

VOLUME 1

SECTION 1: INSTRUCTIONS TO TENDERERS

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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 specified will lead to the rejection of the tender. No account can be taken of any reservation in the tender as regards the tender dossier; any reservation may result in the immediate rejection of the tender without further evaluation.

These Instructions set out the rules for the submission, selection and implementation of contracts financed under this call for tenders, in conformity with the provisions of the Practical Guide, which is applicable to the present 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 request for 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 submission of tenders	< Date >	< Time >
Tender opening session	< Date >	< Time >
Notification of award to the successful tenderer	< Date at most 90 days after deadline for tenders > ^δ	-
Signature of the contract	< Date at most 150 days after deadline for tenders > ^δ	-

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

^δ Provisional date

2. FINANCING

The project is [cofinanced] [financed] by the European Union, in accordance with the rules of <specify the programme> programme.

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

3. PARTICIPATION AND SUBCONTRACTING

a) Participation in this tender procedure is open only to the invited tenderers.

b) 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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- c) The exclusion situation referred to in subclause 3.b) 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.
- d) Tenders should be submitted by the same company or consortium that submitted the application form on the basis of which it was short-listed and to which the letter of invitation to tender is addressed. No change whatsoever in the identity or composition of the tenderer is permitted unless the Contracting Authority has given its prior approval in writing.

4. ONLY ONE TENDER PER TENDERERS

- a) Short-listed companies or consortia are not allowed to form alliances with any other firms or to subcontract to each other for the purposes of this contract.
- b) Subcontracting is the only permitted form of collaboration with firms that have not been short-listed and only on condition that the tenderer explicitly states that it is the sole party that will be contractually liable. If the tenderer intends to subcontract one or more parts of the contracted services, this must be clearly stated in the Tender submission form.
- c) All subcontractors must be eligible for the contract. If the identity of the intended subcontractor is already known at the time of submitting the tender, the tenderer must furnish a statement guaranteeing the eligibility of the subcontractor. If any subcontractor identified in this way does not meet the eligibility criteria, the tender shall be rejected. If the identity of the subcontractor is not known at the time of submitting the tender, any subcontract must be awarded according to Article 7 of the General Conditions of the contract, subject to the limit on the total value of the subcontracted works stated in e) below.
- d) Whenever requested by the Contracting Authority, the successful tenderer/contractor shall submit a declaration from the intended subcontractor that it is not in one of the exclusion situations. In the event of doubt, the Contracting Authority shall request documentary evidence that the subcontractor is not in a situation of exclusion.
- e) The upper limit authorised for subcontracting is 30% of the value of the tender.¹
- f) [EDF only: In the selection of subcontractors preference shall be given by the Contractor to natural persons, companies or firms of ACP States capable of performing the work required on similar terms.]

Deleted: <#>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 conditions mentioned in Section 2.3.3 of the **Practical Guide**. Should they do so, they may be excluded from tender procedures and contracts in accordance with Section 2.3.4 of the **Practical Guide**.¶
<#>Tenderers guilty of making false declarations may also be subject to financial penalties representing 2% to 10% of the total value of the contract being awarded. This rate may be increased to 4% to 20% in the event of a repeat offence within five years of the first infringement. ¶

Deleted: Subcontractors cannot be in any of the exclusion situations listed in Section 2.3.3 of the Practical Guide.

5. TENDER EXPENSES

- 5.1. The tenderer will bear all costs associated with the preparation and submission of the tender. The Contracting Authority will in no case 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.

¹ If the offer 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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6. SITE INSPECTION

- 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, factors necessary for the preparation of its tender and the signing of the contract for the works. <Date, time and place, see point 1.2 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 1.2 above>
- 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 the tenderers will receive a certificate of their site visit.]

