**VOLUME 1**

**SECTION 1: INSTRUCTIONS TO TENDERERS**

**Refurbishment Works on the Kantarevac park and Preparation of the Los Rosales playground for the installation of didactic play equipment and the** **procurement of a set of didactic play equipment for the multi-sensory playgrounds Kantarevac and Los Rosales**

**Ref. Number: 08-11-15330/20-66**

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

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

**CONTENTS**

[**GENERAL PART 4**](#_1fob9te)

[1.](#_3znysh7) GENERAL INSTRUCTIONS 4

[2.](#_tyjcwt) FINANCING 4

[3.](#_3dy6vkm) PARTICIPATION 4

[4.](#_4d34og8) ONLY ONE TENDER PER TENDERER 6

[5.](#_2s8eyo1) TENDER EXPENSES 6

[6.](#_17dp8vu) SITE VISIT AND CLARIFICATION MEETING 6

[**TENDER DOCUMENTS 6**](#_3rdcrjn)

[7.](#_26in1rg) CONTENT OF TENDER DOCUMENTS 6

[8.](#_lnxbz9) EXPLANATIONS CONCERNING TENDER DOCUMENTS 6

[9.](#_35nkun2) MODIFICATIONS TO TENDER DOCUMENTS 7

[**TENDER PREPARATION 7**](#_44sinio)

[10.](#_2jxsxqh) LANGUAGE OF TENDERS 7

[11.](#_z337ya) CONTENT AND PRESENTATION OF TENDER 7

[12.](#_3j2qqm3) INFORMATION/DOCUMENTS TO BE SUPPLIED BY THE TENDERER 8

[13.](#_1y810tw) TENDER PRICES 14

[14.](#_4i7ojhp) PERIOD OF VALIDITY OF TENDERS 14

[15.](#_2xcytpi) TENDER GUARANTEE 15

[16.](#_1ci93xb) VARIANT SOLUTIONS 15

[**SUBMISSION OF TENDERS 16**](#_3whwml4)

[17.](#_2bn6wsx) SEALING, MARKING AND SUBMITTING TENDERS 16

[18.](#_qsh70q) EXTENSION OF THE DEADLINE FOR SUBMITTING TENDERS 17

[19.](#_3as4poj) LATE TENDERS 17

[20.](#_1pxezwc) ALTERING AND WITHDRAWING TENDERS 17

[**OPENING AND EVALUATING TENDERS 17**](#_49x2ik5)

[21.](#_2p2csry) OPENING TENDERS 17

[22.](#_147n2zr) EVALUATING TENDERS 18

[23.](#_3o7alnk) CORRECTING ERRORS 19

[**CONTRACT AWARD 19**](#_23ckvvd)

[24.](#_ihv636) AWARD CRITERIA 19

[25.](#_32hioqz) Notification of award, contract clarifications 19

[26.](#_1hmsyys) CONTRACT SIGNING AND PERFORMANCE GUARANTEE 20

[27.](#_41mghml) CANCELLATION OF THE TENDER PROCEDURE 21

[28.](#_2grqrue) ETHICS CLAUSES 21

[29.](#_vx1227) APPEALS 23

# GENERAL PART

## GENERAL INSTRUCTIONS

### Tenderers must tender for the whole of the works required by the dossier. Tenders will not be accepted for incomplete lots.

### Timetable

|  |  |  |
| --- | --- | --- |
|  | **DATE** | **TIME\*** |
| **Clarification meeting** | - | - |
| **Site visit** | 23.09.2022.  - park Kantarecvac  - Centar Los Rosales | 9:00am - 10:00am  11:00am - 12:00pm |
| **Deadline for requesting any additional information from the Contracting Authority** | 24.09.2022. | 3:00pm |
| **Last date on which additional information are issued by the Contracting Authority** | 04.10.2022. | 3:00pm |
| **Deadline for submitting tenders** | 17.10.2022. | 11:00am |
| **Tender opening session** | 17.10.2022. | 12:00pm |
| **Notification of award to the successful tenderer** | 20.10.2022. | 3:00pm |
| **Signature of the contract** | 25.10.2022. | 11:00am |

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

## FINANCING

Regulation (EU) N°236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action, Regulation (EU) No 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II), The Interreg IPA Cross-border Cooperation Programme Croatia-Bosnia and Herzegovina-Montenegro 2014-2020.

