

# **VOLUME 1**

## **SECTION 1: INSTRUCTIONS TO TENDERERS**

3

## SECTION I INSTRUCTIONS TO TENDERERS

PUBLICATION REF.: EuropeAid/135220/DD/WKS/RS

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 to contract procedures for EU external action, which is applicable to this call (available on the internet at this address: [http://ec.europa.eu/europeaid/work/procedures/index\\_en.htm](http://ec.europa.eu/europeaid/work/procedures/index_en.htm)).

### CONTENTS

<b>GENERAL PART .....</b>	<b>4</b>
1. .... GENERAL INSTRUCTIONS .....	4
2. .... FINANCING .....	4
3. .... PARTICIPATION .....	4
4. .... ONLY ONE TENDER PER TENDERER .....	5
5. .... TENDER EXPENSES .....	5
6. .... SITE INSPECTION .....	5
<b>TENDER DOCUMENTS .....</b>	<b>6</b>
7. .... CONTENT OF TENDER DOCUMENTS .....	6
8. .... EXPLANATIONS CONCERNING TENDER DOCUMENTS .....	6
9. .... MODIFICATIONS TO TENDER DOCUMENTS .....	6
<b>TENDER PREPARATION .....</b>	<b>6</b>
10. ... LANGUAGE OF TENDERS .....	6
11. ... CONTENT AND PRESENTATION OF TENDER .....	7
12. ... INFORMATION/DOCUMENTS TO BE SUPPLIED BY THE TENDERER .....	7
13. ... TENDER PRICES .....	11
14. ... PERIOD OF VALIDITY OF TENDERS .....	12
15. ... TENDER GUARANTEE .....	12
16. ... VARIANT SOLUTIONS .....	12
<b>SUBMISSION OF TENDERS .....</b>	<b>12</b>
17. ... SEALING, MARKING AND SUBMITTING TENDERS .....	12
18. ... EXTENSION OF THE DEADLINE FOR SUBMITTING TENDERS .....	13
19. ... LATE TENDERS .....	13

20... ALTERING AND WITHDRAWING TENDERS .....	13
<b>OPENING AND EVALUATING TENDERS.....</b>	<b>14</b>
21... OPENING TENDERS .....	14
22... EVALUATING TENDERS .....	14
23... CORRECTING ERRORS .....	15
<b>CONTRACT AWARD .....</b>	<b>16</b>
24... AWARD CRITERIA .....	16
25... Notification of award, contract clarifications .....	16
26... CONTRACT SIGNING AND PERFORMANCE GUARANTEE .....	16
27... CANCELLATION OF THE TENDER PROCEDURE .....	17
28... ETHICS CLAUSES .....	17
29... APPEALS .....	19

13

# GENERAL PART

## 1. GENERAL INSTRUCTIONS

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

### 1.2. Timetable

	DATE	TIME*
Clarification meeting	Not Applicable	Not Applicable
Site visit	Not Applicable	Not Applicable
Deadline for requesting any additional information from the Contracting Authority	18 March 2014	16:00
Last date on which additional information are issued by the Contracting Authority	28 March 2014	-
Deadline for submitting tenders	8 April 2014	13:00
Tender opening session	8 April 2014	15:00
Notification of award to the successful tenderer	May 2014 <sup>□</sup>	-
Signature of the contract	May 2014 <sup>□</sup>	-

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

<sup>□</sup> Provisional date

## 2. FINANCING

The project is financed by the European Union, in accordance with the rules of IPA programme.

## 3. PARTICIPATION

3.1. Participation in the call for tender is open to all legal persons participating either individually or in a grouping (consortium) or tenderers established in one of the Member States of the European Union or in a country or territory of the regions covered and/or authorised by the specific instruments applicable to the IPA programme under which the contract is financed. Participation is also open to international organisations. Participation of natural persons is directly governed by the specific instruments applicable to the programme under which the contract is financed.

3.2. These terms refer to all nationals of the above states and to all legal entities, companies or partnerships established in the above states. For the purposes of proving compliance with this rule, tenderers being legal persons, must present the documents required under that country's law. In case of doubt, the Contracting Authority may ask the tenderer to provide evidence demonstrating actual compliance with the "establishment" criteria. For this purpose, legal person will have to demonstrate that their legal person is formed under the law of an eligible State and that its head office is within an eligible State. "Head office" must be understood as its central administration or principal place of business.