TENDERS 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 those design documents available for inspection and any modification to the tender documents issued during the tendering period, and for obtaining reliable information with respect to any and all 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 alteration of 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, to:

<Contact Name>
<Address>
<Fax>
<E-mail>

The Contracting Authority has no obligation to provide additional information after this date. Any clarification of the tender dossier will be communicated simultaneously in writing to all tenderers at the latest 11 calendar days before the deadline for submitting tenders.

9. MODIFICATIONS TO TENDER DOCUMENTS

- 9.1. The Contracting Authority may amend the tender documents up to 11 days before the deadline for submission of tenders. Any modification of the tender dossier will be communicated simultaneously in writing to all tenderers at the latest 11 calendar days before the deadline for submitting tenders.

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- 9.2. The Contracting Authority may, as necessary and in accordance with Clause 18, extend the deadline for submission of tenders to give tenderers sufficient time to take modifications into account when preparing their tenders.

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

11. CONTENT AND PRESENTATION OF TENDER

- 11.1. Tenders must satisfy the following conditions:
- 11.1.1. Tenders must comprise the documents and information in clause 12 below.
 - 11.1.2. The tender must be signed by a person or persons empowered by the power of attorney submitted in accordance with Form 4.3 of Volume 1, Section 4 of the tender dossier.
 - 11.1.3. The relevant pages of the documents specified in clause 12 must be signed as indicated.
 - 11.1.4. The tenderer must provide all documents required by the tender dossier. All such documents, without exception, must comply strictly with these conditions and provisions and contain no alterations made by the tenderer. Tenders which do not comply with the requirements of the tender dossier may be rejected.
- 11.2. [The works are not divided into lots.] [Where works have been divided into lots, the tenderer may submit a tender for [one lot only] [several or all of the lots]].
- 11.2.1. 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 will tenders for part of the quantities required be taken into consideration.
 - 11.2.2. [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].
 - 11.2.3. [If works have not been divided into lots, tenders must be for the whole of the quantities indicated].

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- 11.2.4. 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:

- 12.1.1. 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'], in accordance with the forms provided in Volume 1, Section 2;

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

- 12.1.3. The forms provided in Volume 4:

[for lump-sum contracts:

Volume 4.2.2 – Recapitulation;

Volume 4.2.3 - Breakdown of the Lump-sum Price;

[Volume 4.2.4 – <if applicable:> Daywork 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 according to which, in a lump-sum contract, the total contract price remains fixed irrespective of the quantities 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:> Dayworks Schedule;]

Volume 4.3.5 – Detailed Breakdown of Prices.]

- 12.1.3.1 The prices filled in Volume 4 are deemed to have been determined on the basis of the conditions in force 30 days prior to the latest date fixed for submission of tenders.

The Detailed Breakdown of Prices shall be used when required for any purpose under the contract, notably to provide the coefficients for the application of 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.

- 12.1.4. Copies of the most recent documents showing legal status and place of registration of the headquarters of the tenderer, a power of attorney empowering the person signing the tender and all related documentation. These documents must correspond to the forms in Volume 1, Section 4 of the tender dossier:

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

- 12.1.5 Financial identification form (Form 4.2a, Volume 1) and Legal Entity File (Form 4.2b, Volume 1). Where the tenderer has already signed another contract financed by the European Union, it may provide instead of the forms and its 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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12.1.6. Information about the tenderer's technical offers. This information must follow the forms in Volume 1, Section 4 of the tender documents and include:

- a list of the staff proposed for the execution of the contract, with the CVs of key staff (Form 4.3 Volume 1)
- a list of plant for execution of the contract. The descriptions must demonstrate the tenderer's ability to complete the works and should include inter alia:

- [Trenching machines
- Dewatering plant
- Concrete mixing and placing plant
- Cranes and lifting equipment,....]

