

# INSTRUCTIONS TO TENDERERS

## REFERENCE: COMINF/3.1/1-5.5.4

When submitting their tenders, tenderers must follow all instructions, forms, terms of reference, 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 may lead to the rejection of the tender.

These instructions set out the rules for submitting, selecting and implementing contracts financed under this call for tenders, in conformity with the Practical Guide, (available on the internet at this address: <http://ec.europa.eu/europeaid/prag/document.do> ).

### 1. Services to be provided

The services required by the Contracting Authority are described in the Terms of Reference. They are set out in Annex II to the draft contract, which forms Part B of this tender dossier.

### 2. Timetable

	DATE	TIME*
Deadline for requesting clarification from the Contracting Authority	5 days before deadline for tenders	Accordingly to AIS RSAP
Last date for the Contracting Authority to issue clarification	5 days before deadline for tenders	Accordingly to AIS RSAP
Deadline for submitting tenders	Accordingly to AIS RSAP	
Interviews (if any)	Not applicable <input type="checkbox"/>	-
Completion date for evaluating technical offers	Accordingly to AIS RSAP	
Notification of award	At most 60 days after deadline for tenders	-
Contract signature	At most 80 days after deadline for tenders	-
Start date	06.07.2020 <input type="checkbox"/>	-

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

Provisional date

### 3. Participation, experts and subcontracting

- a) Participation in this tender procedure is open only to the invited tenderers. For the eligibility, please see point 10 of the contract notice.
- b) 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 Section 2.3.3.1. or 2.3.3.2. of the **Practical Guide**. Should they do so, their tender will be considered unsuitable or irregular respectively..
- c) In the cases listed in Section 2.3.3.1. of the **Practical Guide** tenderers may be excluded from EU financed procedures and be subject to financial penalties representing 2 % to

10% of the total value of the contract in accordance with the conditions set in Section 2.3.4. of the **Practical Guide**. This information may be published on the Commission website in accordance with the conditions set in Section 2.3.4. of the Practical Guide.

- d) The contract between the tenderer/contractor and its experts shall contain a provision that it is subject to the approval of the partner country. It is furthermore recommended that this contract contains a dispute resolution clause.
- e) The tenderer must intend to provide the majority of the services itself except for the tasks entrusted to experts either as natural persons or single-member companies. If the tenderer intends to subcontract one or more parts of the contracted services, this must be clearly stated in the Organisation and Methodology and the Tender submission form. All subcontractors must be eligible for the contract.
- f) Subcontractors cannot be in any of the exclusion situations listed in Section 2.3.3 of the Practical Guide.
- g) 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.

#### **4. Content of tenders**

Offers, all correspondence and documents related to the tender exchanged by the tenderer and the Contracting Authority must be written in English or Romanian.

Supporting documents and printed literature furnished by the tenderer may be in another language, provided they are accompanied by a translation into the language of the procedure. For the purposes of interpreting the tender, the language of the procedure has precedence.

The tender must comprise of a Technical offer and a Financial offer, which must be submitted in separate envelopes (see clause 8). Each Technical offer and Financial offer must contain one original, clearly marked '**Original**', 2 copies (due to environmental protection reason should be used double sided printing or degradable material for folders, presentations, etc.) and 1 electronic copy (the electronic copy should be identically with the original one), each marked '**Copy**'. Failure to fulfil the requirements in clauses 4.1, 4.2 and 8 will constitute an irregularity and may result in rejection of the tender.

##### **4.1. Technical offer**

The Technical offer must include the following documents:

- (1) **Tender submission form** (see Part D of this tender dossier) including:
  - a) Signed statements of exclusivity and availability (using the template included with the tender submission form), one for each key expert, the purpose of which are as follows:
    - ❑ The key experts proposed in this tender must not be part of any other tender submitted for this tender procedure. They must therefore commit themselves exclusively to the tenderer.

- Each key expert must also undertake to be available, able and willing to work for the whole period scheduled for his/her input to implement the tasks set out in the Terms of Reference and/or in the Organisation and methodology.

Note that non-key experts must not be asked to sign statements of exclusivity and availability.

Any expert working on an EU/EDF-financed project, where the input from his/her position to that contract could be required on the same dates as his/her activities under this contract, must not be proposed as a key expert for this contract under any circumstances. Consequently, the dates included by a key expert in his/her statement of exclusivity and availability in your tender must not overlap with dates on which he/she is committed to work as a key expert on any other contract.

