**VOLUME 1**

**SECTION 1: INSTRUCTIONS TO TENDERERS**

<**Contract title>**

<**Ref. number>**

In submitting a tender, the tenderer accepts in full and without restriction the special and general conditions governing the contract as the sole basis of this tendering procedure, whatever its own conditions of sale may be, which it hereby waives. Tenderers are expected to examine carefully and comply with all instructions, forms, contract provisions and specifications contained in this tender dossier. Failure to submit a tender containing all the required information and documentation within the deadline will lead to rejection of the tender. No account can be taken of any reservation in the tender as regards the tender dossier; this may result in immediate rejection of the tender without further evaluation.

These Instructions set out the rules for the submission, selection and implementation of contracts financed under this call for tenders, in conformity with the provisions of the Practical Guide, which is applicable to this call (available on the internet at this address: <http://ec.europa.eu/europeaid/prag/document.do> ).

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# GENERAL PART

## GENERAL INSTRUCTIONS

### Tenderers must tender for the whole of the works required by the dossier. Tenders will not be accepted for incomplete lots.

### Timetable

|  |  |  |
| --- | --- | --- |
|  | **DATE** | **TIME\*** |
| **Clarification meeting** | < Date > | < Time > |
| **Site visit** | < Date > | < Time > |
| **Deadline for requesting any additional information from the Contracting Authority** | < 21 days before deadline for tenders > | < Time > |
| **Last date on which additional information are issued by the Contracting Authority** | < Date 11 days before deadline for tenders > | - |
| **Deadline for submitting tenders** | <Date> | < Time > |
| **Tender opening session** | <Date> | < Time > |
| **Notification of award to the successful tenderer** | < Date at most 90 days after deadline for tenders >  | - |
| **Signature of the contract** | < Date at most 150 days after deadline for tenders >  | - |

**\* All times are in the time zone of the country of the Contracting Authority****Provisional date**

|  |
| --- |
| **Please note that all dates should be aligned with the Contract Notice** |

## FINANCING

Regulation (EU) N°236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action, Regulation (EU) No 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II), The Interreg IPA Cross-border Cooperation Programme Croatia-Bosnia and Herzegovina-Montenegro 2014-2020.

## PARTICIPATION

### 

### Participation is open to all legal persons which are effectively established in the participating countries, other Member States, other IPA II beneficiaries, contracting parties to the Agreement on the European Economic Area and partner countries covered by the European Neighbourhood Instrument (hereafter referred to as ‘eligible countries’), and to International Organisations.

### The eligibility requirement detailed in subclaus 3.1 applies to all members of a joint venture/consortium and all subcontractors, as well as to all entities upon whose capacity the tenderer relies for the selection criteria. Every tenderer, member of a joint venture/consortium, every capacity-providing entity, every subcontractor providing more than 10 % of the works and every supplier providing more than 10 % of the works must certify that they meet these conditions. If required, they must prove their eligibility by a document dated less than one year earlier than the deadline for submitting tenders, drawn up in accordance with their national law or practice or by copies of the original documents stating the constitution and/or legal status and the place of registration and/or statutory seat and, if it is different, the place of central administration. The Contracting Authority may accept other satisfactory evidence that these conditions are met.

### In the cases listed in Declaration on honour on exclusion criteria and selection criteria tenderers may be excluded from the procedure.

### The exclusion situation referred to in subclause 3.4 applies to all members of a joint venture/consortium, all subcontractors and all suppliers to tenderers, as well as to all entities upon whose capacity the tenderer relies for the selection criteria.

### The upper limit authorised for subcontracting is 30 % of the value of the tender[[1]](#footnote-1).

## ONLY ONE TENDER PER TENDERER

A company may not tender for a given contract both individually and as a member of a joint venture/consortium. Participation by a tenderer in more than one tender for a contract will result in the disqualification of all those tenders for that contract in which the party is involved. The same company may only participate as subcontractor in different tenders if that is justified by the specific nature of the market and cleared by the Contracting Authority.

## TENDER EXPENSES

### The tenderer will bear all costs associated with preparing and submitting the tender. The Contracting Authority will not be responsible or liable for such costs, whatever the conduct or outcome of the procedure.

### The Contracting Authority will neither be responsible for, nor cover, any expenses or losses incurred by the tenderer through site visits and inspections or any other aspect of its tender.