## PARTICIPATION

### 

### Participation is open to all legal persons which are effectively established in the participating countries, other Member States, other IPA II beneficiaries, contracting parties to the Agreement on the European Economic Area and partner countries covered by the European Neighbourhood Instrument (hereafter referred to as ‘eligible countries’), and to International Organisations.

### The eligibility requirement detailed in subclaus 3.1 applies to all members of a joint venture/consortium and all subcontractors, as well as to all entities upon whose capacity the tenderer relies for the selection criteria. Every tenderer, member of a joint venture/consortium, every capacity-providing entity, every subcontractor providing more than 10 % of the works and every supplier providing more than 10 % of the works must certify that they meet these conditions. If required, 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.

### In the cases listed in Declaration on honour on exclusion criteria and selection criteria tenderers may be excluded from the procedure.

### The exclusion situation referred to in subclause 3.4 applies to all members of a joint venture/consortium, all subcontractors and all suppliers to tenderers, as well as to all entities upon whose capacity the tenderer relies for the selection criteria.

### The upper limit authorised for subcontracting is less then 50 % of the value of the tender[[1]](#footnote-1) if the tenderer applies for both LOTs, primarily LOT 1 implementing tenderer, LOT 2 subcontracted.

## ONLY ONE TENDER PER TENDERER

A company may not tender for a given contract both individually and as a member of a joint venture/consortium. Participation by a tenderer in more than one tender for a contract will result in the disqualification of all those tenders for that contract in which the party is involved. The same company may only participate as subcontractor in different tenders if that is justified by the specific nature of the market and cleared by the Contracting Authority.

## TENDER EXPENSES

### The tenderer will bear all costs associated with preparing and submitting the tender. The Contracting Authority will not be responsible or liable for such costs, whatever the conduct or outcome of the procedure.

### 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.

## SITE VISIT AND CLARIFICATION MEETING

### The tenderer is strongly advised to visit and inspect the site of the works and its surroundings for the purpose of assessing, at its own responsibility, expense and risk, the factors necessary for preparing its tender and signing the contract for the works. (Date, time and place, see point 13 of the contract notice.)

### A clarification meeting and/or a site visit will not be held by the Contracting Authority (Date, time and place, see point 13 of the contract notice).

# 

# TENDER DOCUMENTS

## CONTENT OF TENDER DOCUMENTS

The set of tender documents comprises the documents specified in the invitation letter.

Tenderers bear sole liability for examining with appropriate care the tender documents, including design documents available for inspection and any modification to the tender documents issued during the tendering period, and for obtaining reliable information on any conditions and obligations that may in any way affect the amount or nature of the tender or the execution of the works. In the event that the tenderer is successful, no claim for altering the tender amount will be entertained on the grounds of errors or omissions in the obligations of the tenderer described above.

## EXPLANATIONS CONCERNING TENDER DOCUMENTS

### 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:

Ms. Mirna Trcalo

E-mail: [mirna.trcalo@mostar.ba](mailto:mirna.trcalo@mostar.ba)

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

The Contracting Authority must reply to all tenderers’ questions at least 11 days before the deadline for receipt of tenders. Any clarification of the tender dossier will be published on the following website [www.mostar.ba](http://www.mostar.ba)

### 

## MODIFICATIONS TO TENDER DOCUMENTS

### The Contracting Authority may amend the tender documents by publishing modifications up to 11 days before the deadline for submitting tenders.

### Each modification published will constitute a part of the tender documents and will be published on the following website [www.mostar.ba](http://www.mostar.ba)

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

# TENDER PREPARATION

## LANGUAGE OF TENDERS

### 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 programme participating countries languages (BiH languages) and Latin letter only.

10.2 Relevant experience may be described in in Programme participating countries languages (BiH languages) and Latin letter only language.

Supporting documents and printed literature furnished by the tenderer may be in in Programme participating countries languages (BiH languages) and Latin letter only.

