# A. INSTRUCTIONS TO TENDERERS

**<Contract title>**

**<Ref. number>**

By submitting a tender, tenderers fully and unreservedly accept the special and general conditions governing the contract as the sole basis of this tendering procedure, whatever their own conditions of sale may be, which they hereby waive. 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 specified will lead to the rejection of the tender. No account can be taken of any remarks in the tender relating to the tender dossier; remarks may result in the 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 Practical Guide, which is applicable to this call (available on the Internet at: <http://ec.europa.eu/europeaid/prag/document.do>).

# Supplies to be provided

## 1.1 The subject of the contract is the supply, [manufacture] [delivery] [unloading] [installation] [commissioning] [maintenance] [after-sales service] by the Contractor of the following goods (if divided into lots, specify per lot):

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| Please note that supply tender may (and should) include all necessary subjects stated above. It is necessary that under this point all basic requirements are stated (e.g. titles of items to be purchased including requirements for delivery, installation, training, etc.), whereas detailed specification must be stated in Annex II Technical Specification.  Also, please note that supply contract may also include a proportion of service (such as training component or manual delivery) – it is still a supply contract. |

<general description of supplies and indication of quantity>

[in <insert number> lot[s]]

[at] [to] <the place(s) where supplies are to be delivered> [DDP] [DAP][[1]](#footnote-1), and <the implementation period in days, in accordance with point 15 of the Contract notice>.

## 1.2 The supplies must comply fully with the technical specifications set out in the tender dossier (technical annex) and conform in all respects with the drawings, quantities, models, samples, measurements and other instructions.

## 1.3 [The supplies described under lot[s] no <insert number> must be accompanied by an additional ‘lot’ consisting of spare parts and/or consumables. Neither the unit price, nor the overall price of spare parts will influence the evaluation of the tenders, except where they vary substantially between the tenders received. Lists of spare parts must be drawn up by tenderers on the basis of their professional experience and the expected places of use; they must show the unit prices of the parts, calculated as specified in Article 11 (below). The Project partner reserves the right to alter the list of spare parts; any changes will appear in the contract.

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| Please note that such requirement does not influence the offer or the price; however, it may provide project partner with the opportunity to purchase spare parts on more favourable terms. |

## 1.4 Tenderers are not authorised to tender for a variant solution in addition to the present tender.

# Timetable

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| Note : table must be aligned with the provisions set out in the Contract Notice |

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|  | **DATE** | **TIME\*** |
| **Clarification meeting / site visit (if any)** | [< Date>] [Not applicable] | [< Time>] [Not applicable] |
| **Deadline for requesting clarifications from the Project partner** | < Date 21 days before deadline for tenders > | < Time > |
| **Last date on which clarifications are issued by the Project partner** | < Date 11 days before deadline for tenders > | - |
| **Deadline for submission of 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 Project partner Provisional date**

# Participation

3.1 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.

3.2 n/a

## 3.3 The eligibility requirement detailed in subclauses 3.1 and 3.2 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 supplies 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 Project partner may accept other satisfactory evidence that these conditions are met.

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

## The exclusion situations referred to above also apply 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. When requested by the Project partner, tenderers/contractors must submit declarations from the intended subcontractors that they are not in any of the exclusion situations. In cases of doubt over declarations, the Project partner will request documentary evidence that subcontractors are not in a situation that excludes them.

## 3.5 To be eligible to take part in this tender procedure, tenderers must prove to the satisfaction of the Project partner that they comply with the necessary legal, technical and financial requirements and have the means to carry out the contract effectively.

## 3.6 Where tenders include subcontracting, it is recommended that the contractual arrangements between tenderers and their subcontractors include mediation, according to national and international practices, as a method of dispute resolution.

# Origin

## 4.1 All supplies purchased under a procurement contract, or in accordance with a grant agreement, financed under IPA II shall originate from an eligible country or from any country which is eligible under the rules of the partner or other donor or member state or determined in the constitutive act of the trust fund. As the Croatian national rules do not contain any restrictions as regards the rules of origin, all goods can originate from any country, irrespective of any thresholds.

