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(hereinafter referred to as „Contracting Authority")

EXPLANATION OF TENDER DOCUMENTATION – VII.

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 Procurement, as amended (hereinafter referred to as "Act"), hereby explains the tender documentation in accordance with Sec. 98 of the Act.

Question No. 1: Request for clarification regarding Article 9 of the tender documentation

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 advantageousness 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 % (hereinafter also referred to as "Criterion A").

(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 provides, among others, 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 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."*

Since we had found the description of evaluation under the Criterion B to be unclear and, in particular, highly discriminatory, we requested the Contracting Authority for clarification as regards the Criterion B in our request for clarification dated June 29, 2023. Specifically - in connection with the Criterion B - we requested for clarification regarding the following: (i) whether 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 bids by receiving 0 points in Criterion B according to Article 9 of the tender documentation, (ii) whether the contracting authority allows the supplier to offer a solution comparable to "IAS Classic v5.2 on MultiApp V5.0", and if so, whether the bid containing such a solution comparable to "IAS Classic v5.2 on MultiApp V5.0" will be evaluated with 10.5 points in sub-criterion B.

Following our request dated June 29, 2023, we received a response "EXPLANTION AND CHANGE OF TENDER DOCUMENTATION – VI." (ref. n. STC/012188,ÚSV/2021/25) dated 20 July 2023 (hereinafter referred to as "Explanation"). In the Explanation the Contracting Authority answered that according to the Criterion B "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" and 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."

Regarding the Criterion B the Contracting Authority in the Explanation further states that it prefers Contractor's bids containing 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." and " 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. "

However, it is not clear on the basis of what analysis or on what data the Contracting Authority came to the conclusion that the solution "IAS Classic v5.2 on MultiApp V5.0" should be preferred, apart from general statements that the preferred solution is financially and time-effective and other solution will bring higher costs, and the general statement that the Contracting Authority is obligated to proceed with diligence (the care of a good housekeeper/manager). No specific information or data were provided within the Explanation, neither any specific information on costs and time impact expected due to necessity of implementation of other than preferred solution was provided. From the Explanation it is also not evident what necessary changes (cost relevant influences) and to what extent would be

incurred by the Contracting Authority by implementing different solution than the "IAS Classic v5.2 on MultiApp V5.0".

Moreover the Contracting Authority's argumentation of additional costs incurred by the Contracting Authority that may arise from the implementation of other solution than "IAS Classic v5.2 to MultiApp V5.0" is in our opinion not only incomplete (unclear) but also incorrect (not reflecting all relevant facts), since the Contracting Authority does not take into account other relevant circumstances (aspects) regarding the costs incurred on their part, such as the period of the Contract and the number of chips supplied during the period, which must be inevitably also reflected in the costs. We consider the Contracting Authority's argumentation to be purely purpose-built and unjustified (unsustainable), made in an unjustified attempt to favor a particular supplier in the competition.

We are of the opinion that the Contracting Authority does not proceed with due diligence (and according to principle 3 E) if it insists to require the preferred solution (resp. to favor the above-mentioned preferred solution within evaluation of bids), which can be demonstrated by the following example, where two suppliers submit their bids in a tender procedure, but only one of them offers the unreasonably preferred solution.

First supplier submits a bid offering the solution "IAS Classic v5.2 on MultiApp V5.0" with unit bid price of 0.60 EUR ("Supplier 1"). The second supplier submits a bid with unit bid price of 0.53 EUR, but he does not offer the solution "IAS Classic v5.2 on MultiApp V5.0" (offering similar/comparable or better solution) ("Supplier 2").

According to the method of evaluation set out in the Article 9 of the tender documentation the Supplier 1 would receive 79.05 points under the Criterion A and 10.5 points under the Criterion B. The Supplier 2 would receive 89.5 points under the Criterion A and 0 points under the Criterion B.

In the above-described case the Supplier 1 would receive total of 89.55 points. The Supplier 2 would receive total of 89.50 points. By achieving higher score the Supplier 1 would be selected as the winner and would be awarded the contract.