- 3.3. The eligibility requirement detailed in subclauses 3.1 and 3.2 applies to all members of a joint venture/consortium, all subcontractors and all suppliers to tenderers. Every tenderer, member of a joint venture/consortium, 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. 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.
- 3.4. Natural persons, companies or undertakings falling into a situation set out in section 2.3.3 of the Practical Guide to contract procedures for EU external action are excluded from participation in and the award of contracts. Tenderers must provide declarations to the effect that they are not in any of the exclusion situations listed in section 2.3.3 of the Practical Guide to contract procedures for EU external action. The declarations must cover all the members of a joint venture/consortium. Tenderers guilty of making false declarations may also incur financial penalties and exclusion in accordance with section 2.3.4 of the Practical Guide.
- 3.5. 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.
- 3.6. The upper limit authorised for subcontracting is 30 % of the value of the tender.<sup>1</sup>

#### **4. 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.

#### **5. TENDER EXPENSES**

- 5.1. 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.
- 5.2. 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.

#### **6. SITE INSPECTION**

- 6.1. The tenderer is strongly advised 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.
- 6.2. A clarification meeting and/or a site visit will not be held by the Contracting Authority.

---

<sup>1</sup> 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.

## TENDER DOCUMENTS

### 7. 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.

### 8. EXPLANATIONS CONCERNING TENDER DOCUMENTS

- 8.1. 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:

Delegation of the European Union to the Republic of Serbia  
Finance and Contracts Section, 9th floor  
Avenija 19a Building, Vladimira Popovica 40/V,  
1070 New Belgrade, Republic of Serbia  
E-mail: [DELEGATION-SERBIA-FCS@eeas.europa.eu](mailto:DELEGATION-SERBIA-FCS@eeas.europa.eu)

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.

- 8.2. The questions and answers will be published on the EuropeAid website at <https://webgate.ec.europa.eu/europeaid/online-services/index.cfm?do=publi.welcome> and on the website of the Delegation of the European Union to the Republic of Serbia [www.europa.rs](http://www.europa.rs) (section Funding Opportunities).

### 9. MODIFICATIONS TO TENDER DOCUMENTS

- 9.1. The Contracting Authority may amend the tender documents by publishing modifications up to 11 days before the deadline for submitting tenders.
- 9.2. Each modification published will constitute a part of the tender documents and will be published on the EuropeAid website <https://webgate.ec.europa.eu/europeaid/online-services/index.cfm?do=publi.welcome> and on the website of the Delegation of the European Union to the Republic of Serbia [www.europa.rs](http://www.europa.rs) (section Funding Opportunities).
- 9.3. 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

### 10. LANGUAGE OF TENDERS

3

- 10.1. 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. All correspondence relating to payments, including invoices and interim and final payment certificates, must also be sent to the Contracting Authority in English.
- 10.2. If 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 the language of the call for tenders, in order to facilitate the evaluation of the documents.

## **11. CONTENT AND PRESENTATION OF TENDER**

### **11.1. Tenders must satisfy the following conditions:**

- 11.1.1. Tenders must comprise the documents and information in clause 12 below.
- 11.1.2. 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.
- 11.1.3. The relevant pages of the documents specified in clause 12 must be signed as indicated.
- 11.1.4. 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.

### **11.2. The works are not divided into lots.**

## **12. INFORMATION/DOCUMENTS TO BE SUPPLIED BY THE TENDERER**

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

- 12.1.1. Tender form and appendix, using the forms provided in Volume 1, section 2;
- 12.1.2. Documentation as required in the questionnaire in Volume 1, Section 4, including all forms attached;
- 12.1.3. The forms provided in Volume 4:  
Volume 4.3.2 — Bill of Quantities;
- 12.1.3.1. 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.
- 12.1.4. Cash flow statements.
- 12.1.5. Copies of the most recent documents showing the organisation chart, 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:
- general information about the tenderer (Form 4.1)

- organisation chart (Form 4.2)
  - power of attorney (Form 4.3).
- 12.1.6. 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 Form 4.4, Financial statement, in Volume 1, Section 4 of the tender documents.
- 12.1.7. Financial projections for the two years ahead. This information must follow Form 4.4, Financial statement, provided in accordance with Volume 1, Section 4 of the tender documents.
- 12.1.8. A completed Financial Identification form to nominate the bank account into which payments would be made in the event that the tender is successful. It is made available in a "Fill and Print" mode at the following address: [http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/financial\\_id/financial\\_id\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial_id_en.cfm). (Where the tenderer has already signed another contract with the European Commission, it may provide instead of the financial identification form either its financial identification form number or a copy of the financial identification form provided on that occasion, unless a change occurred in the meantime).

