

A. INSTRUCTIONS TO TENDERERS

PUBLICATION REF.: 2020/421/644/6.2

By submitting a tender, tenderers fully and unreservedly accept the special and general conditions governing the contract as the sole basis of this tendering procedure, whatever their own conditions of sale may be, which they hereby waive. Tenderers are expected to examine carefully and comply with all instructions, forms, contract provisions and specifications contained in this tender dossier. Failure to submit a tender containing all the required information and documentation within the deadline specified will lead to the rejection of the tender. No account can be taken of any remarks in the tender relating to the tender dossier; remarks may result in the immediate rejection of the tender without further evaluation.

These instructions set out the rules for the submission, selection and implementation of contracts financed under this call for tenders, in conformity with the practical guide (available on the internet at: <http://ec.europa.eu/europeaid/prag/document.do>).

1. Supplies to be provided

- 1.1 The subject of the contract is the supply, manufacture, delivery, unloading, installation, commissioning, maintenance, after-sales service, by the contractor of the following goods in 4 lots :

Lot No.1. Buses for urban transportation- 8 units

Lot No. 2. Smart monitoring and management equipment and software (including ticketing, traffic lights, and passenger information) for 8 buses and intelligent traffic lights in 5 intersections in the city:

Lot No: 3. Bus Waiting stations – 17 units

Lot No. 5. Equipment for the car park -

at the address: Octavian Cerempei, 30 , Edinet municipality, Republic of Moldova , DDP¹, and the implementation period in 5 months.

- 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 lots No 1 and 5 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 DDP (Delivered Duty Paid) / DAP (Delivered At Place) — Incoterms 2010 International Chamber of Commerce <http://www.iccwbo.org/products-and-services/trade-facilitation/incoterms-2010/the-incoterms-rules/>.

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

2. Timetable

	DATE	TIME*
Clarification meeting	03.08.2022	16.00
Deadline for requesting clarifications from the contracting authority	30.08.2022	24.00
Last date on which clarifications are issued by the contracting authority	09.09.2022	-
Deadline for submission of tenders	20.09.2022	According to the platform www.achizitii.md
Tender opening session	22.09.2022	10.00
Notification of award to the successful tenderer	22.10.2022	-
Signature of the contract	10.11.2022	-

* All times are in the time zone of the country of the contracting authority provisional date

** Provisional date

3. Participation

- 3.1 Participation is open to all natural persons who are nationals of and legal persons (participating either individually or in a grouping – consortium – of tenderers) which are effectively established in a Member State of the European Union or in a eligible country or territory as defined under the Regulation (EU) No 236/2014 establishing common rules and procedures for the implementation of the Union's instruments for external action (CIR) for the applicable instrument under which the contract is financed (see also heading 22 of the contract notice). Participation is also open to international organisations. All supplies under this contract must originate in one or more of these countries. However, they may originate from any country when the amount of the supplies to be purchased (as a whole or, if divided into lots, per lot) is below EUR 100 000.
- 3.2 These terms refer to all nationals of the above states and to all legal entities, companies or partnerships effectively established in the above states. For the purposes of proving compliance with this rule, tenderers being legal persons, must present the documents required under that country's law.
- 3.3 The eligibility requirement detailed in subclauses 3.1 and 3.2 applies to all members of a joint venture/consortium and all subcontractors, as well as to all entities upon whose capacity the tenderer relies for the selection criteria. Every tenderer, member of a joint venture/consortium, every capacity-providing entity, every subcontractor providing more than 10 % of the supplies must certify that they meet these conditions. They must prove their eligibility by a document dated less than one year earlier than the deadline for submitting tenders, drawn up in accordance with their national law or practice or by copies of the original documents stating the constitution and/or legal status and the place of registration and/or statutory seat and, if it

is different, the place of central administration. The contracting authority may accept other satisfactory evidence that these conditions are met.

