

Explanation of Tender Conditions No. 4

Contracting authority: Czech University of Life Sciences Prague
Registered office: Kamýcká 129, 165 00 Prague - Suchbát
Acting by: prof. Ing. Róbert Marušák, PhD., Dean of FLD
Company Reg. No.: 60460709
Profile of the Contracting Authority: <https://zakazky.czu.cz>

SMALL-SCALE PUBLIC TENDER: DEVELOPMENT OF A PROGRAM FOR THE SIMULATIONS OF IMPACTS OF VARIOUS BIOTIC DISTURBANCE AGENTS ON THE FOREST WITH INTERFACE TO AN EXISTING ECOSYSTEM MODEL

The above-mentioned Contracting Authority hereby provides you with the following explanation of the tender conditions relating to the above-mentioned small-scale public tender.

Questions from the Tenderer about the Work Contract:

Point 2.2 of the Contract

According to 2.2., the contractor will have the right to transfer the result in its entirety and there are no conflicting third-party rights. However, among other requirements, TUM must comply with the German Employee Invention Act (ArbEG), and also the right not to publish results might be an issue. Unrestricted acceptance of 2.2. is therefore not possible.

Therefore, a formulation like "within the context of legal possibilities" would be better.

Point 4.9/4.10 of the Contract

This is unclear; does this apply only for Czech applicants?

Point 5.3 of the Contract

This liability clause includes third parties. Moreover, as a rule TUM stipulates a limitation of liability which is not contained in the contract and is thus unfavourable for TUM.

The term "third parties" should be therefore removed.

Point 5.4 of the Contract

5.4 provides that ownership of the work is transferred promptly upon completion. However, TUM may not provide work or services prior to receipt of remuneration. Moreover, this provision conflicts with the concept of German law concerning contracts for services, according to which ownership will not be transferred prior to receipt of full payment.

We would prefer a transfer of ownership after full payment.

Point 7 of the Contract

In accordance with 7, TUM will have to provide a warranty. A warranty is not a standard feature under a contract of services and thus exceeds the customary obligations. It is not to be confused with the German mandatory warranty under law that obligates the warranty provider to remedy defects within a certain time period. The warranty required under the contract at hand would be a promise given that an object functions for a certain period of time. This type of warranty is never provided by TUM.

The whole point 7 should be removed. TUM would of course consider all mandatory warranty regulations.

Point 8 of the Contract

8 requires TUM to pay a contractual penalty. TUM does not accept contractual penalties.

This is a key point of the legal department. Would it be possible to limit the penalty, e.g. up to 20% of the total price?

Explanation of Tender Conditions No. 1:

Point 2.2 of the Contract

The Contracting Authority states that this is a general wording according to Czech law regardless of the country of origin of the Tenderer, as the Contract is governed by Czech law. Therefore, the Contracting Authority insists on the above wording.

Point 4.9/4.10 of the Contract

The Contracting Authority states that these are conditions for Tenderers from the Czech Republic.

Point 5.3 of the Contract

See the explanation of Point 2.2 of the Contract

Point 5.4 of the Contract

The Contracting Authority states that with regard to the implementation of the Contract in the framework of the project, it insists on the above wording.

Point 7 of the Contract

The Contracting Authority states that this is a requirement regardless of the country of origin of the Tenderer. The implementation of the Public Tender is governed by Czech law. Therefore, the Contracting Authority insists on the above wording.

Point 8 of the Contract

The Contracting Authority shall add the following wording to Point 8.2 of the Contract:

The Client is entitled to demand payment of contractual penalties from the Contractor up to a maximum of 20% of the total price of the subject of the Contract.

In this sense, the Contracting Authority has modified the binding model of the Contract, which is annexed to this Explanation of Tender Conditions. The Tenderers are obliged to respect this binding model of the contract and submit it in their Tender.

Due to the nature of the change/addition to the Tender Conditions and due to the later publication of the answers to the Tenderer's questions, the Contracting Authority shall extend the deadline for submission of Tenders by the entire original length and by an additional three working days. The new deadline for submission of tenders shall be **28 October 2020 before 10:00**. The remaining published information shall remain unchanged.

Done in Prague, date 12 October 2020

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Magdaléna Bičová, Administrator
Public Tenders