# 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.

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 should 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.

# 1. Supplies to be provided

## 1.1 The subject of the contract is:

the [supply], [delivery], [unloading], [siting and installation], [commissioning],

<and other tasks specifically required by the contract:> [design] [manufacture] [maintenance], [after-sales service], [etc.],

of the following supplies:

## (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][[1]](#footnote-1), and <the implementation period in days, in accordance with the contract notice/additional information about 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.]

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

# 2. Timetable

|  |  |  |
| --- | --- | --- |
|  | **DATE** | **TIME** |
| **Clarification meeting / site visit (if any)** | [< Date>] [Not applicable] | [<Time> (time zone location meeting/site)] [Not applicable] |
| **Deadline for requesting clarifications from the contracting authority** | [For open procedures: < Date 21 days before deadline for tenders indicated in the Contract notice >] [For simplified procedures: Date 15 days before deadline for tenders indicated in the contract notice (annex c2)] [negotiated procedure: X days before deadline for tenders indicated in the contract notice] | - |
| **Last date on which clarifications are issued by the contracting authority** | < Date 8 days before deadline for submission of tenders indicated in the Contract notice > | - |
| **Deadline for submission of tenders** | As indicated in the Contract notice |  |
| **Tender opening session** | [Not applicable][As indicated in the Contract Notice] |  |
| **Notification of award to the successful tenderer** | < Date at most 90 days after deadline for submission of tenders >\* | - |
| **Signature of the contract** | < Date at most 150 days after deadline for submission of tenders >\* | - |

**\* Provisional date**

# 3. Participation

## 3.1. 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 EU restrictive measures ([www.sanctionsmap.eu](http://www.sanctionsmap.eu)) or [point 18 of Annex II of the Financing Agreement between the European Commission and the partner country[[2]](#footnote-2)] [point 18 of Annex I of the Regulation 2018/1046[[3]](#footnote-3). Should they do so, their tender will be considered unsuitable or irregular respectively. Tenderers must provide declarations on honour (form G3) that they are not in any of these exclusion situations. Such declarations must also be submitted by all the members of a joint venture/consortium, by any sub-contractor and by any capacity providing entities. Tenderers who make false declarations may also incur financial penalties and exclusion in accordance with the Financial Regulation in force. Their tender will be considered irregular.

## The exclusion situations referred to above also apply to all members of a joint venture/consortium, all subcontractors and all suppliers to tenderers, as well as to all entities upon whose capacity the tenderer relies for the selection criteria. In cases of doubt over declarations, the contracting authority will request documentary evidence that subcontractors and/or capacity providing entities are not in a situation that excludes them.

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

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

## To be inserted only in case the contracting authority identifies certain critical activities cannot be subcontracted. WARNING: these critical tasks identified by the contracting authority must be strictly linked to siting and/or installation operations [The contracting authority requires that the following critical tasks be performed directly by the tenderer itself or, where the tender is submitted by a group of economic operators, a participant in the group:

## 1 <Critical Task 1 (to be defined)>

## 2 <Critical task 2 (to be defined)>

## 3 …etc]

# 4. Type of contract

## [Lump sum] [Unit-price] [Hybrid]

# 5. Currency

## Tenders must be presented in [Euro] [<ISO code of national currency>][[4]](#footnote-4).

# 6. 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:

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

## 6.2 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.

## 6.3 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.

## 6.4 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.]

# 7. Period of validity

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

## 7.2 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.

7.3 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.

# 8. Language of tenders

## 8.1 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][national language].

## 8.2 If supporting documents are not written in [English][national language], a translation into the language of the call for tender must be attached.

# 9. Submission of tenders

9.1 [Electronic submission:

Tenders must be submitted exclusively via the electronic submission system (eSubmission) available through the TED eTendering website accessible from the F&T portal[[5]](#footnote-5). Tenders submitted in any other way (e.g. e-mail or by letter) will be disregarded.

In order to submit a tender using eSubmission, economic operators will need to register in the European Commission's [Participant Register](https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/how-to-participate/participant-register) - an online register of organisations participating in EU calls for tenders or proposals. In case of consortia, the submission of tenders will have to be made through a group submission that requires for each member of the group a registration in the Participant Register.