## SITE VISIT AND CLARIFICATION MEETING

### The tenderer is [strongly advised] [obliged] to visit and inspect the site of the works and its surroundings for the purpose of assessing, at its own responsibility, expense and risk, the factors necessary for preparing its tender and signing the contract for the works. (Date, time and place, see point 13 of the contract notice.)

|  |
| --- |
| For works tenders, site visit or information meeting may be held.  Site visits are recommended. In case site visits are allowed, it is recommended complete data is provided (venue / address, if needed time at which site can be inspected). If site visits are to be organized by the Project partner, Project partner should provide contact details at which site visit can be agreed and held. Project partner should make clear site visit / inspection is held at the responsibility of the tenderer who retains all responsibility for his tender. No tenderer may gain competitive advantage after such meeting is held.  In case meeting is held, exact date and venue must be announced. No tenderer may gain competitive advantage after such meeting is held.  Ideally, visits / meetings are to be held more than 21 days before the deadline for submission of tenders in order to allow tenderers to submit further questions on the tender dossier, if necessary. |

### A clarification meeting and/or a site visit [will] [will not] be held by the Contracting Authority (Date, time and place, see point 13 of the contract notice).

### [The minutes of the [clarification meeting and the site visit] [site visit] will be published on the xy website. As proof of participation, tenderers will receive a certificate of their site visit.]

# TENDER DOCUMENTS

## CONTENT OF TENDER DOCUMENTS

The set of tender documents comprises the documents specified in the invitation letter.

Tenderers bear sole liability for examining with appropriate care the tender documents, including design documents available for inspection and any modification to the tender documents issued during the tendering period, and for obtaining reliable information on any conditions and obligations that may in any way affect the amount or nature of the tender or the execution of the works. In the event that the tenderer is successful, no claim for altering the tender amount will be entertained on the grounds of errors or omissions in the obligations of the tenderer described above.

## EXPLANATIONS CONCERNING TENDER DOCUMENTS

### Tenderers may submit questions in writing up to 21 days before the deadline for submission of tenders, specifying the publication reference and the contract title:

<Contact Name>

<Address>

<Fax>

<E-mail>

The Contracting Authority has no obligation to provide additional information after this date.

The Contracting Authority must reply to all tenderers’ questions at least 11 days before the deadline for receipt of tenders. Any clarification of the tender dossier will be published on the following website [insert web address, same as the address of tender publication].

|  |
| --- |
| Please note that under the best international practice (Public Procurement Directive[[2]](#footnote-2)) deadline for providing information additional information, requested by the economic operator in good time, must be supplied at the latest six days before the time limit fixed for the receipt of tenders. This means that deadlines for submission of questions and requests for clarification could be shortened by the Contracting Authority if necessary. |

### 

## MODIFICATIONS TO TENDER DOCUMENTS

### The Contracting Authority may amend the tender documents by publishing modifications up to 11 days before the deadline for submitting tenders.

### Each modification published will constitute a part of the tender documents and will be published on the following website [insert web address, same as the address of tender publication].

### The Contracting Authority may, as necessary and in accordance with Clause 18, extend the deadline for submitting tenders to give tenderers sufficient time to take modifications into account when preparing their tenders.

# TENDER PREPARATION

## LANGUAGE OF TENDERS

### The tender and all correspondence and documents related to the tender exchanged by the tenderer and the Contracting Authority must be written in the language of the procedure, which is English /programme participating countries languages and Latin letter only.

|  |
| --- |
| Optional, for the purpose of simplifying and facilitating procurement procedure, following may be allowed and inserted: |

## *Relevant experience (selection criteria) may be described in <state language> language.*

## Supporting documents and printed literature furnished by the tenderer may be in *<state language>* or in another language, provided they are accompanied by a translation into the language of the procedure. For the purposes of interpreting the tender, the language of the procedure has precedence.

## CONTENT AND PRESENTATION OF TENDER

### Tenders must satisfy the following conditions:

#### Tenders must comprise the documents and information in clause 12 below.

#### The tender must be signed by a person or persons empowered by power of attorney submitted in accordance with Form 4.3 in Volume 1, Section 4 of the tender dossier.

#### The tenderer must provide all documents required by the tender dossier. All such documents, without exception, must comply strictly with these conditions and provisions and contain no amendments made by the tenderer. Tenders which do not comply with the requirements of the tender dossier may be rejected.

### Either[The works are not divided into lots. Tenders must be for all the quantities indicated.]

### Or [Where works have been divided into lots: The tenderer may submit a tender for [one lot only] [several or all of the lots].

#### Each lot will form a separate contract and the quantities indicated for different lots will be indivisible. The tenderer must offer the entire quantity or quantities indicated for each lot. Under no circumstances will tenders for part of the quantities required be taken into consideration.

#### [A tenderer may include in its tender the overall discount it would grant in the event of some or all of the lots for which it has submitted a tender being awarded to it. The discount should be clearly indicated in such a way that it can be announced at the public tender opening session].

#### Contracts will be awarded lot by lot, but the Contracting Authority must choose the most favourable overall solution taking account of the discounts offered.]

