



EXPLANATION OF PROCUREMENT DOCUMENTS No. 1

IDENTIFICATION INFORMATION OF THE CONTRACTING AUTHORITY

I.

Name of the Contracting Authority	VSB – Technical University Ostrava
Registered office	17. listopadu 2172/15, 708 00 Ostrava-Poruba, CZ
Corporate ID	61989100
Person authorised to act on behalf	prof. RNDr. Václav Snášel, CSc. – Rector
Contact person	Ing. Jan Juřena, e-mail jan.jurena@vsb.cz
Profile of the contracting authority (hereinafter “VSB – TUO”)	https://zakazky.vsb.cz/

II.

Name of the Contracting Authority	The European High-Performance Computing Joint Undertaking
Registered office (hereinafter “EUROHPC JU”)	12, Rue Guillaume J. Croll, L-1882 Luxembourg, LUX

(VSB – TUO JU hereinafter jointly as the “Contracting Authority”)

VSB – TUO is "the lead contracting authority" and the only contact point between the Contracting Authorities and economic operators for the purposes of the procurement.

On 22 April 2020 the Contracting Authority received questions regarding the tender documents delivered by an economic operator. Therefore, according to Section 98 (3) of Act No. 134/2016 Coll., on Public Procurement, as amended (hereinafter the “Act”) the Contracting Authority provides the explanation of procurement documents below.

Question No. 1

In spec SPEC_301 there is requirement to provide a storage for collected data with the total capacity of at least 20TB. Does this requirement count with raw capacity of delivered storages with F/S on top of it (useable capacity from OS perspective) for Elasticsearch storage spread over three clustered nodes ignoring settings of Elasticsearch replicas?

Contracting’s Authority response to Question. No. 1

Regarding SPEC_301, the total capacity of a storage for collected data is the sum of storage capacities allocated to Elasticsearch cluster members (nodes) for storing Elasticsearch data as reported by Elasticsearch software. These storage capacities must be available and dedicated only for Elasticsearch cluster use. Elasticsearch REST API should be used for obtaining storage capacities, e.g. URI `"/_cat/allocation?v&bytes=b"`, attribute `disk.total` (see <https://www.elastic.co/guide/en/elasticsearch/reference/current/cat-allocation.html> for details). Settings of Elasticsearch replicas is ignored for the capacity calculation.

Question No. 2

The contracting authority states two fixed amounts in paragraph 12.6 of the Contract as the basis for invoicing. In the first case, EUR 5.130.000 is directly invoiced to EUROHPC JU in EUR currency, so there is no exchange rate risk. In the second case, a fixed amount of EUR 9.725.000 is set, which, however, is to be converted into Czech crowns using the Czech National Bank exchange rate at the date of acceptance of the respective phase (milestone no.18). The condition still applies that the total invoiced amount for the second phase which will be in CZK does not exceed the amount of 251.800.000 CZK. Considering current turbulent and unpredictable situation when the exchange rates exhibit significant fluctuation in magnitude of several percent and considering invoicing that will be effective after about 12 months, this condition places a significant risk on the Supplier, where, according to the current wording of the contract, the Supplier bears the difference in the exchange rate. Specific example: $9.725.000 * 27,450$ (today's CNB exchange rate) = 266.951.250 CZK. In this case, according to the current wording of the contract, the Supplier shall be obliged to bear the considerable burden of the difference of CZK 15.151.250 (251.800.000 – 266.951.250). The Supplier considers this condition of the contract to be inadequate and therefore in contradiction with the principles of §6 of the Public Procurement Act.

With respect to above stated concerns, would it be possible to add to the contract a condition that the exchange rate risk will be taken into account? For example, when the exchange rate is increased by min. 3% comparing to the exchange rate of 25.892CZK / 1EUR, the maximum amount of CZK 251.800.000 is not applicable and the Supplier will issue an invoice for the amount in Czech crowns representing the conversion of EUR 9.725.000 by the CNB exchange rate applicable on the date of milestone No. 18? OR Would it be possible to formulate the price of the contract deliverables as a fixed amount, when the first phase invoice for EUR 5.130.000 would be issued directly to EUROHPC JU and the second phase invoice for the amount of CZK 251.800.000 to the Contracting Authority?

Czech version of the Question No 2 follows:

Dotaz 2:

Zadavatel v odst. 12.6 smlouvy uvádí dvě pevně dané částky jako podklad k fakturaci. V prvním případě je částka EUR 5.130.000 přímo fakturována EUROHPC JU v měně EUR, tudíž nehrozí žádné kurzové riziko.