The legal entity file and the supporting documents. It is made available in a "Fill and Print" mode at the following address: [http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/legal\\_entities/legal\\_entities\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm). (Where the tenderer has already signed another contract with the European Commission, it may provide instead of the legal entity sheet and its supporting documents either its legal entity number or a copy of the legal entity sheet provided on that occasion, unless a change in its legal status occurred in the meantime).

- 12.1.9. Information about the tenderer's technical qualifications. This information must follow the forms in Volume 1, Section 4 of the tender documents and include:
- a presentation of the tenderer's organisation, including the total number of staff employed (Form 4.6.1.1),
  - a list of the staff proposed for execution of the contract, with the CVs of key staff (Forms 4.6.1.2 and 4.6.1.3),
  - a list of plant for execution of the contract. The descriptions must demonstrate the tenderer's ability to complete the works and should include:
    - Trucks;
    - Concrete mixing and placing plant;
    - Cranes and lifting equipment;
    - Tools;

The tenderer must indicate whether this equipment is owned, hired or used by a subcontractor. Manufacturer's documents fully describing the equipment must be submitted with the tender (Form 4.6.2);

- a list of materials and any supplies intended for use in the works, stating their origin;
- a work plan with brief descriptions of the main tasks (Form 4.6.3), showing the sequence and proposed timetable for implementing the tasks. In particular, the proposal must detail the temporary and permanent works to be constructed. The tenderer must take account of weather conditions and

3



the requirement to prepare designs and obtain building permits prior to carrying out construction works. The tenderer must also submit a comprehensive method statement, with drawings if necessary, showing the methods by which it proposes to carry out the works. In particular, the tenderer must indicate the numbers, types and capacities of the plant and staff it proposes to use on the main areas of work;

- 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 2 projects, each one of the minimum value of **250,000 EUR**, of the same nature and complexity comparable to the works concerned by the tender during the last 5 years (starting from 01.01.2009 until the deadline for submission of tenders);
- information regarding the proposed main site office (Form 4.6.3);
- an outline of the quality assurance system(s) to be used (Form 4.6.7).
- if applicable, information on tenderers involved in a joint venture/consortium (Form 4.6.5);
- details of their litigation history over the last 5 years (Form 4.6.6);
- details of the accommodation and facilities to be provided for the Supervisor (Form 4.6.8);
- any other information (Form 4.6.9).

12.1.10. Proof documents, declarations and undertakings according to clauses 3.1-3.6 above. These documents should cover all members of a joint venture/consortium, all subcontractors and all suppliers to tenderers as specified.

12.1.11. Unless otherwise provided in the contract, 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 clause 3.1 above. 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) in particular its Articles 22 to 246 thereof, and the Code's implementing provisions (Commission Regulation (EEC) No 2454/93).

Tenderers must provide an undertaking signed by their representative certifying compliance with this requirement. For more details, see point 2.3.1 PRAG.

12.1.12. Modifications (if any);

12.1.13. Tender guarantee, using the form provided in Volume 1, Section 3.

- 12.2. 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.

The selection criteria for each tenderer are as follows:

*Economic and financial capacity of candidate:*

- a) the average annual turnover of the last three years (2011, 2012, 2013) is at least **500,000 EURO**;
- b) It must have access to sufficient credit and other financial facilities to cover the required cash-flow for the duration of the contract. In any case, the amount of credit available must exceed the equivalent of **50,000 EURO**.

*Technical and professional capacity of candidate:*

- a) The tenderer must be a registered firm or a natural person legally capable of carrying out the specified works;
- b) The tenderer must have completed at least 2 projects, each covering construction/reconstruction of the buildings with electrical and mechanical installations, each one of the minimum value of **250,000 EUR**, of the same nature and complexity comparable to the works concerned by the tender, which were implemented during the period of 5 years from the submission deadline (starting from 01.01.2009 until the deadline for submission of tenders);

The above value of 250,000 EUR refers to the total value of works the tenderer was responsible for.

