

## A. INSTRUCTIONS TO TENDERERS

PUBLICATION REF.: <insert reference>

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: <http://ec.europa.eu/europeaid/prag/document.do>).

**How to complete these standard instructions to tenderers. Please insert information** between the <> brackets as indicated for each tender procedure. Square brackets [ ] and parts shaded in grey indicate options to choose: they should be included when applicable, but should only be modified in exceptional cases, dictated by the requirements of a specific call for tenders. **All other parts of these standard instructions must be left unchanged.** In the final version of the instructions to tenderers, please remember to delete this paragraph, any other text with yellow highlighting and to suppress all brackets.

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### 1 Supplies to be provided

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

<general description of supplies and indication of quantity>

[in <insert number> lot[s]]

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

- 1.2 The supplies must comply fully with the technical specifications set out in the tender dossier (technical annex) and conform in all respects with the drawings, quantities, models, samples, measurements and other instructions.
- 1.3 [The supplies described under lot[s] no <insert number> must be accompanied by an additional 'lot' consisting of spare parts and/or consumables. Neither the unit price, nor the overall price of spare parts will influence the evaluation of the tenders, except where they vary substantially between the tenders received. Lists of spare parts must be drawn up by tenderers on the basis of their professional experience and the expected places of use; they must show the unit prices of the parts, calculated as specified in Article 11 (below). The Contracting Authority reserves the right to alter the list of spare parts; any changes will appear in the contract.]

<sup>1</sup> DDP (Delivered Duty Paid)/DAP (Delivered At Place) — Incoterms 2010 International Chamber of Commerce <http://www.iccwbo.org/products-and-services/trade-facilitation/incoterms-2010/the-incoterms-rules/>.

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- 1.4 [Tenderers are not authorised to tender for a variant solution in addition to the present tender.]  
**OR**  
 [Tenderers are authorised to tender for a variant solution in addition to the present tender. The price of the variant solution has to be equal or below to the price of the winning tender. See section 20.5]  
**OR, if variants for a higher price than the price of the winning tender are allowed, subject to a derogation granted for a different award criteria:** [Tenderers are authorised to tender for a variant solution in addition to the present tender. See section 20.5. ]

## 2 Timetable

	DATE	TIME*
Clarification meeting / site visit (if any)	[< Date>] [Not applicable]	[< Time>] [Not applicable]
Deadline for requesting clarifications from the Contracting Authority	< Date 21 days before deadline for tenders >	< Time >
Last date on which clarifications are issued by the Contracting Authority	< Date 11 days before deadline for tenders >	-
Deadline for submission of tenders	< Date >	< Time >
Tender opening session	< Date >	< Time >
Notification of award to the successful tenderer	< Date at most 90 days after deadline for tenders > <sup>6</sup>	-
Signature of the contract	< Date at most 150 days after deadline for tenders > <sup>6</sup>	-

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

## 3 Participation

- 3.1 [BUDGET for calls where the CIR applies: Participation is open to all natural persons who are nationals of and legal persons (participating either individually or in a grouping - consortium - of tenderers) which are effectively established in a Member State of the European Union or in an eligible country or territory as defined under the Regulation (EU) N°236/2014 establishing common rules and procedures for the implementation of the Union's instruments for external action (CIR) for the applicable Instrument under which the contract is financed (see also heading 22 of the contract notice). Participation is also open to international organisations. All supplies under this contract must originate in one or more of these countries. However, they may originate from any country when the amount of the supplies to be purchased (as a whole or, if divided into lots, per lot) is below EUR 100 000. ]

[BUDGET for calls where the CIR does not apply (e.g. for IPA I): Participation is open to all legal persons (participating either individually or in a grouping – consortium - of tenderers) which are **effectively** established 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 under which the contract is financed (see item 22 of the contract notice). All goods supplied under this contract must originate in one or more of these countries. 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].