## CONTENT AND PRESENTATION OF TENDER

### Tenders must satisfy the following conditions:

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

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

#### The tenderer must provide all documents required by the tender dossier. All such documents, without exception, must comply strictly with these conditions and provisions and contain no amendments made by the tenderer. Tenders which do not comply with the requirements of the tender dossier may be rejected.

### The tenderer may submit a tender for one or all of the lots.

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

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

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

## INFORMATION/DOCUMENTS TO BE SUPPLIED BY THE TENDERER

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

**VOLUME 1**

SECTION 2: 08. Tender submission form

Annex 1 - Declaration of honour on exclusion and selection criteria…..Form a.15

00. Declaration of objectivity and confidentiality

SECTION 3: 12. Tender guarantee (Tender guarantee, using the form provided in Volume 1, Section 3)

SECTION 4: Bill of quantities (form or template in Volume 4.3.2/4.3.3)

QUESTIONNAIRE

Additional notice to tenderers

General information about the tenderer Form 4.1

Power of attorney Form 4.3

Financial statement Form 4.4

Financial identification form (FIF and LEF) Forms 4.5 a) + b)

Technical qualifications:

Overview of the tenderer’s staff ………………..Form 4.6.1.1

Staff to be employed on the contract Form 4.6.1.2

Critical milestone bar chart………………………………..Form 4.6.3

Data on subcontractors and the percentage of works to be subcontracted (Form 4.6.3)

(if applicable)

Evidence of relevant experience…………………………..Form 4.6.4

#### The forms provided in Volume 4:

Bill of quantities (form or template in Volume 4.3.2/4.3.3)

##### The prices in Volume 4 are deemed to have been set on the basis of the conditions in force30 days prior to the deadline for submitting tenders.

Prices cannot be revised.

#### Cash flow statements.

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

* general information about the tenderer (Form 4.1)
* power of attorney (Form 4.3).

#### Evidence showing that the liquid assets and access to credit facilities are adequate for this contract, confirmed by a financial statement for the last three years verified by a chartered accountant. This evidence must be provided using Tender Form, Form 4.4.

#### Financial identification form (Form 4.5a) and Legal Entity File (Form 4.5b).

#### Information about the tenderer’s technical qualifications. This information must follow the forms in Tender Form and include: Overview of the tenderer’s staff (Form 4.6.1.1) and Staff to be employed on the contract (Form 4.6.1.2)

#### A work plan with brief descriptions of the main tasks (Form 4.6.3), showing the sequence and proposed timetable for implementing the tasks.

* a critical milestone bar chart showing times and duties allocated for employees for this contract (Form 4.6.3);
* data on subcontractors and the percentage of works to be subcontracted (Form 4.6.3) (if applicable);
* evidence of relevant experience in carrying out works of a similar nature, including the nature and value of the contracts, works in hand and contractually committed (Form 4.6.4). The evidence must include successful experience as the prime contractor in construction of at least 5 projects of the same nature and complexity comparable to the works concerned by the tender during the last five years

For full information about procurement procedures please consult the practical guide and its annexes, which can be downloaded from the following web page: <http://ec.europa.eu/europeaid/prag/document.do>

VOLUME 3

LOT 1 - detaljan predmjer radova (2 excel forms)

LOT 2 - detaljan predmjer nabavke opreme (1 excel form)

VOLUME 4

FINANCIAL OFFER (LUMP SUM CONTRACTS)

#### Proof documents, declarations and undertakings according to clauses 3.1-3.5 above. These documents should cover all members of a joint venture/consortium and all subcontractors as specified.

### In order to be eligible for the award of the contract, tenderers must provide evidence that they meet the selection criteria. This must be provided by tenderers using the forms described in 12.1 above and any additional forms tenderers may wish to use.

If a tender is submitted by a consortium, unless specified, the selection criteria will be applied to the consortium as a whole.

#### The selection criteria for each tenderer are as follows:

● the tenderer has delivered works under at least 5 contract[s] with a budget of at least 150.000.00EUR/293.374,50BAM in construction work / purchase of equipment, which were implemented during the following period: 5 years from the submission deadline, 17.10.2022.