The tenderer must indicate whether such equipment is owned, hired or used by a subcontractor. Manufacturer's documents fully describing the equipment must be submitted with the tender (Form 4.3 Volume 1);

- a list of materials and any supplies intended for use in the works, stating their origin;
- a work plan with brief descriptions of major activities (Form 4.3 Volume 1), showing the sequence and proposed timetable for the implementation of the tasks. In particular, the proposal shall detail the temporary and permanent works to be constructed. The tenderer must take account of the prevailing weather conditions and the requirement to prepare designs and obtain building permits prior to the execution of 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 personnel it proposes to use on the major activities of work;
- a critical milestone bar chart showing times and duties allocated for employees for this contract (Form 4.3 Volume 1);
- data concerning subcontractors and the percentage of works to be subcontracted (Form 4.3 Volume 1);
- information regarding the proposed main site office (Form 4.3 Volume 1);
- an outline of the quality assurance system(s) to be used (Form 4.3 Volume 1).
- details of their litigation history over the last <X> years (Form 4.3 Volume 1);
- details of the accommodation and facilities to be provided for the Supervisor (Form 4.3 Volume 1);
- any other information (Form 4.3 Volume 1).

12.1.7. The tenderer will furnish a new declarations and undertakings according to clause 3 above, stating that the situations described in the documents submitted with the application form has not changed since then. The documents furnished should cover all members of a joint venture/consortium. For subcontractor(s) not declared in the application form, the proof documents need to be provided now together with a declaration and undertaking according to clause 3 above.

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12.1.8 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. [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

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manufactured and/or from which services are provided. The origin of the goods must be determined according to the EU Customs Code or to the relevant international agreement applicable.

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

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

12.1.9 [Modifications (if any);]

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

12.1.11. [If obligatory site visit: Site visit certificate.]

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

- The tender must include all the information required by Subclause 12.1 above for each member of the joint venture/consortium and the 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 the individual members. See Form 4.3 in Volume 1 and the tender form.
- All members of the joint venture/consortium are bound to remain in the joint venture/consortium for the whole execution period of the contract. See the declaration in the tender form.

13. TENDER PRICES

13.1. The currency of the tender is the [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 estimate]².

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 the whole of the 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.

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].

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

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- 13.4. The prices do not include the taxes and fiscal duties, whose exoneration is explicitly given for the contract. The non-exonerated taxes and fiscal duties are, apart from those which are stated separately in these financial offer Templates, covered in

[in case of lump-sum contracts: the Lump-sum Price of the contract and in the various prices of the Breakdown of the Lump-sum Price [if applicable: and of the Daywork Schedule.]]

[in case of unit price contracts: the prices of the Bill of Quantities, Price Schedule [if applicable: and Daywork Schedule.]]

- 13.5. 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 2. The discount must be quoted for the whole of the works.
- 13.6. 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 submission of tenders indicated in the procurement notice, the invitation to tender or as modified in accordance with Clauses 9 and/or 18.
- 14.2. In exceptional circumstances the Contracting Authority may, before the period of validity 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 accede to such a request, it may not modify 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. The further period is added to the validity period irrespective of the date of notification.

15. TENDER GUARANTEE

- 15.1. [The tenderer must provide, as a part of its tender, a tender guarantee in the form set out in Volume 1, Section 3 of the tender dossier, or in another form acceptable to the Contracting Authority and meeting the essential requirements set out therein. The tender guarantee must be for an amount of <amount>. 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.

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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 shall be released when the tenderer has signed the contract and provided the requisite performance guarantee.]

16. VARIANT SOLUTIONS

[Variant solutions may only be allowed in the case a derogation has been granted to use best value for money as award criteria. See point 24.:

Variant solutions will not be taken into consideration.]

[If variant solution may be allowed:

16.1. Tenderers must submit a tender in accordance with the requirements of the tender dossier. If the invitation to tender provides for variants to be submitted, the technical specifications and evaluation grid must specify the subject, limits and basic conditions applicable. Should the tenderer wish to submit variant technical proposals, it may do so. **Only variants proposed by the tenderer submitting the lowest compliant tender will be considered by the Contracting Authority.** Any variant proposal must be submitted in a separate inner envelope, clearly marked "variant".

