Warszawa, 12.04.2016 r**.**

### STATEMENT No 3

The Commission on public procurement of Institute of Aviation informs about a questions received from Economic Operator to the tender procedure ref. No. 18/DE/Z/16. According to article 38 paragraph 1 of Public Procurement Law of 29 January 2004, the Contracting Authority answers as follows:

**Question 1**

Reference:  Contract modification 18.03.2016 (Appendix No. 4 to the ToR):

*Material Provisions of the Contract*

*2. Remuneration PLN …. Plus VAT*

Please confirm the VAT ID No. is NIP 525-000-84-94 for the institute under the address mentioned.

If so, we do not need to charge you with VAT in our invoice and therefore indicate PLN 0,00 VAT.

**Answer**

VAT numer of Institute of Aviation isPL5250008494. Economic operators established outside the territory of the Republic of Poland shall write net price on tender form (appendix 1 to ToR).

**Question 2**

*§ 1 Object of the Contract Article 2.*

*…, participation in its installation, start-up, testing at the registered office of the Contracting Authority and training employees in is operation.*

We need to define a time limit of 1 week for this service.

**Answer**

The Contracting Authority modifies § 1 article 2 in following way: “ The object of the contract includes design, delivery of the system, participation in its installation, start-up, testing at the registered office of the Contracting Authority and training employees in its operation. Participation in installation, start-up, testing and training of employees will be made within 5 working days with the proviso of § 2 article 2.

**Question 3**

*§ 4 Software, Documentation – License*

Please confirm this Paragraph does refer to software and its specific documentation only.

Our delivery does not include any customized software (e.g. data acquisition software)

**Answer**

The Contracting Authority is aware of the fact that the delivery does not include customized software, that is why the nonexclusive license is required for the software.

The Contracting Authority requires the exclusive license for the documentation of the system produced by the Economic Operator for the purpose of Contract performance.

**Question 4**

*§ 7 Prices and Payment Terms Article 2*

1. Please let us know the taxes and other public levies in Poland which might have to be charged by us additionally to VAT.
2. Design and Fabrication of the telemetry system is based on our intellectual property and we are not willing to transfer this property, know-how and technology to a customer.

Therefore please remove the general transfer or please make it more specific.

**Answer**

1. Economic Operators established outside the territory of the Republic of Poland shall write net price on tender form. For the Economic Operators established on the territory of EU, the regulations of intra-Community acquisition of goods are in force.
2. The Contracting Authority does not expect transfering of property rights for know-how nad technology. The Contracting Authority expect transfering of exlusive license for the documentation of the system in order to be able to use it for internal needs such as test lab operating instructions, test protocoles, information brochures etc. without breaching third party intellectual property rights.

**Question 5**

*§ 11 Liquidated Damages and Compensations*

1. A 5 % Limit is usual in the market. Therefore please add this limit to article 1.

3.

This article is not acceptable. Please remove it.

4.

This article is not common and not acceptable. Please remove it.

5.

Please add: ‘reasonable’ grounds.

7.

Except for liability for physical injury, our liability for damages caused by faulty goods is limited (in reason and in amount) to foreseeable damages, except in instances of deliberate or gross negligence. Insofar as any damage caused is foreseeable, our liability is limited within the boundaries of services to the limitations of the product liability insurance, except in cases of deliberate or gross negligence. We shall be exclusively liable for fundamental breaches of contract, except in cases of physical injury or deliberate or gross negligence.

**Answer**

Article 1

The Contracting Authority modifies § 11 article 1 in following way: “In the event of a delay in delivering the object of the Contract, the Contracting Authority may impose upon the Economic Operator liquidated damages of 0,5% of the gross consideration specified in § 7 section 1 hereof for each week of such delay with the proviso that liquidated damages in this respect does not exceed 10% of the gross consideration specified in § 7 section 1 of the contract.

Article 3

This article is the only one protecting the Contracting Authority against not fulfilling guaranty conditions by Economic Operator and therefore shall not be deleted.

Article 4

This article refers to withdraw from the contract only for reasons caused by the Economic Operator, therefore, whether the Contracting Authority will enforce this provision, depends on Economic Operator. The Contracting Authority is exposed to incur large losses in the event that the Economic Operator withdrew from the contract. This order is a public contract, which means that it is financed from public funds and the Contracting Authority does not agree to remove this article.

Article 5

The Contracting Authority modifies § 11 article 5 in following way: “The withdrawal notice must be made in writing and contain legal basis and actual grounds.”

Article 7

The Contracting Authority modifies § 11 article 7 in following way: “Payment of liquidated damages shall not preclude the Parties from seeking compensations in line with general principles exceeding the amount of liquidated damages if the liquidated damages are insufficient to cover the damage suffered by the Party. The amount of liquidated damages in this respect is limited to the amount of 2,500,000.00 PLN.”