# A. INSTRUCTIONS TO TENDERERS

## PUBLICATION REF.: EC-NEAR/ANK/2024/EA-OP/0086

**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 (available on the internet at: https://wikis.ec.europa.eu/display/ExactExternalWiki/ePRAG).**

## 1. Supplies to be provided

1.1 For Lot 1, the subject of the contract is: the supply, delivery, unloading, siting and installation, commissioning, after sale services, three years for technical support[1], maintenance, design and delivery of relevant trainings of the following supplies:

**Lot 1: Transport modelling and simulation software**

| Item | Description | Quantity | Delivery to (DDP[1]) | Implementation period |
|---|---|---|---|---|
| 1.1 | Multimodal transport modelling software | 11 | İstanbul Büyükşehir Belediye Başkanlığı, Ulaşım Dairesi Başkanlığı, Ulaşım Planlama Şube Müdürlüğü, Osmaniye mahallesi, Çobançeşme Koşuyolu Bulvarı, no:5 34568 Bakırköy İstanbul, Türkiye | 90 days |
| 1.2 | Multimodal traffic simulation software | 2 | | 90 days |

For Lot 2, the subject of the contract is: the supply, delivery, unloading, siting and installation, commissioning, after sale services, maintenance, design and delivery of relevant trainings of the following supplies:

**Lot 2: IT equipment**

| Item | Description | Quantity | Delivery to (DDP[1]) | Implementation period |
|---|---|---|---|---|
| 2.1 | Desktop | 2 | İstanbul Büyükşehir Belediye Başkanlığı, Ulaşım Dairesi Başkanlığı, Ulaşım Planlama Şube Müdürlüğü, Osmaniye mahallesi, Çobançeşme Koşuyolu Bulvarı, no:5 34568 Bakırköy İstanbul, Türkiye | 60 days |
| 2.2 | Monitor | 8 | | 60 days |
| 2.3 | Laptop | 14 | | 60 days |
| 2.4 | Keyboard | 2 | | 60 days |
| 2.5 | Wireless optical mouse | 16 | | 60 days |
| 2.6 | Printer | 1 | | 60 days |
| 2.7 | Plotter | 1 | | 60 days |

[1] ANNEX II + III:TECHNICAL SPECIFICATIONS + TECHNICAL OFFER, item 1.1.28, item 1.2. 12

| | | | | |
|---|---|---|---|---|
| 2.8 | Monitor for meeting room | 1 | | 60 days |
| 2.9 | Mini projector | 1 | | 60 days |
| 2.10 | Tablet | 5 | | 60 days |
| 2.11 | Hard drive | 3 | | 60 days |
| 2.12 | Video conference camera | 2 | | 60 days |
| 2.13 | Presentation remote | 3 | | 60 days |

For all lots, the delivery address "see as above" DDP[2] and,

**For Lot 1:** The implementation period will last 90 calendar days:

Starting from the commencement of the Contract and ending on the day of issuance of Provisional Acceptance Certificate, the implementation period will include:

- Delivery and installation to designated location, unpacking, assembling and removal of packing materials from site within 30 calendar days,
- Commissioning and training within 30 calendar days,
- Issuance of Provisional Acceptance Certificate within 30 calendar days.

All items from the Lot 1 should function in integrated way as a system.

**For Lot 2:** The implementation period will last 60 calendar days:

Starting from the commencement of the Contract and ending on the day of issuance of Provisional Acceptance Certificate, the implementation period will include:

- Delivery and installation to designated location within 30 calendar days,
- Commissioning and training within 15 calendar days,
- Issuance of Provisional Acceptance Certificate within 15 calendar days.

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 1 and Lot 2 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 contracting authority reserves the right to alter the list of spare parts; any changes will appear in the contract.

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

## 2. Timetable

| | **DATE** | **TIME** |
|---|---|---|
| **Clarification meeting / site visit (if any)** | Not applicable | Not applicable |

2 DDP (Delivered Duty Paid) — Incoterms 2020 International Chamber of Commerce http://www.iccwbo.org/incoterms/

| | | |
|---|---|---|
| **Deadline for requesting clarifications from the contracting authority** | 26.07.2024 | 16:00 |
| **Last date on which clarifications are issued by the contracting authority** | 08.08.2024 | 16:00 |
| **Deadline for submission of tenders** | As indicated in the Contract notice | 16:00 |
| **Tender opening session** | As indicated in the Contract Notice | 14:00 |
| **Notification of award to the successful tenderer** | 15.11.2024* | - |
| **Signature of the contract** | 30.12.2024* | - |

*** Provisional date**

# 3. Participation

3.1. The eligibility requirements detailed in the Additional information about the contract notice (Annex A5f) or, if applicable, in the Contract Notice (C2), apply 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 must certify that they meet these conditions. 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.