## INFORMATION/DOCUMENTS TO BE SUPPLIED BY THE TENDERER

To be customised to the requirements of the tender dossier

### All tenders must comprise the following information and duly completed documents:

|  |
| --- |
| Text below in gray shade sets out optional requirements. It can be deleted if not required, and other requirements may be added if necessary.  In any case, please make sure that requirements under ITT and in the Tender Form / Bill of Quantities are the same.  Please make sure you require only minimum necessary for contract execution.  EXAMPLE:  - if organisational structure is not relevant for the execution of contract, AND is not evaluated, you should not require information on organisational structure.  - if financial capacity is not evaluated, you should not require data on turnover for the last 3 years  - if particular experts are not required, data on experts, employees and other staff should not be required  - etc. |

#### Tender form, together with its Annex 1 'Declaration of honour on exclusion criteria and selection criteria' using the form provided Tender Form;

#### Documentation as required in the Tender Form, including all forms attached;

#### The forms provided in Volume 4:

Bill of quantities (own template / form or template in Volume 4.3.2/4.3.3)

##### The prices in Volume 4 are deemed to have been set on the basis of the conditions in force 30 days prior to the deadline for submitting tenders.

Prices cannot be revised.

#### Cash flow statements.

#### Copies of the most recent documents showing, <please choose and adjust to specific procedure or delete: legal status and place of registration of the tenderer's headquarters, a power of attorney empowering the person signing the tender and all related documentation. These documents must follow the forms in Volume 1, Section 4 of the tender dossier:

To be completed in accordance with the Tender Form

* general information about the tenderer (Form 4.1)
* power of attorney (Form 4.3).

#### <please choose and adjust to specific procedure or delete: Evidence showing that the liquid assets and access to credit facilities are adequate for this contract, confirmed by a financial statement for the last three years verified by a chartered accountant. This evidence must be provided using Tender Form, Form 4.4.

#### Financial identification form (Form 4.5a) and Legal Entity File (Form 4.5b).

#### <please choose and adjust to specific procedure or delete: Information about the tenderer’s technical qualifications. This information must follow the forms in Tender Form and include:

* a presentation of the tenderer’s organisation, staff and CVs (Forms 4.6.1.- 4.6.1.3),
* a work plan with brief descriptions of the main tasks (Form 4.6.3), showing the sequence and proposed timetable for implementing the tasks.
* a critical milestone bar chart showing times and duties allocated for employees for this contract (Form 4.6.3);
* data on subcontractors and the percentage of works to be subcontracted (Form 4.6.3);
* evidence of relevant experience in carrying out works of a similar nature, including the nature and value of the contracts, works in hand and contractually committed (Form 4.6.4). The evidence must include successful experience as the prime contractor in construction of at least <X> projects of the same nature and complexity comparable to the works concerned by the tender during the last <either: eight / five years>

|  |
| --- |
| The objective of this criterion is to examine whether or not the tenderer (i.e., the consortium as a whole, in the case of a tender from a consortium) has sufficient expertise and experience to be able to handle the proposed contract, such as:   1. a list of the works contracts carried out over the past five/eight years, indicating or holding in attachment certificates of the other party concerning the satisfactory performance for the most important works. These certificates shall include the value of the works, the date and place of performance of the works, and an indication whether the works were carried out according to the rules of the trade and properly completed. Where appropriate, the Contracting Authority may require directly from the other party to provide confirmation for the purpose of verification. Contracts must be in the same or similar field as the subject-matter of the procurement, and requested value of contracts may not exceed estimated value <of the procurement / of the tender / of the lot> (fulfilment of the criteria may be requested with one or more contracts). 2. an indication of the technicians or technical departments involved, whether or not belonging directly to the economic operator's undertaking, especially those responsible for quality control and those upon whom the contractor can call in order to carry out the work (whether or not they are employed in the Tenderer) 3. the educational and professional qualifications of the contractor and/or those of the undertaking’s managerial staff, and especially person(s) responsible for managing the works 4. only in justified cases, a statement concerning the measures of environmental management which the economic operator will be in the position to apply during the execution of the works 5. a statement by the economic operator on the average annual manpower and the number of managerial staff over the past three years 6. a statement by the economic operator concerning tools, plant and technical equipment available to the contractor to perform the contract.   Criteria should apply to a consortium as a whole.  **Example of technical criterion for legal and natural persons:**   * the tenderer has delivered works under at least < insert number > contract[s] with a budget of at least <specify budget> EUR in < specify fields> which were implemented during the following period: < 5/8 years from the submission deadline, please specify the dates>. |

#### Proof documents, if required, declarations and undertakings according to clauses 3.1-3.5 above. These documents should cover all members of a joint venture/consortium and all subcontractors as specified.

#### 

#### [Tender guarantee is always optional: Tender guarantee, using the form provided in Volume 1, Section 3; ]

### In order to be eligible for the award of the contract, tenderers must provide evidence that they meet the selection criteria. This must be provided by tenderers using the forms described in 12.1 above and any additional forms tenderers may wish to use.

If a tender is submitted by a consortium, unless specified, the selection criteria will be applied to the consortium as a whole.