- 3.4 Natural or legal persons are not entitled to participate in this tender procedure or be awarded a contract if they are in any of the situations mentioned in Sections 2.4. (EU restrictive measures), 2.6.10.1. (exclusion criteria) or 2.6.10.1.2. (rejection from a procedure) of the practical guide. Should they do so, their tender will be considered unsuitable or irregular respectively. In the cases listed in Section 2.6.10.1. of the practical guide tenderers may also be excluded from EU financed procedures and be subject to financial penalties up to 10% of the total value of the contract in accordance with the Financial Regulation in force. This information may be published on the Commission website in accordance with the Financial Regulation in force. Tenderers must provide declarations on honour² that they are not in any of these exclusion situations. The declarations must cover all the members of a joint venture/consortium. Tenderers who make false declarations may also incur financial penalties and exclusion in accordance with 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. When requested by the contracting authority, tenderers/contractors must submit declarations from the intended subcontractors that they are not in any of the exclusion situations. In cases of doubt over declarations, the contracting authority will request documentary evidence that subcontractors are not in a situation that excludes them.

- 3.5 To be eligible to take part in this tender procedure, tenderers must prove to the satisfaction of the contracting authority that they comply with the necessary legal, technical and financial requirements and have the means to carry out the contract effectively.
- 3.6 Subcontracting is allowed but the contractor will retain full liability towards the contracting authority for performance of the contract as a whole.

4. Origin

- 4.1 Unless otherwise provided in the contract or below, all goods purchased under the contract must originate in a Member State of the European Union or in a country or territory of the regions covered and/or authorised by the specific instruments applicable to the programme specified in clause 3.1 above. For these purposes, 'origin' means the place where the goods are mined, grown, produced or manufactured and/or from which services are provided. The origin of the goods must be determined according to the relevant international agreements (notably WTO agreements), which are reflected in EU legislation on rules of origin for customs purposes: the Customs Code (Council Regulation (EEC) No 2913/92) in particular its Articles 22 to 246 thereof, and the Code's implementing provisions (Commission Regulation (EEC) No 2454/93).

If the estimated intrinsic value of the products divided into lots, per lot is below EUR 100 000: All supplies under this contract may originate from any country.

Tenderers must provide an undertaking signed by their representative certifying compliance with this requirement. The tenderer is obliged to verify that the provided information is correct. Otherwise, the tenderer risks to be excluded because of negligently misrepresenting information. For more details, see Section 2.3.5. of the practical guide.

² See PRAG Section 2.6.10.1.3 A)

- 4.2 When submitting tenders, tenderers must state expressly that all the goods meet the requirements concerning the origin and must state the countries of origin. They may be asked to provide additional information in this connection.

5. Type of contract

unit-price

6. Currency

Tenders must be presented in Euro

In case the provider will be a legal person from the Republic of Moldova, the payment will be in MDL at the national bank exchange rate on the day of the tranche exchange by the beneficiary.

7. Lots

- 7.1 The tenderer may submit a tender for one lot, several or all of the lots.
- 7.2 Each lot will form a separate contract and the quantities indicated for different lots will be indivisible. The tenderer must offer the whole of the quantity or quantities indicated for each lot. Under no circumstances must tenders be considered for part of the quantities required. If the tenderer is awarded more than one lot, a single contract may be concluded covering all those lots.
- 7.3 A tenderer may include in its tender the overall discount it would grant in the event of some or all of the lots for which it has submitted a tender being awarded. The discount should be clearly indicated for each lot in such a way that it can be announced during the public tender opening session.
- 7.4 Contracts will be awarded lot by lot, but the contracting authority may select the most favourable overall solution after taking account of any discounts offered.

