

VOLUME 1

SECTION 1: INSTRUCTIONS TO TENDERERS

SECTION I INSTRUCTIONS TO TENDERERS

PUBLICATION REF.: _____

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

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

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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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	< Date >	< Time >
Site visit	< Date >	< Time >
Deadline for requesting any additional information from the Contracting Authority	< 21 days before deadline for tenders >	< Time >
Last date on which additional information are issued by the Contracting Authority	< Date 11 days before deadline for tenders >	-
Deadline for submitting tenders	< Date >	< Time >
Tender opening session	< Date >	< Time >
Notification of award to the successful tenderer	< Date at most 90 days after deadline for tenders > ¹	-
Signature of the contract	< Date at most 150 days after deadline for tenders > ¹	-

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

2. FINANCING

The project is [co-financed] [financed] by the European Union, in accordance with the rules of <specify the programme and the Regulation 236/2014 if applicable> programme.

[The project is co-financed by < Specify financing body >.]

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 a 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 is below 100 000 euros.]

[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 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.]

[EDF: Participation in the call for tender is open on equal terms to natural and legal persons (participating either individually or in a grouping (consortium) of tenderers) established in one of the Member States of the European Union, ACP States or in a country or territory authorised by the ACP-EC Partnership Agreement under which the contract is financed. Participation is also open to international organisations. All supplies and materials under this contract shall originate from one or more of those eligible countries. However, they may originate from any country when the amount value of the supplies and materials to be purchased is below 100,000 euros]]

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.

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 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.

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3.4. Natural persons, companies or undertakings falling into a situation set out in section 2.3.3.1 ('exclusion from participation in procurement procedures') and section 2.3.3.2 ('rejection from a given procedure') of the Practical Guide, are not entitled to participate in this tender procedure or be awarded a contract. Should they do so, their tender will be considered unsuitable or irregular respectively. 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. 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.

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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, as well as to all entities upon whose capacity the tenderer relies for the selection criteria.

3.6. The upper limit authorised for subcontracting is 30% of the value of the tender¹.

¹ If the tender includes subcontracting, it is recommended that the contractual arrangements between the tenderer and its subcontractors include mediation, according to national and international practices, as a method of dispute resolution.

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[EDF only: In the selection of subcontractors, preference must be given by the Contractor to natural persons, companies or firms of ACP States capable of performing the work required on similar terms.]

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 VISIT AND CLARIFICATION MEETING

- 6.1. The tenderer is [strongly advised] [obliged] to visit and inspect the site of the works and its surroundings for the purpose of assessing, at its own responsibility, expense and risk, the factors necessary for preparing its tender and signing the contract for the works. (Date, time and place, see point 13 of the contract notice.)
- 6.2. A clarification meeting and/or a site visit [will] [will not] be held by the Contracting Authority (Date, time and place, see point 13 of the contract notice).
- 6.3. [The minutes of the [clarification meeting and the site visit] [site visit] will be published on the EuropeAid website. As proof of participation, tenderers will receive a certificate of their site visit.]

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:

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<Contact Name>

<Address>

<Fax>

<E-mail>

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

The Contracting Authority must reply to all tenderers' questions at least 11 days before the deadline for receipt of tenders.

- 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 <enter other media, as applicable>].

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 <enter other media, as applicable>].
- 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

- 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:

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

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

The relevant pages of the documents specified in clause 12 must be signed as indicated.

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

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

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

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

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

12. INFORMATION/DOCUMENTS TO BE SUPPLIED BY THE TENDERER

To be customised to the requirements of the tender dossier

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

Tender form, together with its Annex 1 'Declaration of honour on exclusion criteria and selection criteria' Appendix to be used only by NEAR only in FIDIC contracts: [and its Annex 2 'Appendix'], using the form provided in Volume 1, section 2;

Documentation as required in the questionnaire in Volume 1, Section 4, including all forms attached;

The forms provided in Volume 4:

[for lump-sum contracts:

Volume 4.2.2 — Summary;

Volume 4.2.3 — Breakdown of the lump-sum price;

[Volume 4.2.4 — if applicable; Daily work schedule;]

Volume 4.2.5 — Detailed Breakdown of Prices.

The Breakdown of the Lump-sum Price and the Detailed Breakdown of Prices do not derogate in any way to the clause stating that, in a lump-sum contract, the total

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contract price remains fixed irrespective of the quantity of work actually carried out.]

[for unit price contracts:

Volume 4.3.2 — Bill of Quantities;

Volume 4.3.3 — Price Schedule;

[Volume 4.3.4 — if applicable; Daily work Schedule;]

Volume 4.3.5 — Detailed Breakdown of Prices.]

12.1.1.1. 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.

The Detailed Breakdown of Prices must be used when required for any purpose under the contract, notably to provide the coefficients for applying the price revision formula referred to in Article 48.2 of the Special Conditions. The tenderer must provide clear arithmetical calculations for the proposed coefficients. For tenders below the international threshold (5 000 000 Euros) it is not compulsory for the Contracting Authority to request tenderers to provide the information required in the Detailed Breakdown of Prices in Volume 4. However, given that the price revision formula referred to in Article 48.2 of the Special Conditions uses the coefficients provided by the Detailed Breakdown of Prices, the decision not to ask for the detailed breakdown of prices implies that the Contracting Authority will use its own established price revision formula.