#### [In case of either a contract with no Lots, or a contract divided into Lots whereby no different minimum levels of capacity are set for each Lot:

The selection criteria for each tenderer are as follows:]

#### [In case of contracts divided into Lots whereby different minimum levels of capacity are set for each Lot: Lot n° …(for example Lot 1)

#### The selection criteria for tenderers to Lot n° … (for example Lot 1) are as follows:]

|  |
| --- |
| The selection criteria should be clear and non-discriminatory and may not go beyond the scope of the contract. The reference period for financial capacity may not go beyond the last 3 years for which accounts have been closed. The reference period for professional and technical capacity may not go beyond 8 years counting from the submission deadline (5 years for economic sectors subject to rapid evolution). Consider which proof documents should be requested for each selection criteria. |

***Economic and financial capacity of candidate:***

|  |
| --- |
| The objective of this criterion is to examine whether or not the tenderer (i.e., the consortium as a whole) will not be economically dependent on the Project partner in the event that the contract is awarded to it; and has sufficient financial stability to handle the proposed contract.  Criteria should apply to a consortium as a whole.  **Examples of financial criteria for legal persons:**   * the average annual turnover of the tenderer must exceed the annualised maximum budget of the contract (as a good international practice and standard set in the Public procurement Directive, minimum annual turnover requested may not exceed 2 times the estimated annual contract value); and * Current ratio (current assets/current liabilities) in the last year for which accounts have been closed must be at least XY (e.g. 1). * Tenderer may prove it’s insurance policy potential for the relevant field.   In setting any of the criteria, please bear in mind what purpose and/or insurance does it provide you with. |

1. <insert reference criterion>
2. <insert reference criterion>

<etc.>

***Technical and professional capacity of candidate:***

|  |
| --- |
| T The objective of this criterion is to examine whether or not the tenderer (i.e., the consortium as a whole, in the case of a tender from a consortium) has sufficient expertise and experience to be able to handle the proposed contract, such as:   1. a list of the works contracts carried out over the past five/eight years, indicating or holding in attachment certificates of the other party concerning the satisfactory performance for the most important works. These certificates shall include the value of the works, the date and place of performance of the works, and an indication whether the works were carried out according to the rules of the trade and properly completed. Where appropriate, the Contracting Authority may require directly from the other party to provide confirmation for the purpose of verification. Contracts must be in the same or similar field as the subject-matter of the procurement, and requested value of contracts may not exceed estimated value <of the procurement / of the tender / of the lot> (fulfilment of the criteria may be requested with one or more contracts). 2. an indication of the technicians or technical departments involved, whether or not belonging directly to the economic operator's undertaking, especially those responsible for quality control and those upon whom the contractor can call in order to carry out the work (whether or not they are employed in the Tenderer) 3. the educational and professional qualifications of the contractor and/or those of the undertaking’s managerial staff, and especially person(s) responsible for managing the works 4. only in justified cases, a statement concerning the measures of environmental management which the economic operator will be in the position to apply during the execution of the works 5. a statement by the economic operator on the average annual manpower and the number of managerial staff over the past three years 6. a statement by the economic operator concerning tools, plant and technical equipment available to the contractor to perform the contract.   Criteria should apply to a consortium as a whole.  **Example of technical criterion for legal and natural persons:**   * the tenderer has delivered works under at least < insert number > contract[s] with a budget of at least <specify budget> EUR in < specify fields> which were implemented during the following period: < 5/8 years from the submission deadline, please specify the dates>. |

1. <insert reference criterion>
2. <insert reference criterion>

<etc.>

#### [In case of contracts divided into Lots whereby different minimum levels of capacity are set for each Lot: Lot n° … (for example Lot 2)

The selection criteria for tenderers to Lot n° … (for example Lot 2) are as follows:]

Idem as above

***Economic and financial capacity of candidate*** (to be detailed as above):….

***Technical and professional capacity of candidate*** (to be detailed as above): ….]

N/A

#### Capacity-providing entities:

An economic operator may, where appropriate and for a particular contract, rely on the capacity of other entities, regardless of the legal nature of the links which it has with them. Some examples of when it may *not* be considered appropriate by the Contracting Authority are when the tenderer relies mostly on the capacity of other entities or when it relies on key criteria. If the tenderer relies on other entities, it must prove to the Contracting Authority that it will have at its disposal the resources necessary to perform the contract, for example by producing a commitment on the part of those entities to place resources at its disposal. Such entities, for instance the parent company of the economic operator, must respect the same rules of eligibility and notably that of nationality, as the economic operator. Furthermore, the tender should include a separate document providing data on this third entity for the relevant selection criterion. Proof of capacity must be furnished at the request of the Contracting Authority.

With regard to technical and professional criteria, a tenderer may only rely on the capacities of other entities where the latter will perform the works for which these capacities are required.