8. Period of validity

- 8.1 Tenderers will be bound by their tenders for a period of 90 days from the deadline for the submission of tenders.
- 8.2 In exceptional cases and prior to the expiry of the original tender validity period, the contracting authority may ask tenderers in writing to extend this period by 40 days. Such requests and the responses to them must be made in writing. Tenderers that agree to do so will not be permitted to modify their tenders and they are bound to extend the validity of their tender guarantees for the revised period of validity of the tender. If they refuse, without forfeiture of their tender guarantees, their participation in the tender procedure will be terminated. In case the contracting authority is required to obtain the recommendation of the panel referred to in Section 2.6.10.1.1. of the practical guide, the contracting authority may, before the validity period expires, request an extension of the validity of the tenders up to the adoption of that recommendation.
- 8.3 The successful tenderer will be bound by its tender for a further period of 60 days. The further period is added to the validity period of the tender irrespective of the date of notification.

9. Language of tenders

- 9.1 The tenders, all correspondence and documents related to the tender exchanged by the tenderer and the contracting authority must be written in the language of the procedure, which is English or Romanian.

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 or Romanian, it is strongly recommended to provide a translation into English, to facilitate evaluation of the documents.

10. Submission of tenders

- 10.1 Tenders must be uploaded on the national platform for public tenders www.achizitii.md before the deadline specified on the announcement on the platform. They must include all the documents specified in point 11.

In order to be able to submit a tender, the tenderers have to be registered on the platform <https://achizitii.md/en/> . The questions regarding registration can be sent by e-mail at info@achizitii.md , or directly from the platform on chat.

Tenders must comply with the following conditions:

- 10.2 All tenders must be submitted electronically in one original, signed by an electronic signature. The copies of the requested documents should be scanned in pdf or other format accepted by the platform www.achizitii.md.
- 10.3 All tenders must be uploaded before the time indicated on the platform.

The contracting authority may, for reasons of administrative efficiency, reject any application or tender submitted on time but received, for any reason beyond the contracting authority's control, after the effective date of approval of the short-list report or of the evaluation report, if accepting applications or tenders that were submitted on time but arrived late would considerably delay the evaluation procedure or jeopardize decisions already taken and notified.

- 10.4 All tenders, must include annexes and all supporting documents according to chapter 11 of these instructions.

11. Content of tenders

Failure to fulfil the below requirements will constitute an irregularity and may result in rejection of the tender. All tenders submitted must comply with the requirements in the tender dossier and comprise:

Part 1: Technical offer:

- a detailed description of the supplies tendered in conformity with the technical specifications (Annex II+III) , including any documentation required, including:
 - a training proposal indicates training needs;
 - a proposal for after-sales service/maintenance over 5 years;
 - a list of the spare parts recommended by the manufacturer;
 - a list of the consumables recommended by the manufacturer;

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- technical proposals related to ancillary services.

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

Part 2: Financial offer:

- A financial offer calculated on a DDP³ basis for the supplies tendered, including:
 - financial proposal for spare parts and consumables for use for 5 years with itemized price list;
 - financial proposal for after-sales services for 5 years;
 - 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 transport costs, insurances).

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

- An electronic version of the financial offer in excel format should be also presented

Part 3: Documentation:

To be supplied using the templates attached*:

- The "Tender form for a supply contract", together with its Annex 1 "Declaration on honour on exclusion criteria and selection criteria", both duly completed, which includes the tenderer's declaration, point 7, (from each member if a consortium):
- The details of the bank account into which payments should be made (financial identification form – document fif_en).
- The legal entity file (document lefind_en) and the supporting documents mentioned in the legal entity file regarding registration.

To be supplied in free-text format:

- A description of the warranty conditions, which must be in accordance with the conditions laid down in Article 32 of the general conditions.
- A statement by the tenderer attesting the origin of the supplies tendered (or other proofs of origin).
- Duly authorized signature: an official document (statutes, power of attorney, notary statement, etc.) proving that the person who signs on behalf of the company, joint venture or consortium is duly authorized to do so.
- The financial reports (balance sheet and for the last 3 years of the tenderer (company or each member of a consortium)
- Confirmation of 10% liquidity, according to requested economic selection criteria
- Proof of absence of the debts to the state and local budget
- The copy of the implemented contracts /projects (according to the requested professional and technical capacity criteria)

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

- CVs of the proposed key experts (according to the requested professional and technical capacity criteria)
- Confirmation for the service centre (according to the requested professional and technical capacity criteria)

Remarks:

Tenderers are requested to follow this order of presentation.