Copies (ordinary copies, with translation into English) of the respective taking-over or final acceptance certificates signed by the supervisor/contracting authority/employer of the projects concerned must be submitted;

- c) It must carry out at least 70% of the contract works by own resources, which means that it must have the equipment, materials, human and financial resources necessary to enable it to carry out that percentage of the contract;
- d) If it is the lead member of a joint venture/consortium, it must have the ability to carry out at least 50% of the contract works by its own means;
- e) If it is a partner of a joint venture/consortium (i.e. not the lead member) it must have the ability to carry out at least 10% of the contract works by its own means.
- f) Key personnel:
  - One (1) Project Manager/Site Manager (Architect/Civil engineer) who will coordinate the entire contract. He/she shall be a qualified engineer with project management experience of at least 5 years in at least two projects with a similar nature, size and complexity;
  - One (1) Electrical Engineer qualified as Electrical Engineer with experience of at least 5 years in at least two projects with a similar nature, size and complexity;
  - One (1) Site Mechanical Engineer qualified as Mechanical Engineer with experience of at least 5 years in at least two projects with a similar nature, size and complexity;

- Before the contract commencement date, all staff should possess all the necessary professional licences issued or validated by the relevant National Authorities;

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 an undertaking 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.

12.3. 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. See Form 4.6.5 in Volume 1 and the tender form.
- 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.

### 13. TENDER PRICES

13.1. The currency of the tender is the euro.

13.2. The tenderer must provide for unit-price contracts a Bill of Quantities in euro. The tender price must cover all works as described in the tender documents. All sums in for unit-price contracts: the Bill of Quantities, the questionnaire and other documents must also be expressed in this currency, with the exception of originals of bank and annual financial statements.

13.3. Tenderers must quote all components of for unit-price contracts: the 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 for unit-price contracts: Bill of Quantities. Prices do not include taxes and fiscal duties, as exoneration is explicitly given in the contract. Non-exonerated taxes and fiscal duties, apart from those stated separately in the financial tender templates, are covered in: the prices of the Bill of Quantities.

13.4. If a discount is offered by the tenderer, it must be clearly specified in the Bill of Quantities in Volume 4 and indicated in the tender form in Volume 1, Section 1.2. The discount must be quoted for all works.

13.5. 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.

13

## **14. PERIOD OF VALIDITY OF TENDERS**

- 14.1. 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.
- 14.2. 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.
- 14.3. 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.

## **15. TENDER GUARANTEE**

- 15.1. The tenderer must provide, as a part of its tender, a tender guarantee in the form set out in Volume 1, Section 3 of the tender dossier, or in another form acceptable to the Contracting Authority that meets the essential requirements set out therein. The tender guarantee must be for an amount of **6,000 Euro**. The original guarantee must be included in the original tender.
- 15.2. 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.
- 15.3. 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.
- 15.4. The tender guarantees of unsuccessful tenderers will be returned together with the information letter that the tenderer has been unsuccessful.
- 15.5. The tender guarantee of the successful tenderer must be released when the tenderer has signed the contract and provided the requisite performance guarantee.

## **16. VARIANT SOLUTIONS**

Variant solutions will not be taken into consideration.

## **SUBMISSION OF TENDERS**

### **17. SEALING, MARKING AND SUBMITTING TENDERS**

- 17.1. The complete tender must be submitted in one original, clearly marked 'original' and three copies, clearly marked 'copy'. In the event of any discrepancy between them, the original will prevail.

3

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

17.3. 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 or its representative.

The tender must be sent to the following address:

Delegation of the European Union to the Republic of Serbia  
Finance and Contracts Section, 9th floor  
Avenija 19a Building, Vladimira Popovica 40/V,  
11070 New Belgrade, Republic of Serbia

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

Delegation of the European Union to the Republic of Serbia  
Finance and Contracts Section, 9th floor  
Avenija 19a Building, Vladimira Popovica 40/V,  
11070 New Belgrade, Republic of Serbia,  
Opening hours are from 9.30 till 16:00 CET.

17.4. 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., EuropeAid/135220/DD/WKS/RS);
- (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 "Ne otvarati pre zvanične sesije otvaranja".
- (e) the name of the tenderer.

## **18. 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.

## **19. LATE TENDERS**

19.1. 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.

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

## **20. ALTERING AND WITHDRAWING TENDERS**

20.1. 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.

- 20.2. 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.
- 20.3. 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**

### **21. OPENING TENDERS**

- 21.1. 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.
- 21.2. 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.
- 21.3. 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.
- 21.4. 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.

### **22. 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.

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

#### **22.1. 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.

## 22.2. Technical evaluation

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

The purpose of the evaluation process is to identify the tenderer which for the lowest cost is most likely to enable the Contracting Authority to achieve its objectives of having a facility that is completed on time, meets the published criteria and is within the budget available. The evaluation of tenders may take into account not only the construction costs but, if necessary, the operating costs and resources required (ease of operation and maintenance), in line with the technical specifications. 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.

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.

## 22.3. 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.

# 23. CORRECTING ERRORS

23.1. 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;
- 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 prevail.