With regard to economic and financial criteria, the entities upon whose capacity the tenderer relies, become jointly and severally liable for the performance of the contract.

N/A

### Tenders submitted by companies in partnerships forming a joint venture/consortium must also fulfil the following requirements:

* The tender must include all the information required in 12.1 above for each member of the joint venture/consortium and summary data for execution of works by the tenderer.
* The tender must be signed in a way that legally binds all members. One member must be appointed lead member and that appointment confirmed by submission of powers of attorney signed by legally empowered signatories representing all members.
* All members of the joint venture/consortium are bound to remain in the joint venture/consortium for the whole execution period of the contract. See the declaration in the tender form.

[For tenders below EUR 5 000 000:

Documentary evidence of financial and economic standing and technical and professional capacity, referred to in 12.2 of these Instructions to Tenderers, is not obligatory for tenders below EUR 5 000 000. However, it is obligatory if a pre-financing payment is requested]

## TENDER PRICES

### The currency of the tender is the [EUR] [<national currency>

### The tenderer must provide a Bill of Quantities in [euro] [<national currency>. The tender price must cover all works as described in the tender documents. All sums in the Bill of Quantities, the Tender Form and other documents must also be expressed in this currency, with the exception of originals of bank and annual financial statements.

### Tenderers must quote all components of Bill of Quantities. No payment will be made for items which have not been costed; such items will be deemed to be covered by other items on the Bill of Quantities.

### If a discount is offered by the tenderer, it must be clearly specified in Bill of Quantities in the Tender Form. The discount must be quoted for all works.

### If the tenderer offers a discount, the discount must be included on each interim payment certificate and calculated on the same basis as in the tender.

## PERIOD OF VALIDITY OF TENDERS

### Tenders must remain valid for a period of 90 days after the deadline for submitting tenders indicated in the contract notice, the invitation to tender or as amended in accordance with Clauses 9 and/or 18.

### In exceptional circumstances, the Contracting Authority may, before the validity period expires, request that tenderers extend the validity of tenders for a specific period, which may not exceed 40 days. Such requests and the responses to them must be made in writing. A tenderer may refuse to comply with such a request without forfeiting its tender guarantee. If the tenderer decides to accept the request, it may not amend its tender and it is bound to extend the validity of its tender guarantee for the revised period of validity of the tender. In case the contracting authority is required to obtain the recommendation of the panel referred to in section 2.6.10.1.1. of the Practical Guide, the contracting authority may request an extension of the validity of the tenders up to the adoption of that recommendation.

### The successful tenderer must maintain its tender for a further 60 days. This period is in addition to the validity period, irrespective of the date of notification.

## TENDER GUARANTEE

|  |
| --- |
| Tender Guarantee is used to reduce the risk for the Contracting Authorities in the tendering phase (e.g. in cases where Tenderers reject to sign the contract). However, please bear in mind that requiring Tender Guarantee is not obligatory and if required, it may discourage potential tenderers from sending their offers.  Please also bear in mind that if required, it should be stated in absolute amount, and same for all tenderers (i.e. it should not be based on the percentage of each individual offer). |

EITHER:

### [The tenderer must provide, as a part of its tender, a tender guarantee in the form set out in the tender dossier,. The tender guarantee must be for an amount of <amount indicated in the contract notice>. The original guarantee must be included in the original tender.

### It may be provided in the form of a bank guarantee, a banker’s draft, a certified cheque, a guarantee provided by an insurance and/or guarantee company or an irrevocable letter of credit made out to the Contracting Authority.

### The tender guarantee must remain valid for 45 days beyond the period of validity of the tender, including any extensions, and be issued to the Contracting Authority for the requisite amount.

### The tender guarantees of unsuccessful tenderers will be returned together with the information letter that the tenderer has been unsuccessful.

### The tender guarantee of the successful tenderer must be released when the tenderer has signed the contract and provided the requisite performance guarantee.]

OR: [No tender guarantee is required.]

## VARIANT SOLUTIONS

Variant solutions will not be taken into consideration.

# SUBMISSION OF TENDERS

## SEALING, MARKING AND SUBMITTING TENDERS

### The complete tender must be submitted in one original, clearly marked ‘original’ and < insert number (for environmental reasons, request as few copies as possible)> copies, clearly marked ‘copy’. In the event of any discrepancy between them, the original will prevail.

|  |
| --- |
| Optionally, it can be requested that along on original one electronic copy is required. |

### The technical and financial offers must be placed together in a sealed envelope.

### All tenders must be received by the Contracting Authority before the deadline set in point 19 of the Contract notice, by registered letter with acknowledgement of receipt or hand-delivered against receipt signed by the Contracting Authority.