According to the Section IV par. 1 of the Draft Contract (Annex 1 to the Tender Documentation): "*The Buyer undertakes to order at least the following quantity of Chips for every calendar year of duration of this Framework Agreement (annual minimal binding quantity):* 1 400 000 pieces of Chips." According to the Section XIII. par. 2 of the Draft Contract *"This Framework Agreement is concluded for a definite period of time, namely for period of 11 years from taking effect of the Framework Agreement."* In view of the aforementioned provisions of the Draft Contract, the minimal binding quantity of Chips, that the Buyer (Contracting Authority) has to order for the period of 11 years is 15,400,000 pieces. According to the Section 5.1 of the tender documentation: *"The Contracting Authority states that the maximum tender price for 1 piece of Chip is 0,720 EUR excl. VAT."*

Taking into account the mentioned provisions of the Draft Contract, the total price of the offered chips (taking into account the minimum binding quantity) by the Supplier 1 (who offered "IAS Classic v5.2 on MultiApp V5.0" solution with the unit price of a chip 0.60 EUR) would be

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9,240,000 EUR (0.60 x 15,400,000). On the other hand the total price of the Supplier 2 who does not offer "IAS Classic v5.2 on MultiApp V5.0" and offers the unit price of 0.53 EUR would be 8,162,000 EUR (0.53 x 15,400,000). The difference between the total price of the delivered chips (taking into account the minimum binding quantity) of the Supplier 1 and the Supplier 2 is in the total amount of 1,078,000 EUR. Since we expect that the amount of chips to be delivered will exceed the minimum binding quantity at least in most of the years of the duration of the contract, the difference in price to be paid by the Contracting Authority would be even higher.

According to our calculations and expertise the additional costs associated with the implementation of a different type of chip than "IAS Classic v5.2 on MultiApp V5.0" can be estimated at 30,000 – 50,000 EUR in total, considering alternative product to preferred "IAS Classic v5.2 on MultiApp V5.0" that meet fully requests set by tendering authorities for global standards, such as Global platform (GP v2.3), Java OS version (compliant with 3.0.4), compliance with eIDAS and EN 419211 parts 1,2,4, HASH algorithms, RSA key management, ECC keys management, and following regulation of EU2019/881.

Based on the above, it is clear that the Contracting Authority's argumentation regarding the alleged increased costs associated with the implementation of a different solution than the "IAS Classic v5.2 on MultiApp V5.0" (which may be quite insignificant compared to the total cost of the chips of the preferred solution) is completely inappropriate.

In the view of the above we consider the Criterion B to be disproportionate and unreasonable, and especially (as we already said in our previous request) highly discriminatory, disadvantaging Contractors who are not able to offer "IAS Classic v5.2 on MultiApp V5.0" chips and therefore 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].

In view of the above, we therefore repeatedly request you to remove the Criterion B from the tender documentation, or alternatively, we request you to modify the 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 (or even better), are equally awarded under Criterion B. Otherwise, we are ready to submit objections (and, if necessary, a motion for review of the Contracting Authority's actions to the Office for the Protection of Competition) against the method of evaluation of bids set by the Contracting Authority within the statutory deadline.

Answer No. 1:

As the Contracting Authority has already stated in the Explanation and change of the Tender Documentation IV., the Contracting Authority devoted proper preparation to the setting of the evaluation criteria and thus rejects the allegation that the processing of the tender conditions was based only on general considerations and statements.

The Contracting Authority commissioned an analysis from an external supplier, which captures the real time and financial impacts associated with the implementation of a different solution from "IAS Classic v5.2 on MultiApp V5.0", **namely the most frequently used competitive solution on the market (this solution occupies more than half of on the market).** From this analysis, which took over 2 months of time and the financial cost **480 650 CZK**, came the calculation of the expected financial costs of implementing the chosen different solution from "IAS Classic v5.2 on MultiApp V5.0", which is multiple times higher value, than the one reached by the supplier (hereinafter **"External Analysis").**

Based on the experience of the Contracting Authority with chip version changes, the cost of 30 000 – 50 000 EUR incurred by the supplier is only realistic in the case of a generation change of an identical product, i.e., implementation of a higher product line, or in general it is only part of the cost of implementing a different solution.