# Type of contract

## [lump sum] [unit-price]

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| Lump sum contract is based on total price for all items. It is therefore relatively rare since from the budget it is not visible what are individual item prices (note: this may prove important if certain item is deemed ineligible for programme financing).  For this reason most commonly used is unit price contract. |

# Currency

## Tenders must be presented in [Euro] [other currency].

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| Please note that tenders can also be presented in diferent currencies, but in this case very clear instruction must be provided on what will exact exchange rate be. Such condition must not affect market competition.  Also, think about what is your currency for payments and whether you will have additional costs if contracts are signed in different currencies (thus creating exchange rate difference). |

# Lots

[If the tender procedure is not divided into lots:

This tender procedure is not divided into lots.]

[If the tender procedure is divided into lots:

## 7.1 The tenderer may submit a tender for [one lot only] [one lot, several or all of the lots].

## 7.2 Each lot will form a separate contract and the quantities indicated for different lots will be indivisible. The tenderer must offer the whole of the quantity or quantities indicated for each lot. Under no circumstances must tenders be considered for part of the quantities required. If the tenderer is awarded more than one lot, a single contract may be concluded covering all those lots.

## 7.3 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. The discount should be clearly indicated for each lot in such a way that it can be announced during the public tender opening session.

## 7.4 Contracts will be awarded lot by lot, but the Project partner may select the most favourable overall solution after taking account of any discounts offered.]

# Period of validity

## 8.1 Tenderers will be bound by their tenders for a period of 90 days from the deadline for the submission of tenders.

## 8.2 In exceptional cases and prior to the expiry of the original tender validity period, the Project partner may ask tenderers in writing to extend this period by 40 days. Such requests and the responses to them must be made in writing. Tenderers that agree to do so will not be permitted to modify their tenders and they are bound to extend the validity of their tender guarantees for the revised period of validity of the tender. If they refuse, without forfeiture of their tender guarantees, their participation in the tender procedure will be terminated.

8.3 The successful tenderer will be bound by its tender for a further period of 60 days. The further period is added to the validity period of the tender irrespective of the date of notification.

# Language of tenders

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

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| 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.

# Submission of tenders

## 10.1 The Project partner must receive the tenders before the deadline specified in 10.3. They must include all the documents specified in point 11 of these Instructions and be sent to the following address:

< full postal address >

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

< full delivery address including opening hours >

Tenders must comply with the following conditions:

## 10.2 All tenders must be submitted in one original, marked ‘original’, and <insert number> (in view of environmental considerations, as few copies as possible should be requested, with double side printing, degradable material for folders, presentation, etc…) copies signed in the same way as the original and marked ‘copy’.

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

## 10.3 All tenders must be received at <insert address> before the deadline <date and time>, by registered letter with acknowledgement of receipt or hand-delivered against receipt signed by the Contracting Authority.

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

a) the above address;

b) the reference code of this tender procedure, (i.e. <publication reference>);

c) where applicable, the number of the lot(s) tendered for;

d) 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>.

e) the name of the tenderer.

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

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| 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. |

# Content of tenders

Failure to fulfil the below requirements may result in rejection of the tender. All tenders submitted must comply with the requirements in the tender dossier and comprise:

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| 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 Part 1 Technical offer and under Part 2 Financial offer are the same.  Contracting Authority is free to choose between DDP and DAP options, however in practice DDP is more appropriate and simpler for the Contracting Authority. |

**Part 1: Technical offer:**

## a detailed description of the supplies tendered in conformity with the technical specifications, including any documentation required, including if applicable:

* + [a list of the spare parts and consumables recommended by the manufacturer];
  + [a proposal for after-sales service over <insert number> year[s]];
  + [a training proposal (indicate training needs)];
  + [technical proposals related to ancillary services].

The technical offer should be presented as per template (Annex II+III\*, Contractor’s technical offer) adding separate sheets for details if necessary.