3.2. Natural or legal persons are not entitled to participate in this tender procedure or be awarded a contract if they are in any of the situations mentioned in Sections 2.4. (EU restrictive measures), 2.6.10.1. (exclusion criteria) or 2.6.10.1.2. (rejection from a procedure) of the practical guide. Should they do so, their tender will be considered unsuitable or irregular respectively. In the cases listed in Section 2.6.10.1. of the practical guide tenderers may also be excluded from EU financed procedures and be subject to financial penalties up to 10% of the total value of the contract in accordance with the Financial Regulation in force. This information may be published on the Commission website in accordance with the Financial Regulation in force. Tenderers must provide declarations on honour[3] that they are not in any of these exclusion situations. Such declarations must also be submitted by all the members of a joint venture/consortium, by any sub-contractor and by any capacity providing entities. Tenderers who make false declarations may also incur financial penalties and exclusion in accordance with the Financial Regulation in force. Their tender will be considered irregular.

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. In cases of doubt over declarations, the contracting authority will request documentary evidence that subcontractors and/or capacity providing entities are not in a situation that excludes them.

[3] See PRAG Section 2.6.10.1.3 A)

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

3.4. Subcontracting is allowed. The tenderer and, where applicable, entities on whose capacities it has relied with regard to criteria relating to the economic and financial capacity shall be jointly liable for the performance of the contract.

## 4. Origin

4.1 Unless otherwise provided in the contract or below all goods purchased under the contract must originate in a Member State of the European Union or in a country or territory of the regions covered and/or authorised by the specific instruments applicable to the programme specified in the Additional information about the contract notice (Annex A5f) or, if applicable, in the Contract Notice (C2), . For these purposes, 'origin' means the place where the goods are mined, grown, produced or manufactured and/or from which services are provided. The origin of the goods must be determined according to the relevant international agreements (notably WTO agreements), which are reflected in EU legislation on rules of origin for customs purposes: the Customs Code (Council Regulation (EEC) No 2913/92) its articles 22 to 246 thereof, and the Code's implementing provisions (Commission Regulation (EEC) No 2454/93.

All supplies under Lot 2 may originate in any country.

Tenderers must provide an undertaking signed by their representative certifying compliance with this requirement. The tenderer is obliged to verify that the provided information is correct. Otherwise, the tenderer risks to be excluded because of negligently misrepresenting information. For more details, see Section 2.3.5. of the practical guide.

4.2 When submitting tenders, tenderers must state expressly that all the goods meet the requirements concerning origin and must state the countries of origin. They may be asked to provide additional information in this connection.

## 5. Type of contract

Unit-price

## 6. Currency

Tenders must be presented in Euro.

## 7. Lots

7.1 The tenderer may submit a tender for 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 contracting authority may select the most favourable overall solution after taking account of any discounts offered.

## 8. 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 contracting authority 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. 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, before the validity period expires, request an extension of the validity of the tenders up to the adoption of that recommendation.

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.

## 9. Language of tenders

9.1 The tenders, 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.

If the supporting documents are not written in one of the official languages of the European Union, a translation into the language of the call for tender must be attached. Where the documents are in an official language of the European Union other than English, it is strongly recommended to provide a translation into English, to facilitate evaluation of the documents.

## 10. Submission of tenders

10.1 **Tenders must be sent to the contracting authority before the deadline specified in Contract Notice.** They must include all the documents specified in point 11 of these Instructions and be sent to the following address:

**Att.: Ms. Tijen İĞCİ, PhD**
Ministry of Transport and Infrastructure
Directorate General for European Union Affairs and Foreign Relations
Department of European Union Investments
Hakkı Turayliç Caddesi No: 5 B Blok Kat: 10
Emek 06490 Ankara, Türkiye

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

**Ms. Tijen İĞCİ, PhD**
Ministry of Transport and Infrastructure
Directorate General for European Union Affairs and Foreign Relations
Department of European Union Investments
Hakkı Turayliç Caddesi No: 5 B Blok Kat: 10
Emek 06490 Ankara, Türkiye

**Working hours of the Contracting Authority: 8:30 a.m. - 5:00 p.m. (Local Time)**

Tenders must comply with the following conditions:

10.2 All tenders must be submitted in one original, marked 'original', and three copies signed in the same way as the original and marked 'copy'.