On registering, each organisation obtains a Participant Identification Code (PIC, 9-digit number) which acts as its unique identifier in the above register.  Economic operators already registered in the Participant Register shall reuse their existing PICs when preparing tenders in eSubmission.

A tender received after the time-limit for receipt of tenders will be rejected. The submission receipt provided by eSubmission with the official date and time of receipt of the submission (timestamp) constitutes proof of compliance with the time-limit for receipt of tenders.

Tenderers must ensure that their submitted tenders contain all the information and documents required by the contracting authority at the time of submission as set out in the procurement documents.]

[The tender may be submitted in <name of eplatform> or via email to the following address <email address>. In case of submission via email, the files must be compressed and encrypted with a password. The password will be required after the deadline for submission and before the opening session.]

## [Paper submission:

## **Tenders must be sent to the contracting authority before the deadline specified in Contract Notice.** They must include all the documents specified in point 10 of these Instructions and be sent to the following address:

<Address of contracting authority>

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:

## 9.2 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]

## 9.3 The tenders should be submitted:

## (a) either by post or by courier service, in which case the evidence shall be constituted by the postmark or the date of the deposit slip[[6]](#footnote-6)

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

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

## a) the above address;

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

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

## d) the words ‘Not to be opened before the tender opening session’ in the language of the tender dossier and <equivalent phrase in the local language>.

## e) the name of the tenderer.

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

The submission of a tender implies acceptance of the terms and conditions set out in the procurement documents. The submission binds the contractor to whom the contract is awarded during performance of the contract. The tenders will be kept confidential until the opening.

A tender received after the time-limit for receipt of tenders will be rejected. The submission receipt provided by eSubmission with the official date and time of receipt of the submission (timestamp) constitutes proof of compliance with the time-limit for receipt of tenders. In case of submission via email, the date of reception of the email is the proof of compliance. In case of paper submission, it is the date as indicated in the acknowledgement if receipt.

# 10. Content of tenders

**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].

**Part 2: Financial offer:**

## A financial offer calculated on a [DDP] [DAP][[7]](#footnote-7) basis for the supplies tendered, including if applicable:

* + [financial proposal for spare parts and consumables for use for <insert number> year[s]] [with itemised price list];
  + [financial proposal for after-sales services for <insert number> year[s]];
  + [financial proposal for training];
  + [financial proposal related to ancillary services];
  + [financial proposal for any other amount not directly related to the intrinsic value of the product in question (such as, but not limited to, import duties and taxes, entry-import customs clearance, transport costs)].

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

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

[In case of open procedures and in case of negotiated procedures:

Any request for additional information must be made in writing through the TED eTendering website accessible through the F&T portal. Registration on TED eTendering is required to be able to create and submit a question. Additional information can be requested by clicking “Create a question” in the Questions&Answers tab at the latest [open procedure: 21 days] [negotiated procedure: <insert number of days; provide a reasonable deadline], before the deadline for submission of tenders

Any clarification of the tender dossier will be published on TED eTendering [and <enter relevant media>] at the latest 8 days before the deadline for submission of tenders. The website will be updated regularly and it is the tenderer’s responsibility to check for updates and modifications during the submission period.]

[[In case of simplified procedure:

Tenderers may submit questions in writing to the following address up to 15 days before the deadline for submission of tenders, specifying the publication reference and the contract title:]

[In case of negotiated procedure and local open procedures:

Tenderers may submit questions in writing to the following address up to [local open procedure: 21 days][negotiated procedure: X days] before the deadline for submission of tenders, specifying the publication reference and the contract title:]

<Contact name  
Address  
Fax No  
[E-mail:……>

Any clarification of the tender dossier will be communicated simultaneously in writing to all tenderers at the latest 8 days before the deadline for submitting tenders.]

Any prospective tenderers seeking to arrange individual meetings with the contracting authority during the tender period may be excluded from the tender procedure.

# 12. Clarification meeting / site visit

**[Option 1:**

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

**[Option 2:**

## A clarification meeting / site visit will be held on < date at least 21 days before the deadline for submission of tenders for open procedures> at < time > (time zone of the location of the site) 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 communicated — together with any clarifications in response to written requests which are not addressed during the meeting — at the latest 8 calendar days before the deadline for submission of tenders. No further clarification will be provided after this date. All the costs of attending this meeting will be borne by the tenderers.