23.2. 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

### 24. AWARD CRITERIA

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

### 25. 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.

Documentary evidence required from the successful tenderer:

Before the Contracting Authority signs the contract with the successful tenderer, the successful tenderer must 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 2.3.3 of the Practical Guide to contract procedures for EU external action. 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 providing more than 10% of the works and every supplier providing more than 10% of the works. For any other subcontractor or supplier, the successful tenderer must submit a declaration from the intended subcontractor or supplier that it is not in one of the exclusion situations. 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.

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 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.

### 26. CONTRACT SIGNING AND PERFORMANCE GUARANTEE

26.1. 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.

26.2. 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.

- 26.3. The performance guarantee referred to in the General Conditions is set at 10% 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 in accordance with the Special Conditions.

## **27. 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 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.**

## **28. ETHICS CLAUSES**

- 28.1. Any attempt by a candidate or tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the committee or the Contracting Authority during the process of examining, clarifying, evaluating and comparing tenders will lead to the rejection of its candidacy or tender and may result in administrative penalties.
- 28.2. Without the Contracting Authority's prior written authorisation, the 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 also applies to any other programmes or projects that could, owing to the nature of the contract, give rise to a conflict of interest on the part of the Contractor.
- 28.3. When putting forward a candidacy or tender, the candidate or tenderer must declare that it is not affected by any conflict of interest, and that it has 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 Contracting Authority.

- 28.4. The Contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of its profession. It must refrain from making public statements about the project or services without the Contracting Authority's prior approval. It may not commit the Contracting Authority in any way without its prior written consent.
- 28.5. For the duration of the contract, the Contractor and its staff must respect human rights and undertake not to offend the political, cultural and religious mores of the beneficiary state.
- 28.6. The Contractor may accept no payment connected with the contract other than that provided for therein. The Contractor and its staff must not exercise any activity or receive any advantage inconsistent with their obligations to the Contracting Authority.
- 28.7. The Contractor and its staff are obliged to maintain professional secrecy for the entire duration of the contract and after its completion. All reports and documents drawn up or received by the Contractor are confidential.
- 28.8. The contract governs the Parties' use of all reports and documents drawn up, received or presented by them during execution of the contract.
- 28.9. The Contractor must refrain from any relationship likely to compromise its independence or that of its staff. If the Contractor ceases to be independent, the Contracting Authority may, regardless of injury, terminate the contract without further notice and without the Contractor having any claim to compensation.
- 28.10. The 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 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 implementation of a contract already concluded with the Contracting Authority.
- 28.11. All 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. 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 every appearance of being a front company.
- 28.12. The Contractor undertakes to supply the Commission on request with all supporting documents relating to the conditions of the contract's execution. The Commission may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in cases of suspected unusual commercial expenses.
- 28.13. 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.
- 28.14. The Contracting Authority reserves the right to suspend or cancel the procedure, where 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 Contracting Authority may refrain from concluding the Contract.

## **29. APPEALS**

Tenderers believing that they have been harmed by an error or irregularity during the award process may file a complaint. See section 2.4.15 of the Practical Guide to contract procedures for EU external action.

## **30 DATA PROTECTION**

If processing your reply to the invitation to tender involves the recording and processing of personal data (such as names, addresses and CVs), it will be processed<sup>2</sup> solely for the purposes of the performance management and monitoring of the tender and of the contract by the data controller without prejudice to possible transmission to the bodies charge with monitoring or inspection tasks in application of Union law. Details concerning processing of your personal data are available on the privacy statement at :

<http://aideprgp.cc.cec.eu.int:1261/europeaid/prag/annexes.do?group=A&locale=en><sup>3</sup>

The Controller of this call for tender is the Head of Unit E3.

## **31 EARLY WARNING SYSTEM AND CENTRAL EXCLUSION DATABASE**

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 mentioned in:

- Commission Decision of 16.12.2008 on the Early Warning System (EWS) for the use of authorising officers of the Commission and the executive agencies (OJ, L 344, 20.12.2008, p.125) or
- Commission Regulation of 17.12.2008 on the Central Exclusion Database (CED) (OJ L344, 20.12.2008, p.12),

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 EWS only or both in the EWS and CED, and communicated to the persons and entities listed in the above-mentioned Decision and Regulation, in relation to the award or the execution of a procurement contract.

\* \* \*

---

<sup>2</sup> pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data

<sup>3</sup> This link will lead you to the new " EuropeAid privacy statement" published among the Prag General Annexes.