The expert may participate in parallel tender procedures but must inform the Contracting Authority of these in the Statement of Exclusivity and Availability. Furthermore, the expert is expected to notify the tenderer immediately if he/she is successful in another tender procedure and he/she is expected to accept the first engagement offered to him/her chronologically.

If a key expert is proposed as a key expert by more than one tenderer with the agreement of the key expert, the corresponding tenders may be rejected. The same applies if the key expert proposed has been involved in the preparation of the project. The expert concerned will be excluded from this tender procedure and may also be excluded from other EU/EDF-financed contracts.

Having selected a firm partly on the basis of an evaluation of the key experts presented in the tender, the Contracting Authority expects the contract to be executed by these specific experts. However, after the award letter, the selected tenderer may propose replacements for the key experts under certain conditions (for further information see point 14).

- b) A signed **declaration** together with a signed "Declaration of honour on exclusion criteria and selection criteria" from each legal entity identified in the tender submission form, using the format attached to the tender submission form.
  - c) A completed **Financial Identification form** (see Annex VI to the draft contract) to indicate the bank account into which payments should be made if the tender is successful. (If the tenderer has already signed another contract with the European Commission, it may provide instead either its financial identification form number or a copy of the financial identification form provided on that occasion, unless it has changed in the meantime).
  - d) The **legal entity file** and supporting documents (if the tenderer has already signed another contract with the European Commission, it may provide instead either its legal entity number or a copy of the legal entity file provided on that occasion, unless it has changed its legal status in the meantime).
  - e) Duly authorised signature: an official document (statutes, power of attorney, notary statement, etc.) proving that the person who signs on behalf of the company/joint venture/consortium is duly authorised to do so.
- (2) **Organisation and methodology** (will become Annex III to the contract), to be drawn up by the tenderer using the format in Annex III to the draft contract.

- (3) **Key experts** (to become Annex IV to the contract). The key experts are those whose involvement is considered to be instrumental to achieve the contract objectives.

Annex IV to the draft contract contains the templates that tenderers must use, including:

- a) a list of the names of the key experts;
- b) the CVs of each of the key experts. Each CV should be no longer than 3 pages and only one CV must be provided for each position identified in the Terms of Reference. Note that the CVs of non-key experts must not be submitted.

The qualifications and experience of each key expert must clearly match the profiles indicated in the Terms of Reference. If an expert does not meet the minimum requirements for each evaluation criterion (i.e. qualification and skills, general professional experience and specific professional experience), he/she must be rejected. In such case the entire tender shall be rejected.

Tenderers must provide the following documents for any key experts proposed:

- a copy of the diplomas mentioned in their CVs,
- a copy of employer certificates or references proving the professional experience indicated in their CVs.

Only diplomas and documented experience will be taken into account. Previous experience which would have led to breach of contract and termination shall not be used as reference.]

- (4) Non key experts may also be instrumental to achieve the contract objectives. However, they are not subject to evaluation by the evaluation Committee. Their positions and responsibilities may be defined in Section 6.1.2 of the Terms of Reference in Annex II to the draft contract.
- (5) Documentary proof or statements required under the law of the country in which the company (or each of the companies for consortia) is effectively established, to show that it is not in any of the exclusion situations listed in section 2.3.3 of the Practical Guide. This evidence, documents or statements must be dated, no more than one year before the date of submission of the tender. In addition, a statement must be furnished stating that the situations described in these documents have not changed since then.

If the nature of your entity is such that it cannot fall into the exclusion situations and/or cannot provide the documents indicated above (for instance, national public administrations and international organisations), please provide a declaration explaining this situation.

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.

- (6) 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. (See further point 2.4.11 of the Practical Guide).]

If the documentary evidence submitted is not written in one of the official languages of the European Union, a translation into the language of the procedure must be attached. Where the documents are in an official language of the European Union other than the one of the procedure, it is however strongly recommended to provide a translation into the language of the procedure, in order to facilitate the evaluation of the documents. Documentary proof or statements may be in original or copy. If copies are submitted, the originals must be available to send to the Contracting Authority upon request.

Tenderers are reminded that the provision of false information in this tender procedure may lead to the rejection of their tender and to their exclusion from EU-funded procedures and contracts.

The electronic version of the technical offer must be included with the printed version in the separate envelope in which the technical offer is submitted. If there are any discrepancies between the electronic version and the original, printed version, the latter has precedence.

#### **4.2. Financial offer**

The Financial offer must be presented as an amount in [MDL] and must be submitted using the template for the global-price version of Annex V to part B of this tender dossier. The electronic version of this document ‘B8 — Budget for a global-price contract’ can be found on the website

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

The global price may be broken down by outputs if required from the Terms of Reference.]