**Part 2: Financial offer:**

## A financial offer calculated on a [DDP] [DAP][[2]](#footnote-2) basis for the supplies tendered, including if applicable:

* + [financial proposal for spare parts and consumables for use for <insert number> year[s]] [with itemised price list];
  + [financial proposal for after-sales services for <insert number> year[s]];
  + [financial proposal for training];
  + [financial proposal related to ancillary services];

This financial offer should be presented as per template (Annex IV\*, Budget breakdown), adding separate sheets for details if necessary.

* [An electronic version of the technical and/or financial offer ]

**Part 3: Documentation:**

To be supplied using the templates attached\*:

* [if required: The tender guarantee, for <specify the amount as indicated in point 11 of the Contract notice> ;
* The ‘Tender Form for a Supply Contract’, as provided in the Tender Dossier (please note that certain information must be provided for each member if a consortium):
* Financial identification Form (FIF) – containing the details of the bank account into which payments should be made
* Legal entity file (LEF) and the supporting documents (only if required)

To be supplied in free-text format:

* A description of the warranty conditions, which must be in accordance with the conditions laid down in Article 32 of the General Conditions.
* [If a commercial warranty is required: A description of the organisation of the commercial warranty tendered in accordance with the conditions laid down in Article 32 of the Special Conditions]

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| Standard warranty - please note that under standard PRAG contract tenderers are required to submit ‘regular’ warranty for maximum 12 months (General Conditions art 32.7), unless Contracting Authority sets shorter period in Special Conditions.  Commercial warranty is any warranty additional to the standard warranty which is to be specifically required above the standard warranty 12 months period (and included as a requirement in the Technical Specification and Special Conditions). |

* [<Other>]

# Taxes and other charges

## The applicable tax and customs arrangements are the following:

[The European Commission and <name of the partner country or countries > have agreed in < insert reference to the relevant Financing Agreement or Framework Agreement > to allow [partial] [full] exemption from the following taxes VAT.

# Additional information before the deadline for submission of tenders

The tender dossier should be so clear that tenderers do not need to request additional information during the procedure. If the Project partner, on its own initiative or in response to a request from a prospective tenderer, provides additional information on the tender dossier, it must send such information in writing to all other prospective tenderers at the same time.

Tenderers may submit questions in writing to the following address 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 Project partner has no obligation to provide clarifications after this date.

Any clarification of the tender dossier will be published on the following website [insert web address, same as the address of tender publication] at the latest 11 days before the deadline for submission of tenders.

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| Please note that under the best international practice (Public Procurement Directive[[3]](#footnote-3)) 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. |

No individual meetings are foreseen. Any prospective tenderers seeking to arrange individual meetings with either the Project partner during the tender period may be excluded from the tender procedure.

# Clarification meeting / site visit

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| Clarification meetings are generally organized only in case tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the procurement documents. If no clarification meeting / site visit is necessary for the reasons stated above, it is recommended no clarification meeting / site visit is foreseen. |

**[Alternative 1:**

14.1 No clarification meeting / site visit planned. Visits by individual prospective tenderers during the tender period cannot be organised. ]

**[Alternative 2:**

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| If meeting / site visit is organized, deadlines should be aligned with point 13, i.e. meeting / site visit should be held before the deadline for submission of questions. |

A clarification meeting / site visit will be held on < date at least 21 days before the deadline for submission of tenders > at < time > at < address > to answer any questions on the tender dossier which have been forwarded in writing or are raised at the meeting. Minutes will be taken during the meeting published on the website [insert web address, same as the address of tender publication] together with any clarifications in response to written requests at the latest 11 calendar days before the deadline for submission of tenders. No further clarification will be provided after this date. All the costs of attending this meeting will be borne by the tenderers.

## Other than this site visit for all prospective tenderers, no visits by individual prospective tenderers can be organised during the tender period.]

# Alteration or withdrawal of tenders

## 15.1 Tenderers may alter or withdraw their tenders by written notification prior to the deadline for submission of tenders referred to in Article 10.1. No tender may be altered after this deadline. Withdrawals must be unconditional and will end all participation in the tender procedure.