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

# Alteration or withdrawal of tenders

13.1 [Electronic submission: After submitting a tender, but before the deadline for receipt of tenders, a tenderer may definitively withdraw its tender, or withdraw it and replace it with a new one.]

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

## Any such notification of alteration or withdrawal must be prepared and submitted in accordance with Section 9. The outer envelope must be marked ‘Alteration’ or ‘Withdrawal’ as appropriate.]

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

# 14. 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.

# 15. 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.

# 16. Joint venture or consortium

## 16.1 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.

## 16.2 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. 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.

# 17. Opening of tenders

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

[In case of open procedure. For all other procedures, if applicable:

## 17.2 The date and venue of the tender opening session is indicated in the Contract Notice.

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

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

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

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

## 17.5 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.

## 17.6 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.

# 18. Evaluation of tenders

## 18.1 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.

## 18.2 Technical evaluation

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

## The minimum qualifications required (see selection criteria in the additional information about the contract notice are to be evaluated at the start of this stage.

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

## 18.3 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 18.4. 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.

## 18.4 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.

## 18.5 Variant solutions

Variant solutions will not be taken into consideration.

## 18.6 Award criteria

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

[The compliant tender that offers the best price-quality ratio will be chosen.]

* 1. Documentary evidence for exclusion and selection criteria

[The contracting authority may, if it has doubts about whether the tenderer to whom the contract is to be awarded is in one of the situations leading to exclusion, require the tenderer to provide the evidence on **exclusion criteria**: At any time during the procurement procedure and before the award of the contract, the contracting authority may request documentary evidence on compliance with the exclusion criteria set out in these instructions.]

[For tenders below EUR 300 000, 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, except in duly justified cases: No documentary evidence of the selection criteria shall be submitted but no pre-financing will be granted, except in duly justified cases.]

[When the Contracting Authority must or decides, by case, to request documentary for exclusion and evidence criteria:

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

When requested, regarding the exclusion criteria, the tenderers should be able to provide the documentary proof or statements required under the law of the country in which the company (or, for consortia, each of the companies) is established, to show that it does not fall into any of the exclusion situations in [point 18 of Annex II of the Financing Agreement between the European Commission and the partner country[[8]](#footnote-8)] [point 18 of Annex I of the Regulation 2018/1046[[9]](#footnote-9)].

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

The contracting authority may waive the obligation of any tenderer to submit the documentary evidence referred to above if it can access the evidence in a national database free of charge or in case 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 (in case of exclusion criteria) and that they are still valid. In this case, the tenderer must declare on his/her honour that the documentary evidence has already been provided in a previous procurement procedure and confirm that his/her situation has not changed.

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

If the successful tenderer fails to provide this documentary proof or statement or if the successful tenderer is found to have provided false information, the award will be considered null and void. In this case, the contracting authority may award the tender to the next lowest tenderer or cancel the tender procedure.]

**19. Notification of award**

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

The contracting authority will inform all tenderers simultaneously and individually of the award decision. The tender guarantees of the unsuccessful tenderers will be released once the contract is signed. The successful tenderer will be informed in writing that its tender has been accepted (notification of award).

# 20. Signature of the contract and performance guarantee

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

## 20.2 Within 30 days of receipt of the contract signed by the contracting authority, the selected tenderer must sign and date the contract and return it, with the performance guarantee (if applicable), to the contracting authority. On signing the contract, the successful tenderer will become the contractor and the contract will enter into force.

## 20.3 If it fails to sign and return the contract and any financial guarantee required within 30 days after receipt of notification, the contracting authority may consider the acceptance of the tender to be cancelled without prejudice to the contracting authority’s right to seize the guarantee, claim compensation or pursue any other remedy in respect of such failure, and the successful tenderer will have no claim whatsoever on the contracting authority.

20.4 The performance guarantee referred to in the general conditions is set at < insert percentage up to 10>% of the amount of the contract. The performance guarantee must be presented in the form specified in the annex to the tender dossier. It will be released within 60 days of the issue of the final acceptance certificate by the contracting authority, except for the proportion assigned to after-sales service. The contracting authority may decide not to require such a guarantee.