16.2. Such variant proposals must contain all the details necessary for their thorough evaluation, including drawings, design calculations, technical specifications, <for unit-price contracts:> Bill of Quantities and Price Schedule <for lump-sum contracts:> Breakdown of the Lump-sum Price and proposed construction 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;

16.3. 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 each of the 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 modified by the variant solution. For unit-price contracts, it must include a Bill of Quantities and Price Schedule as modified by the variant solution.]

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SUBMISSION OF TENDERS

17. SEALING, MARKING AND SUBMISSION OF TENDERS

- 17.1. The complete tender must be submitted in one original, clearly marked "original" and <...**(in view of environmental considerations, as few copies as possible should be requested)**> copies, also clearly marked "copy". In the event of any discrepancy between them the original will prevail. **<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 specified in point 19 or the Procurement Notice, by registered letter with acknowledgement of receipt or hand-delivered against receipt signed by <.....> or its representative.

The tender shall be sent to the following address:

<full postal address of Contracting Authority>

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

< full delivery address including opening hours >

- 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 SUBMISSION OF TENDERS

The Contracting Authority may, on its own discretion, extend the deadline for submission of tenders by issuing a modification 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 procurement notice will be subject to the new date.

19. LATE TENDERS

- 19.1. All tenders received after the deadline for submission specified in the procurement notice or these instructions will be kept by the Contracting Authority. The associated 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.

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20. ALTERATION AND WITHDRAWAL OF 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 such notification of alteration or withdrawal must be prepared and submitted in accordance with Clause 17, and the envelope must also be marked with "alteration" or "withdrawal" as appropriate.
- 20.3. The 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 EVALUATION OF TENDERS

21. OPENING OF TENDERS

- 21.1. The opening and examination of tenders is for the purpose of checking whether the tenders are complete, whether the requisite tender guarantees have been furnished, whether the required documents have been properly included and whether the tenders are generally in order.
- 21.2. Tenders will be opened in public session on date and venue specified in point 20 of the Procurement Notice by the committee appointed for the purpose. The committee will draw up minutes of the meeting, which shall be available to tenderers on request.
- 21.3. At the tender opening, 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. EVALUATION OF TENDERS

The Contracting Authority reserves the right to ask a tenderer to clarify any part of this offer that the evaluation committee may consider necessary for the evaluation of the offer. 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.

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22.1. Examination of the administrative conformity 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);
- all the elements in the administrative compliance grid are acceptable;
- has complete documentation and information;
- substantially complies with the requirements of these tender documents.

If a tender does not comply with the requirements of 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 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 determine the final tender price after adjusting it on the basis of Clause 23.

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 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 judgement on the basis of the lowest total cost, including additional costs.¶

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23. CORRECTION OF ERRORS

23.1. Possible errors in the financial offer will be corrected by the evaluation committee as follows:

- where there is a discrepancy between amounts in figures and in words, the amount in words will prevail;
- except for lump-sum contracts, where there is a discrepancy between a unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will prevail.

23.2. The amount stated in the tender will be adjusted by the evaluation committee in the event of error, and the tenderer will be bound by that adjusted amount. If the tenderer does not accept the adjustment, its tender will be rejected and its tender guarantee forfeited.

CONTRACT AWARD

24. AWARD CRITERIA

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

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~~[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, particular preferences shall be given to permit the optimisation of the physical and human resources of those States. See further section 2.4.10 of the Practical Guide.]~~

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

25. NOTIFICATION OF AWARD, CONTRACT CLARIFICATIONS

Prior to the expiration of the period of validity 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 prepare himself to reply. This clarification will be confined to issues that had no direct bearing on the choice of the successful tender. The outcome of such clarifications will be set out in a memorandum of clarifications, to be signed by both parties and incorporated into the contract.