## 15.2 Any such notification of alteration or withdrawal must be prepared and submitted in accordance with Article 10. The outer envelope must be marked ‘Alteration’ or ‘Withdrawal’ as appropriate.

## 15.3 No tender may be withdrawn in the interval between the deadline for submission of tenders referred to in Article 10.1 and the expiry of the tender validity period. Withdrawal of a tender during this interval may result in forfeiture of the tender guarantee.

# Costs of preparing tenders

No costs incurred by the tenderer in preparing and submitting the tender are reimbursable. All such costs will be borne by the tenderer.

# Ownership of tenders

The Project partner retains ownership of all tenders received under this tender procedure. Consequently, tenderers have no right to have their tenders returned to them.

# Joint venture or consortium

## 18.1 If a tenderer is a consortium of two or more persons, the tender must be a single one with the object of securing a single contract. Members of the consortium should designate one of their members to act as leader with authority to bind the consortium. The composition of the consortium must not be altered.

## 18.2 The tender may be signed by the representative of the consortium.

# Opening of tenders

## 19.1 The opening and examination of tenders is for the purpose of checking whether the tenders are complete, whether the requisite tender guarantees have been furnished, whether the required documents have been properly included and whether the tenders are generally in order.

## 19.2 The tenders will be opened in public session on <date and local time> at <address> by the committee appointed for the purpose. The committee will draw up minutes of the meeting, which will be available on request.

## 19.3 At the tender opening, the tenderers’ names, the tender prices, any discount offered, written notifications of alteration and withdrawal, the presence of the requisite tender guarantee (if required) and such other information as the Project partner may consider appropriate may be announced.

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

## 19.5 Any attempt by tenderers 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 Project partner in its decision concerning the award of the contract will result in the immediate rejection of their tenders.

## 19.6 All tenders received after the deadline for submission specified in the contract notice or these instructions will be kept by the Project partner. The associated 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.

# Evaluation of 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). |

## 20.1 Examination of the administrative conformity of tenders

The aim at this stage is to check that tenders comply with the essential 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 Project partner 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.

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

## 20.2 Technical evaluation

After analysing the tenders deemed to comply in administrative terms, the evaluation committee will rule on the technical admissibility of each tender, classifying it as technically compliant or non-compliant.

## The minimum qualifications required (see selection criteria in Contract notice point 16) are to be evaluated at the start of this stage.

Where contracts include after-sales service and/or training, the technical quality of such services will also be evaluated by using yes/no criteria as specified in the tender dossier.

## 20.3 In the interests of transparency and equal treatment and to facilitate the examination and evaluation of tenders, the evaluation committee may ask each tenderer individually for clarification of its tender including breakdowns of prices, within a reasonable time limit to be fixed by the evaluation committee. The request for clarification and the response must be in writing, but no change in the price or substance of the tender may be sought, offered or permitted except as required to confirm the correction of arithmetical errors discovered during the evaluation of tenders pursuant to Article 20.4. Any such request for clarification must not distort competition. Decisions to the effect that a tender is not technically compliant must be duly justified in the evaluation minutes.

## 20.4 Financial evaluation

a) Tenders found to be technically compliant will be checked for any arithmetical errors in computation and summation. Errors 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 be the amount taken into account;

- except for lump-sum contracts, where there is a discrepancy between a unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will be the price taken into account.

b) Amounts corrected in this way will be binding on the tenderer. If the tenderer does not accept them, its tender will be rejected.

c) Unless specified otherwise, the purpose of the financial evaluation process is to identify the tenderer offering the lowest price. Where specified in the technical specifications, the evaluation of tenders may take into account not only the acquisition costs but, to the extent relevant, costs borne over the life cycle of the supplies (such as for instance maintenance costs and operating costs), in line with the technical specifications. In such case, the Project partner will examine in detail all the information supplied by the tenderers and will formulate its judgment on the basis of the lowest total cost, including additional costs.

## 20.5 Variant solutions

Variant solutions will not be taken into consideration.