10.3 The tenders should be submitted:

(a) either by post or by courier service, in which case the evidence shall be constituted by the postmark or the date of the deposit slip[4]

(b) or by hand-delivery to the premises of the contracting authority by the participant in person or by an agent, in which case the evidence shall be constituted by the acknowledgment of receipt.

The contracting authority may, for reasons of administrative efficiency, reject any application or tender submitted on time to the postal service but received, for any reason beyond the contracting authority's control, after the effective date of approval of the short-list report or of the evaluation report, if accepting applications or tenders that were submitted on time but arrived late would considerably delay the evaluation procedure or jeopardise decisions already taken and notified.

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. EC-NEAR/ANK/2024/EA-OP/0086);

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 **"İhale açılış oturumundan önce açmayınız"**.

e) the name of the tenderer.

The technical and financial offers must be placed together in a sealed envelope. The envelope should then be placed in another single sealed envelope/package, unless their volume requires a separate submission for each lot.]

# 11. Content of tenders

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

**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, for information purpose only;
    - a training proposal (indicate training needs).

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

- An electronic version of the technical offer.

[4] It is recommended to use registered mail in case the postmark would not be readable

**Part 2: Financial offer:**

- A financial offer calculated on a DDP basis for the supplies tendered, including if applicable:
    - financial proposal for spare parts and consumables for use for 2 years with itemised price list for information purpose only;
    - financial proposal for training;

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 financial offer.

| |
|---|
| In case of doubt about the applicable VAT system, it is the tenderer's responsibility to contact his or her national authorities to clarify the way in which the European Union is exempt from VAT. |

**Part 3: Documentation:**

To be supplied using the templates attached*:

- The "Tender form for a supply contract", together with Annex 1 **"Declaration on honour on exclusion criteria and selection criteria"**, both duly completed, which includes the tenderer's declaration, point 7, (from each member if a consortium, and capacity-providing entities or subcontractors (if any)). A copy of the signed original Declaration shall be submitted. The original shall be kept by the tenderer and might be requested by the Contracting Authority.
- The details of the bank account into which payments should be made (financial identification form – document c4o1_fif_en) (tenderers that have already signed another contract with the European Commission, may provide their financial identification form number instead of the financial identification form, or a copy of the financial identification form provided on that occasion, if no change has occurred in the meantime.)
- The legal entity file (document c4o2_lefind_en) and the supporting documents (tenderers that have already signed another contract with the European Commission, may provide their legal entity number instead of the legal entity sheet and supporting documents, or a copy of the legal entity sheet provided on that occasion, if no change in legal status has occurred in the meantime).

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.
- A description of the organisation of the commercial warranty tendered in accordance with the conditions laid down in Article 32 of the special conditions
- A statement by the tenderer attesting the origin of the supplies tendered (or other proofs of origin).
- Duly authorised signature: an official document (statutes, power of attorney, notary statement, etc.) proving that the person who signs on behalf of the company, joint venture or consortium is duly authorised to do so.
- Catalogues, brochures, booklets, manufacturers' declaration that sufficiently define the supplies being offered, and thus shall enable the Contracting Authority to check the information provided in the technical offer.

Remarks:

Tenderers are requested to follow this order of presentation.

Annex* refers to templates attached to the tender dossier. These templates are also available on: https://wikis.ec.europa.eu/display/ExactExternalWiki/Annexes#Annexes-AnnexesC(Ch.4):Supplies

## 12. Taxes and other charges

The applicable tax and customs arrangements are the following:

The European Commission and Republic of Türkiye have agreed in IPA Framework Agreement on 11.02.2015, and adopted as law by Turkish Parliament (no: 6647) on 04 April 2015 and which was published in the Turkish Official Gazette on 28 April 2015, no: 29340. It has been put into force by Government Decree, no 2015/7708 that was published in Official Gazette no: 29393, dated 21 June 2015 and government Decree, no 2015/8085 that was published in Official Gazette (complementary version, no: 29459, dated 28.08.2015) to allow full exemption from to the following taxes; value added tax (VAT), Special Consumption Tax (SCT), Motor vehicle tax, Special communication tax, Inheritance and Transfer tax, customs or import duties, charges, and/or taxes of equivalent effect, stamp or registration duties or any other charge having equivalent effect. Please, also refer to the Framework Agreement (accessible via https://www.ab.gov.tr/files/ipaii_framework_agreement_original.pdf), and the Communiqués issued by:

- The Ministry of Finance (MoF) thereto for further information, especially for exemption scope and implementation procedure, which are available at the MoF's website at: http://www.gib.gov.tr/uluslararasi_mevzuat

- The Ministry of Customs and Trade (MoCT) thereto for further information, especially for facilities extended for customs clearance, which is available at the MoCT's website at: http://www.resmigazete.gov.tr/eskiler/2017/10/20171007-9.htm

- Türkiye – Avrupa Birliği Katılım Öncesi Yardım Aracı (IPA II) Çerçeve Anlaşmasına İlişkin Gümrük Genel Tebliği (Seri No:1), published in the Official Gazette of Türkiye, No: 30203, on 07.10.2017.

## 13. Additional information before the deadline for submission of tenders

The tender dossier should be clear enough so that tenderers do not need to request additional information during the procedure. If the contracting authority, 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.

Any request for additional information must be made in writing through the TED eTendering website accessible through the F&T portal. Registration on TED eTendering is required to be able to create and submit a question. Additional information can be requested by clicking "Create a question" in the Questions&Answers tab at the latest 21 days before the deadline for submission of tenders. For administrative efficiency reasons, please copy all your requests for additional information which were already submitted via TED eTendering, to the following functional mailbox: euid@uab.gov.tr.

Any clarification of the tender dossier will be published on TED eTendering and https://ipa.uab.gov.tr/ at the latest 8 days before the deadline for submission of tenders. The website will be updated regularly and it is the tenderer's responsibility to check for updates and modifications during the submission period.

Any prospective tenderers seeking to arrange individual meetings with either the contracting authority and/or the European Commission during the tender period may be excluded from the tender procedure.

## 14. Clarification meeting / site visit

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

## 14.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. No tender may be altered after this deadline. Withdrawals must be unconditional and will end all participation in the tender procedure.

Any such notification of alteration or withdrawal must be prepared and submitted in accordance with Section 10. The outer envelope must be marked 'Alteration' or 'Withdrawal' as appropriate.

15.2 No tender may be withdrawn in the interval between the deadline for submission of tenders.1 and the expiry of the tender validity period. Withdrawal of a tender during this interval may result in forfeiture of the tender guarantee.

## 16. 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.

## 17. Ownership of tenders

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

## 18. Joint venture or consortium

18.1 If a tenderer is a joint venture or consortium of two or more persons, the tender must be a single one with the object of securing a single contract, each person must sign the tender and will be jointly and severally liable for the tender and any contract. Those persons must designate one of their members to act as leader with authority to bind the joint venture or consortium. The composition of the joint venture or consortium must not be altered without the prior written consent of the contracting authority.

18.2 The tender may be signed by the representative of the joint venture or consortium only if it has been expressly so authorised in writing by the members of the joint venture or consortium, and the authorising contract, notarial act or deed must be submitted to the contracting authority in accordance with point 11 of these instructions to tenderers. All signatures to the authorising instrument must be certified in accordance with the national laws and regulations of each party comprising the joint venture or consortium together with the powers of attorney establishing, in writing, that the signatories to the tender are empowered to enter into commitments on behalf of the members of the joint venture or consortium. Each member of such joint venture or consortium must provide the proof required under Article 3.5 as if it, itself, were the tenderer.

## 19. Opening of tenders

19.1 The purpose of the opening session is to check whether the tenders have been submitted in accordance with the submission requirements of the call for tenders.

19.2 The date and venue of the tender opening session are indicated in the Contract Notice.

The committee will draw up minutes of the meeting, which will be available on request.

In the case that at the date of the opening session some tenders have not been delivered to the contracting authority but their representatives can show evidence that it has been sent on time, the contracting authority will allow them to participate in the first opening session and inform all representatives of the tenderers that a second opening session will be organised.

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 contracting authority may consider appropriate may be announced.

19.4 After the public opening of the tenders, no information relating to the examination, clarification, evaluation 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 contracting authority 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 contracting authority. 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.

## 20. Evaluation of tenders

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 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.

If a tender does not comply with the tender dossier, it will be rejected immediately and may not subsequently be made to comply by correcting it or withdrawing the departure or restriction.