The tender must be sent to the following address:

<full postal address of Contracting Authority>

If tenders are hand delivered they should be delivered to the following address:

< full delivery address including opening hours >

### Tenders, including annexes and all supporting documents, must be submitted in a sealed envelope bearing only:

1. the above address;
2. the reference code of this tender procedure, (i.e., <publication reference>);
3. where applicable, the number of the lot(s) tendered for;
4. the words ‘Not to be opened before the tender opening session’ in the language of the tender dossier and <equivalent phrase in the local language>.
5. the name of the tenderer.

|  |
| --- |
| Please note that minor mistakes and / or omissions such as:   * delivering lower number of copies than requested, * not delivering electronic copy (if required), * mistakes in wording, etc.   should not be reasons for rejecting tenders. |

## EXTENSION OF THE DEADLINE FOR SUBMITTING TENDERS

The Contracting Authority may, on its own discretion, extend the deadline for submitting tenders by issuing an amendment in accordance with Clause 9. In such cases, all rights and obligations of the Contracting Authority and the tenderer regarding the original date specified in the contract notice will be subject to the new date.

## LATE TENDERS

### All tenders received after the deadline for submission specified in the contract notice or these instructions will be kept by the Contracting Authority. The guarantees will be returned to the tenderers.

### No liability can be accepted for late delivery of tenders. Late tenders will be rejected and will not be evaluated.

## ALTERING AND WITHDRAWING TENDERS

### Tenderers may alter or withdraw their tenders by written notification prior to the above deadline. No tender may be altered after the deadline for submission. Withdrawals must be unconditional and will end all participation in the tender procedure.

### Any notification of alteration or withdrawal must be prepared and submitted in accordance with Clause 17, and the envelope must be marked ‘alteration’ or ‘withdrawal’, as appropriate.

### Withdrawal of a tender in the period between the deadline for submission and the date of expiry of the validity of the tender will result in forfeiture of the tender guarantee.

# OPENING AND EVALUATING TENDERS

## OPENING TENDERS

### The purpose of opening and examining tenders is to check whether the tenders are complete, whether the requisite tender guarantees have been furnished, whether the required documents are included and whether the tenders are generally in order.

### Tenders will be opened in public session on the date and venue specified in point 20 of the Contract notice by the committee appointed for that purpose. The committee will draw up minutes of the meeting, which must be available to tenderers on request.

### At the tender opening session, the tenderers’ names, the tender prices, any discounts offered, written notifications of alteration and withdrawal, the presence of the tender guarantee (if required) and such other information the Contracting Authority may consider appropriate may be announced.

### After the public opening of the tenders, no information relating to the examination, clarification, evaluation or comparison of tenders or recommendations concerning the award of contract can be disclosed until after the contract has been awarded.

Any attempt by a tenderer to influence the evaluation committee in the process of examination, clarification, evaluation and comparison of tenders, to obtain information on how the procedure is progressing or to influence the Contracting Authority in its decision concerning the award of the contract will result in the immediate rejection of its tender.

## EVALUATING TENDERS

The Contracting Authority reserves the right to ask a tenderer to clarify any part of its tender that the evaluation committee considers necessary to evaluate it. Such requests and the responses to them must be made in writing. They may in no circumstances alter or try to change the price or content of the tender, except to correct arithmetical errors discovered by the evaluation committee when analysing tenders.

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| Imporant note :  Best practice in public procurement **allows** tenders to be supplemented **in regards to the documents related to the exclusion criteria, or selection criteria**.  It **does not allow** tenders to be supplemented or modified **in regards to their technical offer**.  Also, best practice in public procurement shows that tenders may be accepted in cases there are formal mistakes in the tenders, but if those formal mistakes are of such nature that they do not bring into question the integrity of the tender.  For example, there may be a case where Contracting Authority requests tender guarantee in original and in copy. Tenderer delivers original of the guarantee, and unreadable copy. Contracting Authority should not reject such offer since it is clear that the actual purpose of the request was achieved (having tender guarantee), and this formal mistake does not in any way affect the offer itself. Similar cases could be made e.g.:   * If delivered number of requested copies of the offer is less than required * In case of wrong numbering in the offer * In case offer is duly signed, but not additionally signed or initialled in other places (even if requested) * If Contracting Authority can clearly conclude offer content.   It is clear that in example cases, conduct of the Evaluation Committee enables effective procurement and efficient spending of public procurement funds (accepting the tender offering lowest price or best value for money). |

The Contracting Authority reserves the right to check information submitted by the tenderer if the evaluation committee considers it necessary.

### Examination of the administrative compliance of tenders

The aim at this stage is to check that tenders comply with the requirements of the tender dossier. A tender is deemed to comply if it satisfies all the conditions, procedures and specifications in the tender dossier without substantially departing from or attaching restrictions to them.

Substantial departures or restrictions are those which affect the scope, quality or execution of the contract, differ widely from the terms of the tender dossier, limit the rights of the Contracting Authority or the tenderer’s obligations under the contract or distort competition for tenderers whose tenders do comply. Decisions to the effect that a tender is not administratively compliant must be duly justified in the evaluation minutes.

