting Authority extends the time limit to be at least as long from the moment of sending the alteration or supplementation as the original time limit:

Time limit for the submission of tenders:

- **original time limit for the submission of tenders:** until 24.07.2023, 9:00 AM
- **new time limit for the submission of tenders:** until 31.08.2023, 9:00 AM
- **opening of tenders:** after the expiry of the limit for the submission of tenders

Annexes:

- 1) Draft Contract_rev20072023

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In Prague, dated *as per the electronic signature*

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