Annex* refer to templates attached to the tender dossier. These templates are also available on: <http://ec.europa.eu/europeaid/prag/annexes.do?group=C>

12. Taxes and other charges

The applicable tax and customs arrangements are the following:

The European Commission and the Republic of Moldova have agreed according to THE GOVERNMENT. DECISION No. 246 from 08-04-2010 to allow full exemption from the following taxes

VAT and customs taxes for the imported and delivered goods procured in the frame of the project “Edinet - insights into tomorrow’s cities”.

13. Additional information before the deadline for submission of tenders

The tender dossier should be so clear that tenderers do not need to request additional information during the procedure. If the contracting authority, on its own initiative or in response to a request from a prospective tenderer, provides additional information on the tender dossier, it will be published on the platform www.achizitii.md.

Tenderers may submit questions in writing on the platform www.achizitii.md according the timeline indicated on the platform.

The contracting authority has no obligation to provide clarifications after this date.

Any clarification of the tender dossier will be published on the same platform.

Any prospective tenderers seeking to arrange individual meetings with either the contracting authority and/or the European Commission during the tender period may be excluded from the tender procedure.

14. Clarification meeting / site visit

14.1. A clarification meeting/site visit will be held on **03.08.2022** at 4 pm Chisinau time, online. (Registration for receiving the connection link should be at the e-mail address smartedinet2124@gmail.com no later than 02.08.2022, 12 pm.) to answer any questions on the tender dossier which have been forwarded in writing or are raised at the meeting. Minutes will be taken during the meeting and these will be published on the website of DG International Cooperation and Development — together with any clarifications in response to written requests which are not addressed during the meeting — at the latest 11 calendar days before the deadline for submission of tenders. No further clarification will be provided after this date. All the costs of attending this meeting will be borne by the tenderers.

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

15. Alteration or withdrawal of tenders

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

16. Costs of preparing tenders

No costs incurred by the tenderer in preparing and submitting the tender are reimbursable. All such costs will be borne by the tenderer.

17. Ownership of tenders

The contracting authority retains ownership of all tenders received under this tender procedure. Consequently, tenderers have no right to have their tenders returned to them.

18. Joint venture or consortium

- 18.1 If a tenderer is a joint venture or consortium of two or more persons, the tender must be a single one with the object of securing a single contract, each person must sign the tender and will be jointly and severally liable for the tender and any contract. Those persons must designate one of their members to act as leader with authority to bind the joint venture or consortium. The composition of the joint venture or consortium must not be altered without the prior written consent of the contracting authority.
- 18.2 The tender may be signed by the representative of the joint venture or consortium only if it has been expressly so authorised in writing by the members of the joint venture or consortium, and the authorising contract, notarial act or deed must be submitted to the contracting authority in accordance with point 11 of these instructions to tenderers. All signatures to the authorising instrument must be certified in accordance with the national laws and regulations of each party comprising the joint venture or consortium together with the powers of attorney establishing, in writing, that the signatories to the tender are empowered to enter into commitments on behalf of the members of the joint venture or consortium. Each member of such joint venture or consortium must provide the proof required under Article 3.5 as if it, itself, were the tenderer.

19. Opening of tenders

- 19.1 The purpose of the opening session is to check whether the tenders are complete, whether the requisite tender guarantees have been provided, whether the required documents have been properly included and whether the tenders are generally in order.
- 19.2 The tenders will be opened in public session on 22.09.2022 at 10.00 am at the address: Edinet municipality, 30, Cirimpei street, the city hall premises by the appointed committee/ working group . The committee will draw up minutes of the meeting, which will be available on request.