Cash flow statements.

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:

To be completed in accordance with the questionnaire in Volume 1, Section 4

- general information about the tenderer (Form 4.1)
- organisation chart (Form 4.2)
- power of attorney (Form 4.3).

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.

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.

Financial identification form (Form 4.5a, Volume 1) and Legal Entity File (Form 4.5b, Volume 1). If the tenderer has already signed another contract financed by the European Union, it may provide instead of the forms and supporting documents either the file numbers received or copies of the forms provided on that occasion, unless a change occurred in the meantime.

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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 amongst others, the following elements:
 - < Trenching machines
 - Dewatering plant
 - Concrete mixing and placing plant
 - Cranes and lifting equipment ...>

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 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 <X> projects of the same nature and complexity comparable to the works concerned by the tender during the last <either: eight years, or in sectors subject to rapid evolution: five> years;
- 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 <X> 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).

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

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. **[BUDGET for calls where the CIR applies + EDF:** However, they may originate from any country when the amount value of the supplies and materials to be purchased is below 100,000 euros.] 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 26 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.]

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

[Modifications (if any):]

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

[If obligatory site visit: Site visit certificate.]

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.

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

The selection criteria for each tenderer are as follows:]

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

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

The selection criteria should be clear and non-discriminatory and may not go beyond the scope of the contract. The reference period for financial capacity may not go beyond the last 3 years for which accounts have been closed. The reference period for professional and technical capacity may not go beyond 8 years counting from the submission deadline **(5 years for economic sectors subject to rapid evolution)**. Consider which proof documents should be requested for each selection criteria. See point 2.4.11 of the Practical Guide.

Economic and financial capacity of candidate:

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The objective of this criterion is to examine whether or not the candidate (i.e. the consortium as a whole, for applications from consortia):

- will not be economically dependent on the Contracting Authority if the contract is awarded to it; and
- has sufficient financial stability to take on the proposed contract.

Examples of financial criteria:

- the average annual turnover of the tenderer in the past 3 years must be at least [EUR] [<ISO code of national currency> only for indirect management] (minimum yearly turnover requested may not exceed 2 times the estimated annual contract value, except in duly justified cases motivated in the tender dossier)<.....>
 - if it is the sole tenderer, 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 [EUR] [<ISO code of national currency> only for indirect management] <.....>
- a) <insert reference criterion>
- b) <insert reference criterion>
- <etc.>

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Technical and professional capacity of candidate:

The objective of this criterion is to examine whether or not the tenderer:

- has sufficient on-going staff resources, expertise and experience to be able to take on the proposed contract;
- is not a so-called 'body shop', i.e. a candidate with no real expertise in fields related to the contract but which simply identifies and proposes experts to fit the project description.

Examples of professional and technical criteria:

- it must have completed at least <X> projects of the same nature/amount/complexity as the works concerned by the tender and implemented during the following period: <8 years (5 years, for economic sectors subject to rapid evolution) from the submission deadline, please specify the dates>. The Contracting Authority reserves the right to ask for copies of certificates of final acceptance signed by the supervisors/contracting authority of the projects concerned.
- (This means that the project the tenderer refers to could have been started/implemented/completed at any time during the indicated period but it does not necessarily have to be started and completed during that period, nor implemented during the entire period.)
- it must carry out at least 70 % of the contract works using its own resources, which means that it must have the equipment, materials, human and financial resources necessary to carry out that percentage of the contract.
 - if it is the lead member of a joint venture/consortium, it must be able to carry out at least 50 % of the contract works using its own means.
 - if it is a partner of a joint venture/consortium (i.e. not the lead member) it must be able to carry out at least 10 % of the contract works using its own means.

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- all its key staff must have at least <X> years' appropriate experience and proven qualifications relevant to works of a similar nature to this project.
- a) <insert reference criterion>
- b) <insert reference criterion>
- <etc.>

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

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

Idem as above

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

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

12.2.4. [In case of contracts divided into Lots whereby additional levels of capacity are added for the case several Lots are awarded to the same tenderer: for example

<In case a tenderer applies to (for example, both Lot n° 1 and Lot n° 2, ...), the tenderer must comply with the following selection criteria:

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

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

12.2.5. Capacity-providing entities:

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

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

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

12.2.6. [Optional: Critical tasks

The Contracting Authority requires that the following critical tasks be performed directly by the tenderer itself, or where the tender is submitted by a joint venture/consortium, by one of its participating members: (to be defined)]

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

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- 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.

[For tenders below EUR 5 000 000:

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

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13. TENDER PRICES

13.1. The currency of the tender is the [EUR] [<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 estimate².

Deleted: [euro] [<national currency>] only for indirect management]

13.2. The tenderer must provide [for unit-price contracts: a Bill of Quantities and Price Schedule] [for lump-sum contracts: Breakdown of the Lump-sum Price] in [euro] [<national currency>] only for indirect management]. The tender price must cover all works as described in the tender documents. All sums in [for unit-price contracts: the Bill of Quantities and Price Schedule] [for lump-sum contracts: Breakdown of the Lump-sum Price], the questionnaire and other documents must also be expressed in this currency, with the exception of originals of bank and annual financial statements.