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[EDF: Tendering is open on equal terms to natural and legal persons (participating either individually or in a grouping – consortium – of tenderers) which are effectively established in one of the Member States of the European Union, an ACP State or in a country or territory authorised by the ACP-EC Partnership Agreement under which the contract is financed. Tendering is also open to international organisations.]

- 3.2 These terms refer to all nationals of the above states and to all legal entities, companies or partnerships effectively 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.

- 3.3 The eligibility requirement detailed in subclauses 3.1 and 3.2 applies to all members of a joint venture/consortium and all subcontractors, as well as to all entities upon whose capacity the tenderer relies for the selection criteria. Every tenderer, member of a joint venture/consortium, every capacity-providing entity, every subcontractor providing more than 10 % of the supplies must certify that they meet these conditions. 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.

**Deleted:** These rules apply to:¶  
tenderers¶  
members of a consortium¶  
any subcontractors

- 3.4 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 2.3.3.1 or 2.3.3.2 of the Practical Guide. Should they do so, their tender will be considered unsuitable or irregular respectively. In the cases listed in Section 2.3.3.1 of the Practical Guide tenderers may also be excluded from EU financed procedures and be subject to financial penalties representing 2% to 10% of the total value of the contract in accordance with the conditions set in Section 2.3.4 of the Practical Guide. This information may be published on the Commission website in accordance with the conditions set in Section 2.3.4 of the Practical Guide. Tenderers must provide declarations that they are not in any of these exclusion situations. The declarations must cover all the members of a joint venture/consortium. Tenderers who make false declarations may also incur financial penalties and exclusion in accordance with section 2.3.4 of the Practical Guide. Their tender will be considered irregular.

**Deleted:** Natural persons, companies or undertakings falling into one of the situations set out in section 2.3.3 of the Practical Guide are excluded from participation in and the award of contracts

The exclusion situations referred to above also apply to all members of a joint venture/consortium, all subcontractors and all suppliers to tenderers, as well as to all entities upon whose capacity the tenderer relies for the selection criteria. When requested by the Contracting Authority, tenderers/contractors must submit declarations from the intended subcontractors that they are not in any of the exclusion situations. In cases of doubt over declarations, the Contracting Authority will request documentary evidence that subcontractors are not in a situation that excludes them.

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- 3.5 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.
- 3.6 Where tenders include subcontracting, it is recommended that the contractual arrangements between tenderers and their subcontractors include mediation, according to national and international practices, as a method of dispute resolution.

[EDF only: When selecting subcontractors, suppliers should give preference to natural persons, companies or firms of ACP States capable of providing the supplies required on similar terms.]

#### 4 Origin

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- 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

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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. **[EDF: Goods originating in the EU include goods originating in the Overseas Countries and Territories.]**

**[BUDGET for calls where the CIR applies and 10<sup>th</sup> EDF/11<sup>th</sup> EDF:**

**[If the estimated budget is above or equal to EUR 100 000: All supplies under this contract must originate in one or more of the above countries.]**

**[If the estimated budget (of the tender procedure as a whole or if divided into lots, per lot) is below EUR 100 000: All supplies under this contract may originate from any country. ]]**

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

**[lump sum] [unit-price] [hybrid]**

## 6 Currency

Tenders must be presented in **[Euro]** **[<ISO code of national currency> only for indirect management in the following cases: (i) when legal or local constraints exceptionally impose using the national currency; (ii) when needed, for contracts within the imprest component of a programme estimate].**<sup>2</sup>

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## 7 Lots

**[If the tender procedure is not divided into lots:**

**This tender procedure is not divided into lots.]**

**[If the tender procedure is divided into lots:**

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

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

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

<sup>2</sup> The currency of tender shall be the currency of the contract and of payment.