The evaluation committee will check that each tender:

* has been properly signed;
* includes a correct tender guarantee (if required);
* meets the requirements as set out in the administrative compliance grid;
* has complete documentation and information;
* substantially complies with the requirements of these tender documents.

If a tender does not meet the requirements set out in the administrative compliance grid, it may be rejected by the evaluation committee when checking admissibility.

Contracting Authority (Project partner) may request clarification and supplement of the documents related to the administrative conformity.

### Technical evaluation

The evaluation committee must evaluate only those tenders considered substantially compliant in accordance with Clause 22.1.

At this step of the evaluation procedure, the Committee will analyse the tenders' technical conformity in relation to the technical specifications, classifying them technically compliant or non-compliant.

### Financial evaluation

Once the technical evaluation has been completed, the evaluation committee checks that the financial offers contain no arithmetical errors. If the tender procedure contains several lots, financial offers are compared for each lot. The financial evaluation will have to identify the best financial offer for each lot, taking due account of any discounts offered.

When analysing the tender, the evaluation committee will calculate the final tender price after adjusting it on the basis of Clause 23.

## CORRECTING ERRORS

### Possible errors in the financial offer will be corrected by the evaluation committee as follows:

* where there is a discrepancy between amounts in figures and in words, the amount in words will prevail;

### The amount stated in the tender will be adjusted by the evaluation committee in the event of error, and the tenderer will be bound by that adjusted amount. If the tenderer does not accept the adjustment, its tender will be rejected and its tender guarantee forfeited.

# CONTRACT AWARD

## AWARD CRITERIA

[Where no technical scoring is given to the offers: The most economically advantageous tender is the technically compliant tender with the lowest price].

Where very exceptionally a technical scoring is given to the offers: The most economically advantageous tender is the technically compliant tender with the best price-quality ratio. The best price-quality ratio is established by weighing technical quality against price on an (to be assessed on a case by case basis, for example 80/20, 70/30, 60/40, etc. : <… >basis.

Award criteria is described under point 17 of the Contract Notice.

## Notification of award, contract clarifications

Prior to the expiry of the validity period of tenders, the Contracting Authority will notify the successful tenderer, in writing, that its tender has been selected and draw its attention to any arithmetical errors corrected during the evaluation process. This notification may take the form of an invitation to clarify certain contractual questions raised therein, to which the tenderer must be prepared to reply. This clarification will be confined to issues that had no direct bearing on the choice of the successful tender. The outcome of such clarification will be set out in a memorandum of clarification, to be signed by both parties and incorporated into the contract.

For tenders below EUR 5 000 000, the documentary evidence described below is optional:

[Documentary evidence required from the successful tenderer:

Before the Contracting Authority signs the contract with the successful tenderer, the successful tenderer must, if required to do so by the Contracting Authority, provide the **documentary proof** or statements required under the law of the country in which the company (or, for consortia, each of the companies) is established, to show that it does not fall into any of the exclusion situations listed the Tender Dossier. This evidence, documents or statements must carry a date, which cannot be more than one year before the date of submission of the tender. In addition, a statement must be furnished stating that the situations described in these documents have not changed since then. The above-mentioned documents must be submitted for the tenderer, every member of a joint venture/consortium, all subcontractors and every supplier. In the event of doubt on this declaration of honour, the Contracting Authority must request documentary evidence that they are not in a situation of exclusion.]

[For contracts below EUR 5 000 000, the Contracting Authority may, depending on its assessment of the risks, decide not to require proof for selection criteria, but then no pre-financing must be made.

Evidence of financial, economic, technical and professional capacity according to the selection criteria specified in subsection 12.2 above will be requested unless satisfactory documents are already included in the tender.

If the successful tenderer is required to provide documentary proof, but fails to provide this documentary proof or statement within 15 calendar days following notification of award or if the successful tenderer is found to have provided false information, the award will be considered null and void. In this case, the Contracting Authority may award the tender to the next lowest tenderer or cancel the tender procedure.]

After the contract has been signed and the successful tenderer has provided the performance guarantee, in accordance with Clause 26, the Contracting Authority will promptly notify the other tenderers that their tenders have not been successful and release their tender guarantees.

By submitting a tender, each tenderer accepts to receive notification of the outcome of the procedure by electronic means. Such notification shall be deemed to have been received on the date upon which the contracting authority sends it to the electronic address referred to in the offer.

## CONTRACT SIGNING AND PERFORMANCE GUARANTEE

### Within 30 days of receipt of the contract already signed by the Contracting Authority, the selected tenderer must sign and date the contract and return it, with the performance guarantee (if applicable) to the Contracting Authority. On signing the contract, the successful tenderer will become the Contractor and the contract will enter into force.