The electronic version of the financial offer must be included with the printed version in the separate envelope in which the financial offer is submitted. If there are any discrepancies between the electronic version and the original, printed version, the latter will have precedence. Note that a schedule based on the ‘Estimated number of working days’ worksheet within this spread sheet must be included as part of the Organisation and Methodology in the technical offer.

Tenderers are reminded that the maximum budget available for this contract, as stated in the contract notice, is [MDL] 526 000. Payments under this contract will be made in the currency of the tender.

The applicable tax and customs arrangements are as follows:

##### Exemption of taxes

The European Commission and Government of Republic of Moldova have agreed in Financing Agreement of December 2016, to fully exonerate the following taxes VAT and customs taxes. In this aspect, the project is introduced with ID AMP :8721147812514 in the Government Decision no 246 of 08.04.2010 ”on the application of tax and customs facilities related to the implementation of technical and investment assistance projects in progress, which fall under the international treaties to which the Republic of Moldova is a part”.

## **5. Variant solutions**

Tenderers are not authorised to tender for a variant in addition to this tender.

## **6. Period during which tenders are binding**

Tenderers are bound by their tenders for 90 days after the deadline for submitting tenders or until they have been notified of non-award.

The selected tenderer must maintain its tender for a further 60 days. A further period of 60 days is added to the validity period irrespective of the date of notification. This period can be further extended when the contracting authority is required to obtain the recommendation of the panel referred to in section 2.3.3.1 of the Practical Guide, up to the adoption of that recommendation.

## **7. Additional information before the deadline for submitting tenders**

The tender dossier should be clear enough to avoid candidates having to request additional information during the procedure. If the Contracting Authority, either on its own initiative or in response to a request from a tenderer, provides additional information on the tender dossier, it must send such information in writing to all the tenderers at the same time.

Tenderers may submit questions in writing to the following address up to 5 days before the deadline for submission of tenders, specifying the publication reference and the contract title:

<https://mtender.gov.md/tenders/ocds-b3wdp1-MD-1591339618707>

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

Any tenderer seeking to arrange individual meetings with the Contracting Authority and/or the government of the partner country and/or the European Commission concerning this contract during the tender period may be excluded from the tender procedure.

No information meeting or site visit is foreseen.

## **8. Submission of tenders**

Tenders must be submitted to the contracting authority electronically via AIS RSAP.

These must include the documents required in clause 4 above and be submitted in accordance with the AIS RSAP system:

<https://mtender.gov.md/tenders/ocds-b3wdp1-MD-1591339618707>

**Tenders submitted by any other means will not be considered.**

The tender should provide the following information:

- a) the reference code of the tender procedure (i.e. COMINF/3.1/1-5.5.4);
- b) the name of the tenderer.

The pages of the Technical and Financial offers must be numbered.

## **9. Amending or withdrawing tenders**

Tenderers may amend or withdraw their tenders by written notification prior to the deadline for submitting tenders. Tenders may not be amended after this deadline.

Any such notification of amendment or withdrawal must be prepared and submitted in accordance with Clause 8. The outer envelope (and the relevant inner envelope) must be marked 'Amendment' or 'Withdrawal' as appropriate.

## **10. Costs for preparing tenders**

No costs incurred by the tenderer in preparing and submitting the tender are reimbursable. All such costs must be borne by the tenderer, including the cost of interviewing proposed experts.

## **11. Ownership of tenders**

The Contracting Authority retains ownership of all tenders received under this tendering procedure. Consequently, tenderers do not have the right to have their tenders returned to them.

## **12. Evaluation of tenders**

### **12.1. Evaluation of technical offers**

The quality of each technical offer will be evaluated in accordance with the award criteria and the weighting detailed in the evaluation grid in Part C of this tender dossier. No other award criteria will be used. The award criteria will be examined in accordance with the requirements indicated in the Terms of Reference.

The evaluation of the technical offers will follow the procedures set out in Section 3.3.10 of the Practical Guide (available on the internet at <http://ec.europa.eu/europeaid/prag/document.do>).

#### **12.1.1. Interviews**

No interviews are foreseen.

### **12.2. Evaluation of financial offers**

Upon completion of the technical evaluation, the envelopes containing the financial offers for tenders that were not eliminated during the technical evaluation will be opened (i.e. those with an average score of 75 points or more). Tenders exceeding the maximum budget available for the contract are unacceptable and will be eliminated.