- 19.3 At the tender opening, the tenderers' names, the tender prices, any discount offered, written notifications of alteration and withdrawal, the presence of the requisite tender guarantee (if required) and such other information as the contracting authority may consider appropriate may be announced.
- 19.4 After the public opening of the tenders, no information relating to the examination, clarification, evaluation and comparison of tenders, or recommendations concerning the award of the contract can be disclosed until after the contract has been awarded.
- 19.5 Any attempt by tenderers to influence the evaluation committee in the process of examination, clarification, evaluation and comparison of tenders, to obtain information on how the procedure is progressing or to influence the contracting authority in its decision concerning the award of the contract will result in the immediate rejection of their tenders.
- 19.6 All tenders received after the deadline for submission specified in the contract notice or these instructions will be kept by the contracting authority. The associated guarantees will be returned to the tenderers. No liability can be accepted for late delivery of tenders. Late tenders will be rejected and will not be evaluated.

20. Evaluation of tenders

20.1 Examination of the administrative conformity of tenders

The aim at this stage is to check that tenders comply with the essential requirements of the tender dossier. A tender is deemed to comply if it satisfies all the conditions, procedures and specifications in the tender dossier without substantially departing from or attaching restrictions to them.

Substantial departures or restrictions are those which affect the scope, quality or execution of the contract, differ widely from the terms of the tender dossier, limit the rights of the contracting authority or the tenderer's obligations under the contract or distort competition for tenderers whose tenders do comply. Decisions to the effect that a tender is not administratively compliant must be duly justified in the evaluation minutes.

If a tender does not comply with the tender dossier, it will be rejected immediately and may not subsequently be made to comply by correcting it or withdrawing the departure or restriction.

20.2 Technical evaluation

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

The minimum qualifications required (see selection criteria in contract notice section III) 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.

- 20.3 In the interests of transparency and equal treatment and to facilitate the examination and evaluation of tenders, the evaluation committee may ask each tenderer individually for clarification of its tender including breakdowns of prices, within a reasonable time limit to be fixed by the evaluation committee. The request for clarification and the response must be in writing, but no change in the price or substance of the tender may be sought, offered or permitted except as required to confirm the correction of arithmetical errors discovered during the evaluation of tenders pursuant to Article 20.4. Any such request for clarification must not

distort competition. Decisions to the effect that a tender is not technically compliant must be duly justified in the evaluation minutes.

20.4 Financial evaluation

- a) Tenders found to be technically compliant will be checked for any arithmetical errors in computation and summation. Errors will be corrected by the evaluation committee as follows:
 - where there is a discrepancy between amounts in figures and in words, the amount in words will be the amount taken into account;
 - except for lump-sum contracts, where there is a discrepancy between a unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will be the price taken into account.
- b) Amounts corrected in this way will be binding on the tenderer. If the tenderer does not accept them, its tender will be rejected.
- c) Unless specified otherwise, the purpose of the financial evaluation process is to identify the tenderer offering the lowest price. Where specified in the technical specifications, the evaluation of tenders may take into account not only the acquisition costs but, to the extent relevant, costs borne over the life cycle of the supplies (such as for instance maintenance costs and operating costs), in line with the technical specifications. In such case, the contracting authority will examine in detail all the information supplied by the tenderers and will formulate its judgment on the basis of the lowest total cost, including additional costs.

20.5 Variant solutions

Variant solutions will not be taken into consideration.

20.6 Award criteria

For lots 1, 3 and 5

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

For lot 2

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

21. Notification of award

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.

22. Signature of the contract and performance guarantee

- 22.1 The successful tenderer will be informed in writing that its tender has been accepted (notification of award). Upon request of the contracting authority and before the signature of the contract with the successful tenderer, the successful tenderer shall provide the **documentary proof** or statements required under the law of the country in which the company (or each of the companies in case of a consortium) is effectively established, to show that it is not in any of the exclusion situations listed in Section 2.6.10.1. of the practical guide. This evidence or these documents or statements must carry a date not earlier than one year before the date of submission of the tender. In addition, a statement shall be provided that the situations described in these documents have not changed since then.

For contracts with a value of less than EUR 300 000, the contracting authority may, depending on its assessment of the risks, decide not to require proofs for selection criteria.