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| Deadline of 30 days may be shortened, but only in case it does not have effect on the level of competition. |

### If it fails to sign and return the contract and any financial guarantee required within 30 days after receipt of notification, the Contracting Authority may consider the acceptance of the tender to be cancelled, without prejudice to the Contracting Authority’s right to invoke the guarantee, claim compensation or pursue any other remedy in respect of such failure, and the successful tenderer will have no claim whatsoever on the Contracting Authority.

### The performance guarantee referred to in the General Conditions is set at <insert a percentage between 5 and 10 %as specified in the contract notice*>* of the amount of the contract and must be presented in the form specified in the annex to the tender dossier, except where it takes the form of a certified cheque or a cash deposit. It will be released in accordance with the Special Conditions.

## CANCELLATION OF THE TENDER PROCEDURE

In the event of cancellation of a tender procedure, tenderers will be notified by the Contracting Authority. If the tender procedure is cancelled before the tender opening session, the sealed envelopes will be returned, unopened, to the tenderers.

Cancellation may occur, for example, where:

* the tender procedure has been unsuccessful, namely where no qualitatively or financially worthwhile tender has been received or there has been no valid response at all;
* the economic or technical parameters of the project have been fundamentally altered;
* exceptional circumstances or force majeure render normal execution of the project impossible;
* all technically compliant tenders exceed the financial resources available;
* there have been irregularities in the procedure, in particular where these have prevented fair competition;
* the award is not in compliance with sound financial management, i.e. does not respect the principles of economy, efficiency and effectiveness (e.g. the price proposed by the tenderer to whom the contract is to be awarded is objectively disproportionate with regard to the price of the market.

**In no event will the Contracting Authority be liable for any damages whatsoever including, without limitation, damages for loss of profits, in any way connected with the cancellation of a tender procedure, even if the Contracting Authority has been informed of the possibility of damage. Publication of a contract notice does not commit the Contracting Authority to implement the programme or project announced.**

## ETHICS CLAUSES AND CODE OF CONDUCT

28.1 Absence of conflict of interest

The tenderer must not be affected by any conflict of interest and must have no equivalent relation in that respect with other tenderers or parties involved in the project. Any attempt by a tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the evaluation committee or the contracting authority during the process of examining, clarifying, evaluating and comparing tenders will lead to the rejection of its tender and may result in administrative penalties according to the Financial Regulation in force.

28.2 Respect for human rights as well as environmental legislation and core labour standards

The tenderer and its staff must comply with human rights. In particular and in accordance with the applicable basic act, tenderers and applicants who have been awarded contracts must comply with the environmental legislation including multilateral environmental agreements, and with the core labour standards as applicable and as defined in the relevant International Labour Organisation conventions (such as the conventions on freedom of association and collective bargaining; elimination of forced and compulsory labour; abolition of child labour).

**Zero tolerance for sexual exploitation and sexual abuse:**

The European Commission applies a policy of 'zero tolerance' in relation to all wrongful conduct which has an impact on the professional credibility of the tenderer.

Physical abuse or punishment, or threats of physical abuse, sexual abuse or exploitation, harassment and verbal abuse, as well as other forms of intimidation shall be prohibited.

28.3 Anti-corruption and anti-bribery

The tenderer shall comply with all applicable laws and regulations and codes relating to anti-bribery and anti-corruption. The European Commission reserves the right to suspend or cancel project financing if corrupt practices of any kind are discovered at any stage of the award process or during the execution of a contract and if the contracting authority fails to take all appropriate measures to remedy the situation. For the purposes of this provision, ‘corrupt practices’ are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or execution of a contract already concluded with the contracting authority.

28.4 Unusual commercial expenses

Tenders will be rejected or contracts terminated if it emerges that the award or execution of a contract has given rise to unusual commercial expenses. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a payee who is not clearly identified or commissions paid to a company which has every appearance of being a front company.

Contractors found to have paid unusual commercial expenses on projects funded by the European Union are liable, depending on the seriousness of the facts observed, to have their contracts terminated or to be permanently excluded from receiving EU funds.

28.5 Breach of obligations, irregularities or fraud

The contracting authority reserves the right to suspend or cancel the procedure, where the award procedure proves to have been subject to breach of obligations, irregularities or fraud. If breach of obligations, irregularities or fraud are discovered after the award of the contract, the contracting authority may refrain from concluding the contract.

## APPEALS

Tenderers believing that they have been harmed by an error or irregularity during the award process may file a complaint. Complaints are sent to the Contracting Authority, at the address set out in this Tender Dossier.

1. If the tender includes subcontracting, it is recommended that the contractual arrangements between the tenderer and its subcontractors include mediation, according to national and international practices, as a method of dispute resolution. [↑](#footnote-ref-1)
2. DIRECTIVE 2014/24/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 February 2014 on public procurement and repealing Directive 2004/18/EC,<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0024&from=HR> [↑](#footnote-ref-2)