Documentary evidence required from the successful tenderer:

Before the Contracting Authority signs the contract with the successful tenderer, the successful tenderer must provide the **documentary proof** or statements required under the law of the country in which the company (or each of the companies in case of a consortium) 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 or these documents or statements must carry a date, which cannot be more than 1 year before the date of submission of the tender. In addition, a statement shall 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

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subcontractors providing more than 10% of the works and every supplier providing more than 10% of the works. For any other sub-contractor 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 case of doubt on this declaration of honour, the Contracting Authority shall request documentary evidence that they are not in a situation of exclusion.

Furthermore evidence of the financial and economic capacity as well as the 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 the notification of award or if the successful tenderer is found to have provided false information, the award will be considered null and void. In such a case, the Contracting Authority may award the tender to the next lowest tenderer or cancel the tender procedure.

After the contract has been signed and the performance guarantee has been provided by the successful tenderer, 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.

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 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.
- 26.3. The performance guarantee referred to in the General Conditions is set at <insert a percentage between 5 and 10%> of the amount of the contract and must be presented in the form specified in the annex to the tender dossier, except where it takes the form of a certified cheque or a cash deposit. It will be released in accordance with the Special Conditions.

27. CANCELLATION OF THE TENDER PROCEDURE

In the event of a tender procedure's cancellation, tenderers will be notified by the Contracting Authority. If the tender procedure is cancelled before the tender opening session the sealed envelopes will be returned, unopened, to the tenderers.

Cancellation may occur where:

- the tender procedure has been unsuccessful, namely where no qualitatively or financially worthwhile tender has been received or there has been no valid response at all;
- the economic or technical parameters of the project have been fundamentally altered;

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- 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 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. The publication of a procurement 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 prohibition 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 affected by no conflict of interest, and that it has no equivalent relation in that respect with other tenderers or parties involved in the project. Should such a situation arise during execution of the contract, the Contractor must immediately inform the Contracting Authority.
- 28.4. The Contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of its profession. It must refrain from making public statements about the project or services without the Contracting Authority's prior approval. It may not commit the Contracting Authority in any way without its prior written consent.
- 28.5. For the duration of the contract, the Contractor and its staff must respect human rights and undertake not to offend the political, cultural and religious mores of the beneficiary state.
- 28.6. The Contractor may accept no payment connected with the contract other than that provided for therein. The Contractor and its staff must not exercise any activity or receive any advantage inconsistent with their obligations to the Contracting Authority.
- 28.7. The Contractor and its staff are obliged to maintain professional secrecy for the entire duration of the contract and after its completion. All reports and documents drawn up or received by the Contractor are confidential.
- 28.8. The contract governs the Parties' use of all reports and documents drawn up, received or presented by them during the execution of the contract.

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- 28.9. The Contractor shall 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. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commissions paid to a company which has every appearance of being a front company.
- 28.12. The Contractor undertakes to supply the Commission on request with all supporting documents relating to the conditions of the contract's execution. The Commission may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in cases of suspected unusual commercial expenses.
- 28.13. Contractors found to have paid unusual commercial expenses on projects funded by the European Union are liable, depending on the seriousness of the facts observed, to have their contracts terminated or to be permanently excluded from receiving EU funds.
- 28.14. The Contracting Authority reserves the right to suspend or cancel the procedure, where the award procedure proves to have been subject to substantial errors, irregularities or fraud. Where such substantial errors, irregularities or fraud are discovered after the award of the Contract, the Contracting Authority may refrain from concluding the Contract.

29. APPEALS

Tenderers believing that they have been harmed by an error or irregularity during the award process may file a complaint. See further 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), such data will be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies and on the free movement of such data. Unless indicated otherwise, your replies to the questions and any personal data requested are required to evaluate your tender in accordance with the invitation to tender and technical specifications and will be processed solely for that purpose by the data controller. Details concerning processing of your personal data are available on the privacy statement at

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<http://ec.europa.eu/europeaid/prag/annexes.do?chapterTitleCode=A>³

For EuropeAid: The Controller of call for tenders is the Head of Unit R3⁴

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

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

⁴ 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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