## 20.6 Award criteria

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

# Notification of award

The contracting authority will inform all tenderers simultaneously and individually of the award decision. The tender guarantees of the unsuccessful tenderers will be released once the contract is signed.

# Signature of the contract and performance guarantee

22.1. The successful tenderer will be informed in writing that its tender has been accepted (notification of award). Upon request of the contracting authority and before the signature of the contract with the successful tenderer, the successful tenderer shall provide the **documentary proof** or statements required under the law of the country in which the company (or each of the companies in case of a consortium) is effectively established, to show that it is not in any of the exclusion situations listed in Section 2.6.10.1. of the practical guide. This evidence or these documents or statements must carry a date not earlier than one year before the date of submission of the tender. In addition, a statement shall be provided that the situations described in these documents have not changed since then.

For contracts with a value of less than EUR 300 000, the contracting authority may, depending on its assessment of the risks, decide not to require proofs for selection criteria.

22.2. Upon request of the contracting authority, the successful tenderer shall also provide evidence of financial and economic standing and technical and professional capacity according to the selection criteria for this call for tenders specified in the contract notice, point 16. The documentary proofs required are listed in Section 2.6.11. of the practical guide.

The contracting authority may, depending on its assessment of the risks, decide not to require proofs for financial and economic standing and technical and professional capacity.

22.3. If the successful tenderer fails to provide the documentary proof or statement or the evidence of financial and economic standing and technical and professional capacity within 15 calendar days following the notification of award or if the successful tenderer is found to have provided false information, the award will be considered null and void. In such a case, the contracting authority may award the tender to the next lowest tenderer or cancel the tender procedure.

The contracting authority may waive the obligation of any candidate or tenderer to submit the documentary evidence referred to above if such evidence has already been submitted for the purposes of another procurement procedure, provided that the issue date of the documents does not exceed one year and that they are still valid. In this case, the candidate or tenderer must declare on his/her honour that the documentary evidence has already been provided in a previous procurement procedure and confirm that his/her situation has not changed.

[For contracts with a value of maximum EUR 300 000:

[Option 1: Documentary evidence of the financial and economic capacity and/or of the technical and professional capacity according to the selection criteria specified in point 16 of the contract notice shall be submitted. (See further Section 2.6.11. of the practical guide).]

[Option 2: The contracting authority may, depending on its assessment of the risks, decide not to require the documentary proof of the selection criteria, but in that case no pre-financing will be granted: No documentary evidence of the selection criteria in point 16 of the contract notice shall be submitted but no pre-financing will be granted.] ]

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.

22.4. The contracting authority reserves the right to vary quantities specified in the tender by +/- 100 % at the time of contracting and during the validity of the contract. The total value of the supplies may not, as a result of the variation rise or fall by more than 25 % of the original financial offer in the tender. The unit prices quoted in the tender shall be used.

22.5. Within 30 days of receipt of the contract 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.

22.6. 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 seize 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.

22.7. The performance guarantee referred to in the general conditions is set at <insert the percentage between 5 and 10 % mentioned 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. It will be released within 45 days of the issue of the final acceptance certificate by the contracting authority, except for the proportion assigned to after-sales service. For contracts of EUR 150 000 or below, on the basis of objective criteria such as the type and value of the contract, the contracting authority may decide not to require such a guarantee.

# Tender guarantee

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| For the performance guarantee (Point 22.7) and Tender Guarantee instruction, please see instructions in the Contract Notice, point 11 and 12 |

[The tender guarantee referred to in Article 11 above is set at **<**amount as indicated in point 11 of the Contract Notice**>** and must be presented in the form specified in the annex to the tender dossier. It must remain valid for 45 days beyond the period of validity of the tender. Tender guarantees provided by tenderers who have not been selected will be returned together with the information letter that the tenderer has been unsuccessful. The tender guarantee of the successful tenderer will be released on signing of the contract, once the performance guarantee has been submitted.]

OR: [No tender guarantee is required.]