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 the additional information about the contract notice 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 contracting authority 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

The sole award criterion will be the price. The contract will be awarded to the lowest compliant tender.

1.7 Documentary evidence for exclusion and selection criteria

At any time during the procurement procedure and before the award of the contract, the contracting authority may request documentary evidence on compliance with the exclusion criteria and selection criteria (financial, economic, technical and professional capacity) set out in these instructions. Please note that a request for evidence in no way implies that the tenderer has been successful. **All tenderers are invited to prepare in advance the documents related to the evidence, since they may be requested to provide such evidence within a short deadline**. In any event, the tenderer proposed by the evaluation committee for the award of the contract, will be requested to provide such evidence at short notice.

When requested, regarding the exclusion criteria, the tenderers should be able to 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 in Section 2.6.10.1. of the practical guide.

This evidence, documents or statements must be dated, no more than one year before the date of submission of the tender.

The above-mentioned documents must be submitted for every member of a joint venture/consortium, all subcontractors and every capacity providing entity.

The contracting authority may waive the obligation of any 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 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.

Where the documentary evidence submitted is in an official language of the European Union other than the one of the procedure, it is strongly recommended to provide a translation into the language of the procedure, in order to facilitate the evaluation of the documents.

Failure to provide valid documentary evidence at the request and within the deadline set by the Contracting Authority shall lead to the rejection of the tender for the award of the contract, unless the tenderer can justify the failure on the grounds of material impossibility.

If the successful tenderer fails to provide this documentary proof or statement 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.

## 21. Notification of award

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.

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. The successful tenderer will be informed in writing that its tender has been accepted (notification of award).

## 22. Signature of the contract and performance guarantee

22.1 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.

22.2 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.

22.3 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.

22.4 The performance guarantee referred to in the general conditions is set at 10% of the amount of the contract. The performance guarantee must be presented in the form specified in the annex to the tender dossier. It will be released within 60 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.

## 23. Tender guarantee

No tender guarantee is required.

## 24. Ethics clauses and code of conduct

24.1 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.

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

The tenderer and its personnel must comply with human rights and applicable data protection rules. 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, abuse and harassment:**

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.

24.3 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.

24.4 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.

24.5 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.

## 25. Cancellation of the tender procedure

If a tender procedure is cancelled, 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, 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 breach of obligations, 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 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 advised of the possibility of damages. The publication of a contract notice does not commit the contracting authority to implement the programme or project announced.

## 26. Appeals

Tenderers believing that they have been harmed by an error or irregularity during the award process may file a complaint. See Section 2.12. of the practical guide.

## 27. Data Protection

Processing of personal data related to this tender procedure by the contracting authority takes place in accordance with the national legislation of the state of the contracting authority and with the provisions of the respective financing agreement.

The tender procedure and the contract relate to an external action funded by the EU, represented by the European Commission. If processing your reply to the invitation to tender involves transfer of personal data (such as names, contact details and CVs) to the European Commission, they will be processed solely for the purposes of the monitoring of the procurement procedure and of the implementation of the contract by the Commission, for the latter to comply with its obligations under the applicable legislative framework and under the financing agreement concluded between the EU and the Partner Country without prejudice to possible transmission to the bodies in charge of monitoring or inspection tasks in application of EU law. For the part of the data transferred by the contracting authority to the European Commission, the controller for the processing of personal data carried out within the Commission is the head of contracts and finance unit R4 of DG Neighbourhood and Enlargement Negotiations.

Details concerning processing of your personal data by the Commission are available on the privacy statement at:

https://wikis.ec.europa.eu/display/ExactExternalWiki/Annexes#Annexes-AnnexesA(Ch.2):General

In cases where you are processing personal data in the context of participation to a tender (e.g. CVs of both key and technical experts) and/or implementation of a contract (e.g. replacement of experts) you shall accordingly inform the data subjects of the possible transmission of their data to EU institutions and bodies and communicate the above mentioned privacy statement to them.

## 28. Early detection and exclusion system

The tenderers and, if they are legal entities, persons who have powers of representation, decision-making or control over them, are informed that, should they be in one of the situations of early detection or exclusion, their personal details (name, given name if natural person, address, legal form and name and given name of the persons with powers of representation, decision-making or control, if legal person) may be registered in the early detection and exclusion system, and communicated to the persons and entities listed in the above-mentioned decision, in relation to the award or the execution of a procurement contract.