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- 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 2.3.3.1 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 The Contracting Authority must receive the tenders before the deadline specified in 10.3. They must include all the documents specified in point 11 of these Instructions and be sent to the following address:

< full postal address >

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

< full delivery address including opening hours >

Tenders must comply with the following conditions:

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- 10.2 All tenders must be submitted in one original, marked 'original', and <insert number> (in view of environmental considerations, as few copies as possible should be requested, with double side printing, degradable material for folders, presentation, etc...) copies signed in the same way as the original and marked 'copy'. [other specifications regarding the submission of tenders]
- 10.3 All tenders must be received at <insert address> before the deadline <date and time>, by registered letter with acknowledgement of receipt or hand-delivered against receipt signed by <insert name> or its representative.
- 10.4 All tenders, including annexes and all supporting documents, must be submitted in a sealed envelope bearing only:
- the above address;
  - the reference code of this tender procedure, (i.e. <publication reference>);
  - where applicable, the number of the lot(s) tendered for;
  - the words 'Not to be opened before the tender opening session' in the language of the tender dossier and <equivalent phrase in the local language>.
  - 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];
  - [a proposal for after-sales service over <insert number> year[s]];
  - [a training proposal (indicate training needs)];
  - [technical proposals related to ancillary services].

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

### Part 2: Financial offer:

- A financial offer calculated on a [DDP] [DAP]<sup>3</sup> basis for the supplies tendered, including if applicable:
  - [financial proposal for spare parts and consumables for use for <insert number> year[s]] [with itemised price list];
  - [financial proposal for after-sales services for <insert number> year[s]];]

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

- [financial proposal for training];
- [financial proposal related to ancillary services];

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

- [An electronic version of the financial offer ]

### Part 3: Documentation:

To be supplied using the templates attached\*:

- [if required: The tender guarantee, for <specify the amount as indicated in point 11 of the Contract notice> ;
- The 'Tender Form for a Supply Contract', together with its Annex 1 'Declaration of honour on exclusion criteria and selection criteria', both duly completed, which includes the tenderer's declaration, point 7, (from each member if a consortium):
- 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.
- [If a commercial warranty is required: A description of the organisation of the commercial warranty tendered in accordance with the conditions laid down in Article 32 of the Special Conditions]
- 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.
- [<Other>]

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: <http://ec.europa.eu/europeaid/prag/annexes.do?group=C>

## 12 Taxes and other charges

The applicable tax and customs arrangements are the following:

[The European Commission and <name of the partner country or countries > have agreed in < insert reference to the relevant Financing Agreement or Framework Agreement > to allow

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[partial] [full] exemption from the following taxes < specify type(s) of tax >. (More specific information may be added such as details of the competent authority in the partner country[ies], a reference to exemption procedures under national legislation (e.g. formalities required, scheme for ex ante exemption or ex post reimbursement, etc.)).

OR [There is no agreement between the European Commission and <name of the partner country> allowing partial or full exemption from taxes.]

[EDF: General provisions regarding tax and customs arrangements are attached to the tender dossier.]

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

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

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

<Contact name  
Address  
Fax  
E-mail>

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

Any clarification of the tender dossier will be published on the EuropeAid website at <https://webgate.ec.europa.eu/europeaid/online-services/index.cfm?do=publi.welcome> [and <enter relevant media>] at the latest 11 days before the deadline for submission of tenders.

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

#### [Alternative 1:

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

#### [Alternative 2:

14.1. A clarification meeting / site visit will be held on < date at least 21 days before the deadline for submission of tenders > at < time > at < address > to answer any questions on the tender dossier which have been forwarded in writing or are raised at the meeting. Minutes will be taken during the meeting and these will be published on the EuropeAid website — together with any clarifications in response to written requests which are not addressed during the meeting — at the latest 11 calendar days before the deadline for submission of tenders. No further clarification will be provided after this date. All the costs of attending this meeting will be borne by the tenderers.