- 22.2 Upon request of the contracting authority, the successful tenderer shall also provide evidence of financial and economic standing and technical and professional capacity according to the selection criteria for this call for tenders specified in the contract notice, point 16. The documentary proofs required are listed in Section 2.6.11. of the practical guide.

The contracting authority may, depending on its assessment of the risks, decide not to require proofs for financial and economic standing and technical and professional capacity.

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

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

Documentary evidence of the financial and economic capacity and/or of the technical and professional capacity according to the selection criteria specified in point 16 of the contract notice shall be submitted. (See further Section 2.6.11. of the practical guide).

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.

- 22.4 The contracting authority reserves the right to vary quantities specified in the tender by +/- 100 % at the time of contracting and during the validity of the contract. The total value of the supplies may not, as a result of the variation rise or fall by more than 25 % of the original financial offer in the tender. The unit prices quoted in the tender shall be used.
- 22.5 Within 30 days of receipt of the contract signed by the contracting authority, the selected tenderer must sign and date the contract and return it, with the performance guarantee (if applicable), to the contracting authority. On signing the contract, the successful tenderer will become the contractor and the contract will enter into force.
- 22.6 If it fails to sign and return the contract and any financial guarantee required within 30 days after receipt of notification, the contracting authority may consider the acceptance of the tender to be cancelled without prejudice to the contracting authority's right to seize the guarantee, claim compensation or pursue any other remedy in respect of such failure, and the successful tenderer will have no claim whatsoever on the contracting authority.
- 22.7 The performance guarantee referred to in the general conditions is set at **5 % of the amount of the contract** and must be presented in the form specified in the annex to the tender dossier. It will be released within 45 days of the issue of the final acceptance certificate by the contracting authority, except for the proportion assigned to after-sales service. **For contracts of EUR 150 000 or below, on the basis of objective criteria such as the type and value of the contract, the contracting authority does not require such a guarantee.**

23. Tender guarantee

No tender guarantee is required.

24. Ethics clauses and code of conduct

24.1 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.

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

The tenderer and its staff 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 and sexual abuse:

The European Commission 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.

24.3 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 European 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 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.

24.4 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.

24.5 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.

25. 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.

26. Appeals

Tenderers believing that they have been harmed by an error or irregularity during the award process may file a complaint. See Section 2.12. of the practical guide.

27. Data Protection

Processing of personal data related to this tender procedure by the contracting authority takes place in accordance with the national legislation of the state of the contracting authority and with the provisions of the respective financing agreement.

The tender procedure and the contract relate to an external action funded by the EU, represented by the European Commission. If processing your reply to the invitation to tender involves transfer of personal data (such as names, contact details and CVs) to the European Commission, they will be

processed solely for the purposes of the monitoring of the procurement procedure and of the implementation of the contract by the Commission, for the latter to comply with its obligations under the applicable legislative framework and under the financing agreement concluded between the EU and the Partner Country without prejudice to possible transmission to the bodies in charge of monitoring or inspection tasks in application of EU law. For the part of the data transferred by the contracting authority to the European Commission, the controller for the processing of personal data carried out within the Commission is

the head of contracts and finance unit R4 of DG Neighbourhood and Enlargement Negotiations

Details concerning processing of your personal data by the Commission are available on the privacy statement at:

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

In cases where you are processing personal data in the context of participation to a tender (e.g. CVs of both key and technical experts) and/or implementation of a contract (e.g. replacement of experts), you shall accordingly inform the data subjects of the possible transmission of their data to EU institutions and bodies and communicate the above-mentioned privacy statement to them.

28. Early detection and exclusion system

The tenderers and, if they are legal entities, persons who have powers of representation, decision-making or control over them, are informed that, should they be in one of the situations of early detection or exclusion, their personal details (name, given name if natural person, address, legal form and name and given name of the persons with powers of representation, decision-making or control, if legal person) may be registered in the early detection and exclusion system, and communicated to the persons and entities listed in the above-mentioned decision, in relation to the award or the execution of a procurement contract.]