# Ethics clauses

## 23.1 Any attempt by a candidate or tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the committee or the Project partner during the process of examining, clarifying, evaluating and comparing tenders will lead to the rejection of their candidacy or tender and may result in administrative penalties.

## 23.2 Without the Project partner’s prior written authorisation, a Contractor and its staff or any other company with which the Contractor is associated or linked may not, even on an ancillary or subcontracting basis, supply other services, carry out works or supply equipment for the project. This prohibition also applies to any other projects that could, owing to the nature of the contract, give rise to a conflict of interest on the part of the Contractor.

## 23.3. When submitting a tender, tenderers must declare that they are not affected by a conflict of interest and have no equivalent relation in that respect with other tenderers or parties involved in the project. Should such a situation arise during execution of the contract, the Contractor must immediately inform the Project partner.

## 23.4 Contractors must at all times act impartially and as faithful advisers in accordance with the code of conduct of their profession. They will refrain from making public statements about the project or services without the Project partner’s prior approval. They may not commit the Project partner in any way without its prior written consent.

## 23.5 For the duration of the contracts Contractors and their staff must respect human rights and undertake not to offend the political, cultural and religious mores of the beneficiary state. In particular and in accordance with the legal basic act concerned, tenderers that have been awarded contracts must abide by core labour standards as defined in the relevant International Labour Organisation conventions (such as the Conventions on freedom of association and collective bargaining; Abolition of forced and compulsory labour; Elimination of forced and compulsory labour; Abolition of child labour).

## 23.6 Contractors may accept no payment connected with the contracts other than that provided for therein. Contractors and their staff must not exercise any activity nor receive any advantage inconsistent with their obligations to the Project partner.

## 23.7 Contractors and their staff are obliged to maintain professional secrecy for the entire duration of contracts and after their completion. All reports and documents drawn up or received by Contractors will be confidential.

## 23.8 The contract governs the Contracting Parties’ use of all reports and documents drawn up, received or presented by them during the implementation of the contract.

## 23.9 Contractors must refrain from any relationship likely to compromise their independence or that of their staff. If the Contractor ceases to be independent, the Project partner may, regardless of injury, terminate the contract without further notice and without the Contractor having any claim to compensation.

## 23.10 The Project partner reserves the right to suspend or cancel project financing if corrupt practices of any kind are discovered at any stage of the award process and if the Project partner 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 implementation of a contract already concluded with the Project partner.

## 23.11 All tenders will be rejected or contracts terminated if it emerges that the award or implementation 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 recipient who is not clearly identified or commissions paid to a company which has any appearance of being a front company.

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

## 23.13 The Project partner reserves the right to suspend or cancel the procedure, if the award procedure proves to have been subject to substantial errors, irregularities or fraud. Where such substantial errors, irregularities or fraud are discovered after the award of the Contract, the Project partner may refrain from concluding the Contract.

# Cancellation of the tender procedure

If a tender procedure is cancelled, tenderers will be notified by the Project partner. 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, if:

* the tender procedure has been unsuccessful, namely where no suitable, qualitatively or financially acceptable tender has been received or there has been no valid response at all;
* the economic or technical parameters of the project have changed fundamentally;
* exceptional circumstances or *force majeure* render normal implementation of the project impossible;
* all technically acceptable tenders exceed the financial resources available;
* there have been substantial errors, irregularities or frauds 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 Project partner 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 Project partner has been advised of the possibility of damages. The publication of a contract notice does not commit the Project partner to implement the programme or project announced.**

# 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 point 10.1 of this document.

1. DDP (Delivered Duty Paid)/DAP (Delivered At Place) — Incoterms 2010 International Chamber of Commerce <http://www.iccwbo.org/products-and-services/trade-facilitation/incoterms-2010/the-incoterms-rules/>. [↑](#footnote-ref-1)
2. [<DDP (Delivered Duty Paid)>] [<DAP (Delivered At Place)>] — Incoterms 2010 International Chamber of Commerce <http://www.iccwbo.org/products-and-services/trade-facilitation/incoterms-2010/the-incoterms-rules/> . [↑](#footnote-ref-2)
3. **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-3)