

**FZU**Institute of Physics  
of the Czech  
Academy of Sciences**TERAFIT****CZECH  
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LAB.****EXPLANATION OF THE TENDER DOCUMENTATION**

<b>Contracting Authority</b>	Fyzikální ústav AV ČR, v. v. i.
<b>Seat</b>	Na Slovance 1999/2, 182 00 Praha 8, Czech Republic
<b>Identification No.</b>	68378271
<b>Public Contract name</b>	<b>UHV, low temperature SPM with magnetic field for Electron Spin Resonance (ESR) experiments - REISSUE</b>
<b>Registration Number</b>	Z2024-043674
<b>Type of public contract</b>	above-threshold public contract for supplies
<b>Type of procurement procedure</b>	open procedure pursuant to Section 56 of the Act No. 134/2016 Coll., on Public Procurement, as amended (hereinafter the "Act")
<b>Projects</b>	OP: Jan Amos Komenský Title: CzechNanoLab+ Teraferroics for ultra-high capacity, speed and energy-efficiency of information technology Reg. No.: CZ.02.01.01/00/23_015/0008200 CZ.02.01.01/00/22_008/0004594

In accordance with Section 98 and 99 of the Act, the Contracting Authority explains the Tender Documentation for the public contract "**UHV, low temperature SPM with magnetic field for Electron Spin Resonance (ESR) experiments - REISSUE**".

The Contracting Authority replies to the request and contract modification requirements of a supplier delivered via the Tender Arena electronic tool on September 23, 2024.

**Request:**

In the draft of the purchase contract, sections 2.4 and 15.6 state that there is a "right to compensation for damages incurred". Please clarify this, as there is already a section on termination of the contract, contractual penalties and insurance/product liability obligations. (Supplier will not provide any compensation or reimbursement for downtime, salaries, operating costs, building costs, consumables or similar.)

**Contracting Authority's response:**

The text of neither of these sections implies that the Contracting Authority wishes to establish in the Contract its right to recover the indirect damages listed by the supplier. That is to say, only

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direct damage, i.e. damage that is a direct consequence of the breach of contract, is relevant to the supplier's liability.

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**Modification requirement 1** - regarding 3.2.3:

Original text:

3.2.3 Transport of the Equipment incl. all accessories specified in Annexes No. 1 and 2 hereto to the place of performance, un-packaging and control thereof;

Please change to:

3.2.3 Transport of the Equipment incl. all accessories specified in Annexes No. 1 and 2 hereto to the place of performance, un-packaging and control thereof, whereas the Buyer bears the responsibility to provide a secure and lockable room for unpacking and storage, and a safe path for transportation of the unpacked equipment to the place of performance;

**Contracting Authority's response:**

This does not need to be stated in the Contract; it is a standard level of assistance provided by a buyer for the installation of similarly costly and complex equipment. Supplier may include such requirements, if not inconsistent with the Draft Contract, in the documents which will become Annex 2 to the Contract. The Contracting Authority's obligation to ensure that the technical requirements are met at the place of performance contains also preparation of a transport route to the target laboratory that corresponds to the transport dimensions of the individual parts of the supplied equipment. In this context, the Contracting Authority attaches a plan of the transport route, including the relevant dimensions. Note that the transport route as well as the target laboratory will be modified by the Contracting Authority to comply with requirements specified by the selected supplier (e.g. size of the entrance door to the laboratory, level of the vibration noise of floor etc.).

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**Modification requirement 2** - regarding 3.2.4:

Original text:

3.2.4 Installation of the Equipment and all components necessary to operate the Equipment including connection to installation infrastructure at the place of performance;

Please change to:

3.2.3. Installation of the Equipment and all components necessary to operate the Equipment including connection to installation infrastructure at the place of performance, whereas the Buyer bears the responsibility to provide a secure and lockable room for unpacking and storage, and a safe path for transportation of the unpacked equipment to the place of performance.

**Contracting Authority's response:**

This does not need to be stated in the Contract; it is a standard level of assistance provided by a buyer for the installation of similarly costly and complex equipment. Supplier may include such



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requirements, if not inconsistent with the Draft Contract, in the documents which will become Annex 2 to the Contract. See response to Modification requirement 1.

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**Modification requirement 3** - regarding 3.3:

Original text:

3.3 The Seller shall be liable for the Equipment and related services to be in full compliance with this Contract, its Annexes and all valid legal regulation, technical and quality standards and shall also be liable that the Buyer will be able to use the Equipment for the defined purpose. In case of any conflict between applicable standards, it is understood that the stricter standard or its part shall always apply.

Please change to:

3.3 The Seller shall be liable for the Equipment and related services to be in full compliance with this Contract, its Annexes and all valid legal regulation, technical and quality standards and shall also be liable that the Buyer will be able to use the Equipment for the defined purpose.