### **12.3. Choice of selected tenderer**

The best price-quality ratio is established by weighing technical quality against price on an 80/20 basis.

### **12.4. Confidentiality**

The entire evaluation procedure is confidential, subject to the Contracting Authority's legislation on access to documents. The Evaluation Committee's decisions are collective and its deliberations are held in closed session. The members of the Evaluation Committee are bound to secrecy. The evaluation reports and written records are for official use only and may

be communicated neither to the tenderers nor to any party other than the Contracting Authority, the European Commission, the European Anti-Fraud Office and the European Court of Auditors.

### **13. Ethics clauses / Corruptive practices**

- a) 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.
- b) 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.
- c) 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.
- d) 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.

- e) 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. If substantial errors, irregularities or fraud are discovered after the award of the Contract, the Contracting Authority may refrain from concluding the Contract.

### **14. Signature of contract(s)**

#### **14.1. Notification of award**

The successful tenderer will be informed in writing that its tender has been accepted.

The successful tenderer shall then confirm availability or unavailability of their key-experts within 5 days from the date of the notification of award.

In case of unavailability the tenderer will be allowed to propose replacement key-expert(s). The successful tenderer shall give due justification for the exchange of key-expert but the acceptance will not be limited to specific cases. Several replacement key-experts may be proposed but only one time-period of 15 days from the date of the notification of award will be offered. The replacement key-expert(s) cannot be an expert proposed by another tenderer in the same call for tender.



The replacement key-expert's total score must be at least as high as the scores of the key-expert proposed in the tender. It must be emphasised that the minimum requirements for each evaluation criteria must be met by the replacement expert.

If replacement key-experts are not proposed within the 15 days delay or if the replacement experts are not sufficiently qualified, or that the proposal of the replacement key-expert amends the award conditions which took place, the Contracting Authority may decide to award the contract to the second best technically compliant tenderer (also giving them a chance to replace a key-expert should he/she not be available).

Should the Contracting Authority learn that a tenderer has confirmed the availability of a key expert and signed the contract although the tenderer has deliberately concealed the fact that the key-expert is unavailable from the date specified in the tender dossier for the start of the assignment, the Contracting Authority may decide to terminate the contract on the basis of article 36.2 (m) of the General Conditions.

It is reminded that the tenderer/contractor may also be subject to administrative and financial penalties foreseen in section 2.3.4 of the PRAG and article 10.2 of the General Conditions of service contracts. Furthermore it may lead to a tenderer's /contractor's exclusion from other contracts funded by the European Union.

#### **14.2. Signature of the contract(s)**

Within 20 days of receipt of the contract already signed by the Contracting Authority, the selected tenderer shall sign and date the contract and return it to the Contracting Authority.

Failure of the selected tenderer to comply with this requirement may constitute grounds for annulling the decision to award the contract. In this event, the Contracting Authority may award the tender to another tenderer or cancel the tender procedure.

The other tenderers will, at the same time as the notification of award is submitted, be informed that their tenders were not retained, by electronic means or standard letter, including an indication of the relative weaknesses of their tender by way of a comparative table of the scores for the winning tender and the unsuccessful tender. The second best tenderer is informed of the notification of award to the successful tenderer with the reservation of the possibility to receive a notification of award in case of inability to sign the contract with the first ranked tenderer. The validity of the offer of the second best tenderer will be kept. The second tenderer may refuse the award of the contract if, when receiving a notification of award, the 90 days of validity of their tender has expired.

The Contracting Authority will furthermore, at the same time, also inform the remaining unsuccessful tenderers and the consequence of these letters will be that the validity of their offers must not be retained.

#### **15. Cancellation of the tender procedure**

In the event of cancellation of the tender procedure, the Contracting Authority will notify tenderers of the cancellation. If the tender procedure is cancelled before the outer envelope of any tender has been opened, the unopened and sealed envelopes will be returned to the tenderers.

Cancellation may occur, for example, where:

- the tender procedure has been unsuccessful, i.e., no suitable, qualitatively or financially acceptable tender has been received or there is no valid response at all;

- there are fundamental changes to the economic or technical data of the project;
- exceptional circumstances or force majeure render normal performance of the contract impossible;
- all technically acceptable tenders exceed the financial resources available;
- there have been substantial errors, irregularities or frauds in the procedure, in particular if they 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 shall 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.

## **16. Appeals**

Tenderers believing that they have been harmed by an error or irregularity during the award process may file a complaint. See section 2.4.15 of the Practical Guide.