The Contracting Authority sincerely believes that it is not possible for the supplier to correctly identify the real impacts associated with the implementation of a different solution from "IAS Classic v5.2 on MultiApp V5.0" and therefore it is not possible to realistically determinate the future costs for this change by the supplier. The change of chip type requires demanding software modifications, especially in the internal systems of the Contracting Authority, whose architecture may not be known to the supplier, and has an impact on many parts of the eID system in the Czech Republic, as the Contracting Authority has also stated in the previous Explanation and Change of Tender Documentation.

For an idea, the Contracting Authority again gives an example of systems that are involved in the preparation on the side of the Contracting Authority, which have to be changed in case of a change of chip supplier:

- Impact on the CKA system
- Impact on the personalisation process
- Impact on the contact chip management module
- Impact on the terminal application module
- Impact on server middleware modules
- Impact on client middleware modules
- Impact on mobile middleware modules
- Impact on the eIDCCA system
- Impact on the eIDTCA system

The reason for processing the external analysis was precisely so that the completition would not be closed by narrowing the technical parametres to the existing solution of the Contracting Authority and so that the Contracting Authority would take into account the real technical and technological risks and financial impacts associated with the adopting of a different solution from "IAS Classic v5.2 on MultiApp V5.0", and thus, with due care set the % disadvantage for suppliers who don´t have the "IAS Classic v5.2 on MultiApp V5.0" solution, which will always bring risks to the Contracting Authority.

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The results of the External Analysis were further used for the subsequent calculation of the percentage under evaluation criterion B, as follows:

- **Costs of changing the solution:**
  Costs considering and reflecting the labour intensity of the part of individual suppliers throughout the supply chain (data mainly from External Analysis) i.e., in particular the price and frequency of expected man-hours of programming and other activities, operational support, etc., and at the same time for example the internal costs of the Contracting Authority for project the costs involved in bringing about such a change. In contrast, the Contracting Authority states that not all risks associated with changing the type of chip, which are known to it from experience, but cannot be determined, analysed and quantified in advance, have been taken into account.

- **Volume of received performance:**
  In this part, the Contracting Authority took into account the duration of the planned contract, i.e. 11 years, and the expected annual purchase, i.e. 1 400 000 of chips, and the information about the price of chips on the market that the Contracting Authority was able to have at the time of the start of the public contract.

  The Contracting Authority adds that to set up the evaluation model, a market survey was carried out (period 02/2023), when possible delivery conditions were identified with regard to the circumstances of the project on the side of the Contracting Authority (contract length, minimum delivery quantity, inflation clause, volumes, delivery time, etc.).

- **Cost ratio:**
  From the above-mentioned inputs, the Contracting Authority then calculated **the ratio of the costs of changing the solution to the volume of the expected performance, which corresponds to 10,5%, and accordingly chose the value for the evaluation formula.**
  According to the procedure described above, the Contracting Authority always chose **a conservative estimate, the so-called middle way,** and based it on the data available on the market at the time. Considering the expected market behaviour of the bidders for the contract and the overall current trend in the chip supply market, it can be noted that it is not excluded that the Contracting Authority would have a basis for determining an even higher percentage disadvantage of a different solution from "IAS Classic v5.2 on MultiApp V5.0", than was chosen in the Tender Documentation, as the ratio of the costs of the change to the volume of the expected deliveries tends to increase over time.

The Contracting Authority thus made the required effort to set the most reasonable assessment of the economic advantage of the requested solution to its need, based on the knowledge available at the time of the start of the public contract. Since the costs of changing the existing

solution are significant, the Contracting Authority had to take their amount into account when preparing the tender conditions to be able to comprehensively evaluate the advantage of the received tenders.

The Contracting Authority has therefore decided not to change the tender conditions and leaves them in the same wording, as it doesn´t find the tender conditions to be unreasonably discriminatory, as the supplies can offer any solution according to the technical conditions of the Contracting Authority.

The Contracting Authority considers the advantage of the existing solution in the evaluation to be reasonable, carefully analysed ant thus proceeding with due care and in accordance with 3E principles.

Question No. 2: Request for explanation of the tender documentation – Annex 6 – ACCEPTANCE PROCEDURE OF SAMPLE SET 1 TESTING

According to the Annex 6 – "ACCEPTANCE PROCEDURE OF SAMPLE SET 1 TESTING" to the tender documentation, the tested samples have to fulfill "General functionality requirements", whereas one of the required functionality that has to be fulfilled is: "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." (hereinafter referred to as the "Requirement").