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

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## **15 Alteration or withdrawal of tenders**

- 15.1 Tenderers may alter or withdraw their tenders by written notification prior to the deadline for submission of tenders referred to in Article 10.1. No tender may be altered after this deadline. Withdrawals must be unconditional and will end all participation in the tender procedure.
- 15.2 Any such notification of alteration or withdrawal must be prepared and submitted in accordance with Article 10. The outer envelope must be marked 'Alteration' or 'Withdrawal' as appropriate.
- 15.3 No tender may be withdrawn in the interval between the deadline for submission of tenders referred to in Article 10.1 and the expiry of the tender validity period. Withdrawal of a tender during this interval may result in forfeiture of the tender guarantee.

## **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 opening and examination of tenders is for the purpose of checking whether the tenders are complete, whether the requisite tender guarantees have been furnished, whether the required documents have been properly included and whether the tenders are generally in order.
- 19.2 The tenders will be opened in public session on <date and local time> at <address> by the committee appointed for the purpose. The committee will draw up minutes of the meeting, which will be available on request.
- 19.3 At the tender opening, the tenderers' names, the tender prices, any discount offered, written notifications of alteration and withdrawal, the presence of the requisite tender guarantee (if

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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 and comparison of tenders, or recommendations concerning the award of the contract can be disclosed until after the contract has been awarded.
- 19.5 Any attempt by tenderers to influence the evaluation committee in the process of examination, clarification, evaluation and comparison of tenders, to obtain information on how the procedure is progressing or to influence the 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 Contract notice point 16) are to be evaluated at the start of this stage.

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

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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

**[If variant solutions are not allowed:**

Variant solutions will not be taken into consideration.]

**[If variant solutions for a price equal or below than the price of the original tender of the selected tenderer are allowed:**

Variant solutions will be taken into consideration only if the variant solution has a price equal or below the price of the original tender of the selected tenderer.

Tenderers must submit tenders in accordance with the requirements of the tender dossier. If the invitation to tender provides for variants to be submitted, the technical specifications must specify the subject, limits and basic conditions applicable. If tenderers wish to submit variant technical proposals, they may do so. **Only variants proposed by the selected tenderer will be considered by the Contracting Authority.**

Variant solutions must include all the details necessary for their full evaluation, including the proposed drawings, design calculations, technical specifications, price schedule and methods. Any variant solution must comprise:

(a) an individual tender for the variant solution;

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- (b) a demonstration of the advantages of the variant solution over the initial solution, including a quantifiable justification of any economic and/or technical advantages;
- (c) the drawings and specifications provided for in the initial solution which are not affected by the variant solution;
- (d) the drawings and specifications affected by the variant solution;
- (e) a technical note on the design of the variant solution and, where appropriate, drawings and calculations;

The rates and prices inserted in the budget breakdown must correspond to the conditions laid down in the tender documents. Tenderers must clearly indicate in their variants what additions and subtractions are to be made for each rate and price if the Contracting Authority accepts the variant and its specific features.

Any variant proposals must be submitted in a separate inner envelope, clearly marked 'variant', and it must contain a technical and a financial offer. ]

[Variant solutions for a higher price than the price of the original tender of the selected tenderer are only allowed if a **prior approval** has been granted to use best **price-quality ratio** as an award criterion. (see 20.6): If variant solutions are allowed:

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Give details of conditions to be met by any variant:

Variant solutions will be taken into consideration.

Tenderers must submit tenders in accordance with the requirements of the tender dossier. If the invitation to tender provides for variants to be submitted, the technical specifications and evaluation grid must specify the subject, limits and basic conditions applicable. If tenderers wish to submit variant technical proposals, they may do so. **Only variants proposed by the selected tenderer will be considered by the Contracting Authority.**

Variant solutions must include all the details necessary for their full evaluation, including the proposed drawings, design calculations, technical specifications, price schedule and methods. Any variant solution must comprise:

- (a) an individual tender for the variant solution;
- (b) a demonstration of the advantages of the variant solution over the initial solution, including a quantifiable justification of any economic and/or technical advantages;
- (c) the drawings and specifications provided for in the initial solution which are not affected by the variant solution;
- (d) the drawings and specifications affected by the variant solution;
- (e) a technical note on the design of the variant solution and, where appropriate, drawings and calculations;

The rates and prices inserted in the budget breakdown must correspond to the conditions laid down in the tender documents. Tenderers must clearly indicate in their variants what additions and subtractions are to be made for each rate and price if the Contracting Authority accepts the variant and its specific features.