# 21. Tender guarantee

[Tenderers must provide a tender guarantee of EUR < amount to be specified within the range 1% - 2% of the budget available for the contract; specify separate lots where necessary> when submitting their tender. The tender guarantee 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. This guarantee will be called upon if the tenderer does not fulfil all obligations stated in its tender.

This guarantee will be released to unsuccessful tenderers once the tender procedure has been completed. The tender guarantee of the successful tenderer will be released on signing of the contract, once the performance guarantee has been submitted.

This guarantee will be called upon if the tenderer does not fulfil all obligations stated in its tender.]

OR: [No tender guarantee is required.]

# 22. Ethics clauses and code of conduct

## 22.1 Absence of conflict of interest

The tenderer must not be affected by any conflict of interest and must have no equivalent relation in that respect with other tenderers or parties involved in the project. Any attempt by a tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the evaluation committee or the contracting authority during the process of examining, clarifying, evaluating and comparing tenders will lead to the rejection of its tender and may result in administrative penalties according to the Financial Regulation in force.

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

The tenderer and its personnel must comply with human rights and applicable data protection rules. In particular and in accordance with the applicable basic act, tenderers and applicants who have been awarded contracts must comply with the environmental legislation including multilateral environmental agreements, and with the core labour standards as applicable and as defined in the relevant International Labour Organisation conventions (such as the conventions on freedom of association and collective bargaining; elimination of forced and compulsory labour; abolition of child labour).

**Zero tolerance for sexual exploitation, abuse and harassment:**

The contracting authority applies a policy of 'zero tolerance' in relation to all wrongful conduct which has an impact on the professional credibility of the tenderer.

Physical abuse or punishment, or threats of physical abuse, sexual abuse or exploitation, harassment and verbal abuse, as well as other forms of intimidation shall be prohibited.

## 22.3 Anti-corruption and anti-bribery

The tenderer shall comply with all applicable laws and regulations and codes relating to anti-bribery and anti-corruption. The Managing Authority reserves the right to suspend or cancel project financing if corrupt practices of any kind are discovered at any stage of the award process or during the execution of a contract and if the contracting authority fails to take all appropriate measures to remedy the situation. For the purposes of this provision, ‘corrupt practices’ are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or execution of a contract already concluded with the contracting authority.

## 22.4 Unusual commercial expenses

Tenders will be rejected or contracts terminated if it emerges that the award or execution of a contract has given rise to unusual commercial expenses. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a payee who is not clearly identified or commissions paid to a company which has every appearance of being a front company.

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

## 22.5 Breach of obligations, irregularities or fraud

The contracting authority reserves the right to suspend or cancel the procedure, where the award procedure proves to have been subject to breach of obligations, irregularities or fraud. If breach of obligations, irregularities or fraud are discovered after the award of the contract, the contracting authority may refrain from concluding the contract.

# 23. Cancellation of the tender procedure

If a tender procedure is cancelled, tenderers will be notified by the contracting authority.

If the tender procedure is cancelled before the tender opening session the sealed envelopes will be returned, unopened, to the tenderers.

Cancellation may occur, for example, if:

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

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

# 24. Appeals

Tenderers believing that they have been harmed by an error or irregularity during the award process may file a complaint.

1. DDP (Delivered Duty Paid) / DAP (Delivered At Place) — Incoterms 2020 International Chamber of Commerce <http://www.iccwbo.org/incoterms/> [↑](#footnote-ref-1)
2. For partners located in Partner Countries [↑](#footnote-ref-2)
3. For partners located in Member States, which are not contracting authorities within the meaning of the Union law applicable to public procurement procedures [↑](#footnote-ref-3)
4. The currency of tender shall be the currency of the contract and of payment. [↑](#footnote-ref-4)
5. <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/home> [↑](#footnote-ref-5)
6. It is recommended to use registered mail in case the postmark would not be readable. [↑](#footnote-ref-6)
7. [<DDP (Delivered Duty Paid)>] [<DAP (Delivered At Place)>] — Incoterms 2020 International Chamber of Commerce <http://www.iccwbo.org/incoterms/> [↑](#footnote-ref-7)
8. For partners located in Partner Countries [↑](#footnote-ref-8)
9. For partners located in Member States, which are not contracting authorities within the meaning of the Union law applicable to public procurement procedures [↑](#footnote-ref-9)