According to our understanding of the Annex 6, the Contracting Authority considers the Requirement to be mandatory (the Requirement must be met in order for the supplied samples to be accepted for testing; see Annex 6: " For acceptance of delivered samples for testing and for fulfillment of the requirement for testing, the results have to be 100 % "YES"); Therefore a supplier who will not offer chips complying with the Requirement: "card operating system should be able to be patched in documents deployed in the field" should be disqualified.

Shall the Requirement be mandatory, can you please clarify, whether our conclusion that to regulation EU 2019/881 (Cybersecurity Act) and the new EU CC scheme being deployed by ENISA, is correct in the following respect:

1. All elements of the chip specified in the tender documentation need to be patched in all identification documents deployed in the field having on board user (citizen) data?

2. Following this understanding please explain if User data shall be saved on the card to avoid unnecessary personalization process for particular user during and after the patch process

In view of the above terms of the tender documentation provided in the Annex 6, do we understand correctly that the Requirement is mandatory, i.e. if the supplier offers samples - cards, which do not comply with the Regulation EU 2019/881 (Cybersecurity Act) and the new EU CC scheme being deployed by ENISA, these samples will not be accepted and therefore such a supplier will be disqualified/excluded from the tender procedure?

Answer No. 2:

The Contracting Authority states that EU CC scheme does not define a specific technical way of implementing patching functionality. For this reason, both partial questions No. 1 and No. 2 cannot be answered unequivocally. At the same time, the Contracting Authority believes that in the case of some types of cryptographic vulnerabilities (e.g. MINERVA vulnerability) it does not make sense to preserve user data (e.g. keys).

The Contracting Authority also understands that the method of implementation of the patching functionality mechanism can be implemented by individual chip suppliers in different ways and with different properties for individual types of chips.

In view of the above information, the Contracting Authority does not look at the method of implementation of the patching functionality, Contracting Authority looks only at the fact whether the offered chip supports or doesn't, the functionality of secure patching.

Therefore, supplier will be disqualified/excluded from the tender procedure only in the case if the offered chip does not support secure patching functionality in general. Technical parameters of the secure patching implementation are not decisive for the evaluation process.

Question No. 3: Request for clarification of the tender documentation – transport security requirements

The tender documentation in Section 8.4.2 "Security process with respect to management of security printing processes" stipulates that: "In accordance with the provision under Section 79 (2)(e) of the Act, the Contractor shall prove, that it has implemented security processes to ensure the production security integrity (transport incl.) within the performance of the subject matter of the Public Contract in the minimal level of the "ISO 14298 Management of security printing processes" or "CWA 15374 Security management system for suppliers to the security printing industry", respectively requirements 1-12 stated in the Annex no. 4 of the Draft Contract, whereas all the requirements stated there are based on the requirements of ISO 14298 and CWA 15374 and must be interpreted in accordance with ISO 14298 and CWA 15374."

The mentioned requirement stipulated in the tender documentation regarding transport of the chips is in our opinion inadequate (unreasonable) given the fact that the chips to be supplied will contain no data that should be protected, respectively will not contain any data.

In connection with the above-mentioned could you please clarify whether the Contracting Authority actually requires the suppliers (and if so, why) to take such security measures regarding the transport of the chips that do not yet bear/contain any data (as stipulated in Section 8.4.2 of the tender documentation)? If there is no relevant reason for such requirement

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in respect of the chips' transport, please consider removing the text "(transport incl.)" from the above-specified provision of the tender documentation.

Answer No. 3:

The Contracting Authority states that the requirements for security transport have already been removed from the draft contract (Annex No. 1 of the Tender Documentation), specifically by answering the supplier´s question in the "Explanation and change of the Tender Documentation IV.", which was accompanied with the extension of the tender submission deadline, and therefore the **Contracting Authority confirms that it is not required for suppliers to take security measures regarding the transport of chips.**

The Contracting Authority is thus aware that the above-mentioned addendum "transport incl." sounds misleading with this regard.

On the basis of the above, the Contracting Authority agrees to remove the addendum "transport incl." from Art. 8.4.2 and also 14.3.1 of the Tender Documentation.

Conclusion:

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.

Annexes:

1) Tender Documentation_Contact Chip Modules_rev23082023

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