Any variant proposals must be submitted in a separate inner envelope, clearly marked 'variant', and it must contain a technical and a financial offer. ]

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## 20.6 Award criteria

To be used in all cases except where a supply contract includes particularly significant ancillary services (see below and Practical Guide 4.3.3): [The sole award criterion will be the price. The contract will be awarded to the lowest compliant tender.]

[In exceptional cases of supply contracts including particularly significant ancillary services (such as after sales services and/or training): The compliant tender that offers the best **price-quality ratio** will be chosen.]

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[EDF only: Where tenders are of equivalent economic and technical quality, preference will be given to those with the widest participation of ACP States. See further section 2.4.10 of the Practical Guide.]

## 21 Signature of the contract and performance guarantee

21.1 The successful tenderer will be informed in writing that its tender has been accepted (notification of award). 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 each of the companies in case of a consortium) is **effectively** established, to show that it is not in any of the exclusion situations listed in section 2.3.3 of the Practical Guide. This evidence or these documents or statements must carry a date not earlier than one year before the date of submission of the tender. In addition, a statement must be provided that the situations described in these documents have not changed since then.

21.2 The successful tenderer must also provide evidence of financial and economic standing and technical and professional capacity according to the selection criteria for this call for tenders specified in the contract notice, point 16. The documentary proofs required are listed in section 2.4.11 of the Practical Guide.

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

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

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

[Option 1: Documentary evidence of the financial and economic capacity and/or of the technical and professional capacity according to the selection criteria specified in point 16 of the contract notice shall be submitted. (See further point 2.4.11 of the Practical Guide).]

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

By submitting a tender, each tenderer accepts to receive notification of the outcome of the procedure by electronic means. Such notification shall be deemed to have been received on

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the date upon which the contracting authority sends it to the electronic address referred to in the offer.

- 21.4 The Contracting Authority reserves the right to vary quantities specified in the tender by +/- 100% at the time of contracting and during the validity of the contract. The total value of the supplies may not, as a result of the variation rise or fall by more than 25 % of the original financial offer in the tender. The unit prices quoted in the tender shall be used.
- 21.5 Within 30 days of receipt of the contract signed by the Contracting Authority, the selected tenderer must sign and date the contract and return it, with the performance guarantee (if applicable), to the Contracting Authority. On signing the contract, the successful tenderer will become the Contractor and the contract will enter into force.
- 21.6 If it fails to sign and return the contract and any financial guarantee required within 30 days after receipt of notification, the Contracting Authority may consider the acceptance of the tender to be cancelled without prejudice to the Contracting Authority's right to seize the guarantee, claim compensation or pursue any other remedy in respect of such failure, and the successful tenderer will have no claim whatsoever on the Contracting Authority.
- 21.7 The performance guarantee referred to in the General Conditions is set at <insert the percentage between 5 and 10 % mentioned in the contract notice> of the amount of the contract and must be presented in the form specified in the annex to the tender dossier. It will be released within 45 days of the issue of the final acceptance certificate by the Contracting Authority, except for the proportion assigned to after-sales service. For contracts of € 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.

## 22 Tender guarantee

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

OR: [No tender guarantee is required.]