Ve druhém případě je však stanovena pevná částka EUR 9.725.000, která však má být přepočtena na koruny české kurzem ČNB aktuálním ke dni akceptace dané fáze (tzn. po milníku č. 18). To však za podmínky, že celková fakturovaná částka za druhou fázi nepřekročí částku 251,800,000,- korun českých. Za současné zcela nepředvídatelné a turbolentní situace, kdy kurz měny CZK/EUR zaznamenává velké výkyvy v řádu jednotek procent a při vědomí toho, že k fakturaci druhé fáze dojde až cca za 12 měsíců klade tato podmínka na Dodavatele značné riziko, kdy podle současného znění smlouvy Dodavatel nese tíži kurzového rozdílu. Konkrétní příklad: $9.725.000 * 27,450$ (dnešní kurz ČNB) = 266.951.250 korun českých. V tomto případě, tedy dle aktuálního znění smlouvy, nutí Zadavatel Dodavatele, aby ke své tíži nesl nezanedbatelné břímě rozdílu ve výši 15.151.250,- Kč (251.800.000 – 266.951.250). Tuto podmínku smlouvy Dodavatel vnímá jako nepřiměřenou a tudíž v rozporu se zásadami §6 ZZVZ.

Bylo by tedy možné s ohledem na výše uvedené do smlouvy doplnit podmínku, která bude zohledňovat kurzové riziko, v tom smyslu, že např. při zvýšení kurzu o min. 3% oproti kurzu 25,892CZK/1EUR se maximální výše částky CZK251.800.000,- neaplikuje a Dodavatel vystaví fakturu na částku v korunách českých odpovídající přepočtu částky EUR 9.725.000 aktuálním kurzem ČNB ke dni akceptace milníku č. 18?

NEBO

Bylo by možné cenu plnění formulovat jako fixní částku, kdy za první fázi bude vystavena faktura na částku EUR 5.130.000 přímo na EUROHPC JU a za druhou fázi faktura na částku 251.800.000,- korun českých na Zadavatele?

Contracting's Authority response to Question. No. 2

The contracting authority does not perceive this condition as unreasonable in relation to Section 6 (1) of the Act.

Proceeding pursuant to the principle of proportionality primarily consists in providing, on the one hand, sufficient guarantees to the contracting authority for the selection of the economic operator who will be able to carry out the public contract well and within the required deadlines; and, on the other hand, a procedure which, beyond guaranteeing the above objective, does not further unduly restrict competition.

However, payment terms are not determined on the basis of the will of the Contracting Authority, but with regard to the financing conditions that are related to the implementation of the subject of the public contract. With regard to these specific conditions, the Contracting Authority considered different models of payment conditions. The current model stated in the tender documents is the only one that will ensure the required ratio of funding sources and will realistically enable the completion of the implementation of the subject of the public contract.

The setting of the conditions for participation in the procurement procedure cannot primarily prefer the interests of suppliers, but aims primarily at the proper fulfilment of the needs of the Contracting Authority, i.e. proper delivery of the subject of the public contract while fulfilling all conditions that are binding for the Contracting Authority, in this case by third parties as well.

Question No. 3

Regarding to Article 12.1 of the Contract, the Supplier is obligate to state the breakdown of the price of the Work according to individual units to the Annex 4 of the Contract.

Does the Supplier understand correctly that the subtotal of the price of the Work for individual phases of delivery, as the phases of delivery set out in Annex 2 of the Contract, must exactly correspond to the prices of the Work stated in Article 12.6 of the Contract?

Czech version of the Question No 3 follows:

Dotaz 3:

Do přílohy číslo 4 smlouvy, na kterou se odkazuje článek 12.1. smlouvy, musí Dodavatel uvést rozpad ceny Díla dle jednotlivý celků.

Chápe Dodavatel správně, že mezisoučet ceny Díla za jednotlivé fáze dodávky, tak jak jsou fáze dodávky stanovené v příloze č. 2 Smlouvy, musí přesně odpovídat cenám Díla uvedeným v článku 12.6. Smlouvy?

Contracting's Authority response to Question. No. 3

No, the subtotal price of the Work for the individual phases of delivery may not correspond to the prices of the Work according to Article 12.6 of the Contract. It has been set up for the needs of property registration and future pricing of the lease of computing capacity of the subject of the public contract. The Supplier is obliged to state the prices of individual units of the delivery according to Annex No. 4 of the Contract so that the Customer has an overview of how much each part of the delivery costs (for his own needs and for fulfilling funding project's obligations). However, the prices of individual units of the delivery have nothing to do with the method of payment of the total price of the Work (as stated in the Article 12.6 of the Contract). For clarification, the entire Work will be owned by VSB-TUO and EuroHPC JU according to a certain ratio in accordance with Article 1.4 of the Contract. However, this does not mean that each subject will own only a certain part of the Work, for which he will pay its price.

In Ostrava

prof. RNDr. Václav Snášel, CSc.

Rector