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13.3. Tenderers must quote all components of [for unit-price contracts: the Bill of Quantities and Price Schedule] [for lump-sum contracts: Breakdown of the Lump-sum Price]. 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 and Price Schedule] [for lump-sum contracts: Breakdown of the Lump-sum Price].

13.4. If a discount is offered by the tenderer, it must be clearly specified in [for unit-price contracts: the Bill of Quantities and Price Schedule] [for lump-sum contracts: Breakdown of the Lump-sum Price] 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.

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.

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² The currency of tender will be the currency of the contract and of payment.

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. 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 request an extension of the validity of the tenders up to the adoption of that recommendation.

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

EITHER:

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 <amount indicated in the contract notice>. 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.]

OR: [No tender guarantee is required.]

16. VARIANT SOLUTIONS

[If variant solutions are not allowed: Variant solutions will not be taken into consideration.]

[If variant solutions for a price equal to or below 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 to 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.**

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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. The prices inserted in [for unit-price contracts: the Bill of Quantities and Price Schedule] [for lump-sum contracts: Breakdown of the Lump-sum Price] must tally with the conditions laid down in the tender documents.]

[The tenderer must state clearly in its variant proposals any additions or deductions to be made to all relevant prices in the event that the Contracting Authority accepts the variant and the details of its construction. For lump-sum contracts, it must include an itemised Breakdown of the Lump-sum Price as amended by the variant solution. For unit-price contracts, it must include a Bill of Quantities and Price Schedule as amended by the variant solution.]

SUBMISSION OF TENDERS

17. SEALING, MARKING AND SUBMITTING TENDERS

17.1. The complete tender must be submitted in one original, clearly marked 'original' and < insert number (for environmental reasons, request as few copies as possible) > copies, clearly marked 'copy'. In the event of any discrepancy between them, the original will prevail. <add other specifications regarding the submission of tenders>]

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 <...> or its representative.

The tender must be sent to the following address:

<full postal address of Contracting Authority>

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

< full delivery address including opening hours >

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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., <publication reference>);
- (c) where applicable, the number of the lot(s) tendered for;
- (d) the words 'Not to be opened before the tender opening session' in the language of the tender dossier and <equivalent phrase in the local language>.
- (e) the name of the tenderer.

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.

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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.

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.

Only very exceptionally, subject to derogation, the technical requirements for the works will limit themselves to minima above which the tenderers can propose own solutions: only

Deleted: 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.¶

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in such cases, the offers which comply with those minimum quality levels, should be technically scored. If so, add the following sentence:

Subsequently, the Committee will evaluate the technically compliant offers in accordance with the technical evaluation grid (setting out the technical criteria, subcriteria and weightings) attached to the tender dossier.] (in such case, an ad hoc to be determined grid needs to be added in Annex D4m, which details how the technical evaluation is conducted for the technically compliant offers)

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.

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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.

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CONTRACT AWARD

24. AWARD CRITERIA

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

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

[EDF only: To encourage the widest participation of natural or legal persons of ACP States in the performance of contracts, special preference measures must be taken in order to permit the optimisation of the physical and human resources of those States. See section 2.4.10 of the Practical Guide.]

Deleted: 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

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choice of the successful tender. The outcome of such clarification will be set out in a memorandum of clarification, to be signed by both parties and incorporated into the contract.

For tenders below EUR 5 000 000, the documentary evidence described below is optional, see section 2.3.3 of the Practical Guide:

[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. 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.]

[For contracts below EUR 5 000 000, the Contracting Authority may, depending on its assessment of the risks, decide not to require proof for selection criteria, but then no pre-financing must be made, see point 2.4.11 of the Practical Guide.

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.

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

Deleted: unless a financial guarantee of an equivalent amount is provided

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 <insert a percentage between 5 and 10 % as specified in the contract notice> of the amount of the contract and must be presented in the form specified in the annex to the tender dossier,

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except where it takes the form of a certified cheque or a cash deposit. It will be released in accordance with the Special Conditions.

[For amounts of EUR 345 000 or below, on the basis of objective criteria such as the type and value of the contract, the relevant services of the Commission may decide not to require this guarantee.]

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, for example, where:

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

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

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

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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.

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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 be included only in case of direct management:

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 processed³ 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>⁴

[For EuropeAid: The Controller of call for tenders is the Head of Unit R3⁵]

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

[For any other DG: <please add the name of your Controller >]]

To be included only in case of direct management:

31 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 (EDES) and communicated to the persons and entities concerned in relation to the award or the execution of a procurement contract.]

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³ 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.

⁴ This link will lead you to the new "EuropeAid privacy statement" published among the Prag General Annexes.

⁵ The data controller may be the unit or directorate in charge of the contract, or the entity declared to the Data Protection Officer as data controller for all procurements in a given DG.

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