## 23 Ethics clauses

- 23.1 Any attempt by a candidate or tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the committee or the Contracting Authority during the process of examining, clarifying, evaluating and comparing tenders will lead to the rejection of their candidacy or tender and may result in administrative penalties.
- 23.2 Without the Contracting Authority's prior written authorisation, a Contractor and its staff or any other company with which the Contractor is associated or linked may not, even on an ancillary or subcontracting basis, supply other services, carry out works or supply equipment for the project. This prohibition also applies to any other projects that could, owing to the nature of the contract, give rise to a conflict of interest on the part of the Contractor.
- 23.3. When submitting a tender, tenderers must declare that they are not affected by a conflict of interest and have no equivalent relation in that respect with other tenderers or parties involved in the project. Should such a situation arise during execution of the contract, the Contractor must immediately inform the Contracting Authority.
- 23.4 Contractors must at all times act impartially and as faithful advisers in accordance with the code of conduct of their profession. They will refrain from making public statements about

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the project or services without the Contracting Authority's prior approval. They may not commit the Contracting Authority in any way without its prior written consent.

- 23.5 For the duration of the contracts Contractors and their staff must respect human rights and undertake not to offend the political, cultural and religious mores of the beneficiary state. In particular and in accordance with the legal basic act concerned, tenderers that have been awarded contracts must abide by core labour standards as defined in the relevant International Labour Organisation conventions (such as the Conventions on freedom of association and collective bargaining; Abolition of forced and compulsory labour; Elimination of forced and compulsory labour; Abolition of child labour).
- 23.6 Contractors may accept no payment connected with the contracts other than that provided for therein. Contractors and their staff must not exercise any activity nor receive any advantage inconsistent with their obligations to the Contracting Authority.
- 23.7 Contractors and their staff are obliged to maintain professional secrecy for the entire duration of contracts and after their completion. All reports and documents drawn up or received by Contractors will be confidential.
- 23.8 The contract governs the Contracting Parties' use of all reports and documents drawn up, received or presented by them during the implementation of the contract.
- 23.9 Contractors must refrain from any relationship likely to compromise their independence or that of their staff. If the Contractor ceases to be independent, the Contracting Authority may, regardless of injury, terminate the contract without further notice and without the Contractor having any claim to compensation.
- 23.10 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.
- 23.11 All tenders will be rejected or contracts terminated if it emerges that the award or implementation of a contract has given rise to unusual commercial expenses. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commissions paid to a company which has any appearance of being a front company.
- 23.12 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.
- 23.13 Contractors found to have paid unusual commercial expenses on projects funded by the EU are liable, depending on the seriousness of the facts observed, to have their contracts terminated or to be permanently excluded from receiving EU funds.
- 23.14 The Contracting Authority reserves the right to suspend or cancel the procedure, if the award procedure proves to have been subject to substantial errors, irregularities or fraud. Where such substantial errors, irregularities or fraud are discovered after the award of the Contract, the Contracting Authority may refrain from concluding the Contract.

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## 24 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 substantial errors, irregularities or frauds in the procedure, in particular where these have prevented fair competition;
- the award is not in compliance with sound financial management, i.e. does not respect the principles of economy, efficiency and effectiveness (e.g. the price proposed by the tenderer to whom the contract is to be awarded is objectively disproportionate with regard to the price of the market).

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**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.**

## 25 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.

[Point 26 to be included only in direct management.]

## 26 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), such data will be processed<sup>4</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://ec.europa.eu/europeaid/prag/annexes.do?chapterTitleCode=A><sup>5</sup>.

[For DG DEVCO: The Controller of your call for tenders is the Head of Unit R3 ]

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[For any other DG: The Controller of your call for tender is <please add the name of your Controller>]

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[Point 27 to be included only in direct management.]

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<sup>4</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>5</sup> This link will lead you to the new "EuropeAid privacy statement" published among the Practical Guide General Annexes.

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27 **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.]

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<#>the Decision (2014/792/EU) of 13 November 2014 on the Early Warning System (EWS) for the use of authorising officers of the Commission and the executive agencies (OJ, L 329, 14.11.2014, p.69) or ¶  
<#>the European Commission Regulation of 17.12.2008 on the Central Exclusion Database (CED) (OJ L344, 20.12.2008, p.12). ¶

**Deleted:** EWS only, or in both the EWS and CED

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