**Contracting Authority's response:**

The Contracting Authority retains the original wording. The standards to be taken into account are only those resulting from the legislation in force (at the time of conclusion of the Contract), i.e. European Electrical Safety Standards, Directive 2013/35/EU etc.

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**Modification requirement 4** - regarding 3.3:

Original text:

5.2. VAT shall be settled in accordance with the valid Czech regulation.

Please change to:

5.2. VAT shall be settled in accordance with the then valid Czech regulation at the point of Transfer of Ownership (sec. 6).

**Contracting Authority's response:**

The method of VAT settlement is determined by legislation. In any case, the obligation to pay VAT is the responsibility of the Contracting Authority.

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**Modification requirement 5** - regarding 5.4.4:

Original text:

5.4.4 invoice the remaining part of the Price after the handover protocol in accordance with Section 10.3 (hereinafter the "Handover Protocol") will have been signed; in the case the Equipment will be handed over with minor defects, the Price shall be invoiced after removal of these minor defects.



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Please change to:

5.4.4 invoice the remaining part of the Price after the handover protocol in accordance with 10.3 (hereinafter the "Handover Protocol") will have been signed; Should the Equipment be handed over with minor defects as per the Handover Protocol, Parties may agree upon a security deposit of a reasonable amount to be paid after resolving the related defect.

**Contracting Authority's response:**

The Contracting Authority retains the original wording. At the time of handover, the remaining part of the Price to be paid will be 10%. The Contracting Authority considers this amount to be a *sui generis* security deposit. The Contracting Authority adds that the mentioned minor defects are such that, although they may not constitute an obstacle to the use of the supplied equipment, they affect the achievement of the declared level of any parameters of the equipment. Vice versa, minor defects that do not affect the achievement of the specified performance of the equipment are not subject to the final 10% payment. Such minor defects are the subject of a complaint procedure.

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**Modification requirement 6** - regarding 5.8.1:

Original text:

5.8.1 damages caused by the Seller,

Please change to:

5.8.1 damages caused by the Seller, to the extent as the damage claim has been accepted by the Seller,

**Contracting Authority's response:**

The requested extension is not necessary since, according to § 1987 (2) of the Civil Code, "an uncertain or indeterminate claim is not eligible for set-off." Thus, the Contracting Authority would only set off damages whose value can be accurately determined, and which are caused by the Seller without any doubt.

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**Modification requirement 7** - regarding 10.1:

Original text:

10.1 The Seller shall transport the Equipment at his own cost to the place of performance. If the shipment is intact, the Buyer shall issue a delivery note for the Seller.

Please change to:



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10.1 The Seller shall transport the Equipment at his own cost to the place of performance. It is assumed that the Buyer provides a path of transportation from the loading dock to the place of performance, which is adequate for the kind of Equipment, safe, and not requiring any modifications of the building. If the shipment is intact, the Buyer shall issue a delivery note for the Seller.

**Contracting Authority's response:**

This does not need to be stated in the Contract; it is a standard level of assistance provided by a buyer for the installation of similarly costly and complex equipment. Supplier may include such requirements, if not inconsistent with the Draft Contract, in the documents which will become Annex 2 to the Contract. See response to Modification requirement 1.

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**Modification requirement 8** - regarding 14.3:

Original text:

14.3 The warranty does not cover consumable parts. Consumable parts for the purposes of the Contract are the items contained in the Equipment which are consumed at regular intervals during the normal use of the Equipment, i.e. parts which have a specified typical lifetime, that does not exceed the warranty period provided the Equipment is used with normal frequency.

Please change to:

14.3 The warranty does not cover consumable parts nor defects caused by improper handling or storage. Consumable parts for the purposes of the Contract are the items contained in the Equipment which are consumed at regular intervals during the normal use of the Equipment, i.e. parts which have a specified typical lifetime, that does not exceed the warranty period provided the Equipment is used with normal frequency.

**Contracting Authority's response:**

The fact that the warranty does not cover defects caused by improper handling or storage follows from the law.

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**Modification requirement 9** - regarding 17:

Please insert a new paragraph between original 17.1 and original 17.2 (after modification 17.3):

New (additional) paragraph 17.2: Liabilities in between the Parties shall be limited to the minimum extent or amount as permissible by the governing law, unless explicitly specified differently in this Contract.



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**Contracting Authority's response:**

The extent of the supplier's liability has already been described earlier in this document. Only direct damage, i.e. damage that is a direct consequence of the breach of contract, is relevant to the supplier's liability. The liability of the supplier does not include compensation for any indirect damage caused by the supplier's breach of contract. Therefore, liabilities in between the Parties shall not exceed the minimum extent as permissible by the governing (Czech) law - unless explicitly specified differently in the Draft Contract.

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The Contracting Authority extends the deadline for submission of bids.

The Contracting Authority therefore modifies the terms of reference, namely the first sentence of Clause 2.2 of the Tender Documentation which is now valid as follows:

2.2 Bids shall be submitted no later than on **October 21, 2024, by 11:00 am.**

In Prague



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