***Economic and financial capacity of candidate:***

1. the average annual turnover of the tenderer must exceed the annualised maximum budget of the contract
2. Tenderer may prove its insurance policy potential for the relevant field.

***Technical and professional capacity of candidate:***

1. a list of the works contracts carried out over the past five/eight years, indicating or holding in attachment certificates of the other party concerning the satisfactory performance for the most important works. These certificates shall include the value of the works, the date and place of performance of the works, and an indication whether the works were carried out according to the rules of the trade and properly completed.
2. an indication of the technicians or technical departments involved, whether or not belonging directly to the economic operator's undertaking, especially those responsible for quality control and those upon whom the contractor can call in order to carry out the work (whether or not they are employed in the Tenderer)
3. a statement by the economic operator concerning tools, plant and technical equipment available to the contractor to perform the contract.

N/A

#### Capacity-providing entities:

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

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

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

N/A

### 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 in 12.1 above for each member of the joint venture/consortium and summary data for execution of works by the tenderer.
* The tender must be signed in a way that legally binds all members. One member must be appointed lead member and that appointment confirmed by submission of powers of attorney signed by legally empowered signatories representing all members.
* 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.

## TENDER PRICES

### The currency of the tender is the national currency of Bosnia and Herzegovina (BAM).

### The tenderer must provide a Bill of Quantities in national currency of Bosnia and Herzegovina. The tender price must cover all works as described in the tender documents. All sums in the Bill of Quantities, the Tender Form and other documents must also be expressed in this currency, with the exception of originals of bank and annual financial statements.

### Tenderers must quote all components of Bill of Quantities. 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 Bill of Quantities.

### If a discount is offered by the tenderer, it must be clearly specified in Bill of Quantities in the Tender Form. The discount must be quoted for all works.

### 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.

## PERIOD OF VALIDITY OF TENDERS

### Tenders must remain valid for a period of 90 days after the deadline for submitting tenders indicated in the contract notice, the invitation to tender or as amended in accordance with Clauses 9 and/or 18.

### In exceptional circumstances, the Contracting Authority may, before the validity period expires, request that tenderers extend the validity of tenders for a specific period, which may not exceed 40 days. Such requests and the responses to them must be made in writing. A tenderer may refuse to comply with such a request without forfeiting its tender guarantee. If the tenderer decides to accept the request, it may not amend its tender and it is bound to extend the validity of its tender guarantee for the revised period of validity of the tender. In case the contracting authority is required to obtain the recommendation of the panel referred to in section 2.6.10.1.1. of the Practical Guide, the contracting authority may request an extension of the validity of the tenders up to the adoption of that recommendation.

### The successful tenderer must maintain its tender for a further 60 days. This period is in addition to the validity period, irrespective of the date of notification.

## TENDER GUARANTEE

### The tenderer must provide, as a part of its tender, a tender guarantee in the form set out in the tender dossier,. The tender guarantee must be for an amount of 189.300,00EUR/370.238,61BAM

### LOT 1: max. 97.258,00EUR/190.220,11BAM

### LOT 2: max. 92.042,00EUR/180.018,50BAM

### The original guarantee must be included in the original tender.

### 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.

### 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.

### The tender guarantees of unsuccessful tenderers will be returned together with the information letter that the tenderer has been unsuccessful.

### The tender guarantee of the successful tenderer must be released when the tenderer has signed the contract and provided the requisite performance guarantee.

## VARIANT SOLUTIONS

Variant solutions will not be taken into consideration.

# SUBMISSION OF TENDERS

## SEALING, MARKING AND SUBMITTING TENDERS

### The complete tender must be submitted in one original, clearly marked ‘original’ and one copy, clearly marked ‘copy’. In the event of any discrepancy between them, the original will prevail.

### The technical and financial offers must be placed together in a sealed envelope.

### All tenders must be received by the Contracting Authority before the deadline set in point 19 of the Contract notice, by registered letter with acknowledgement of receipt or hand-delivered against receipt signed by the Contracting Authority.

The tender must be sent to the following address:

**GRAD MOSTAR,**

**Odjel za gospodarstvo/privredu, komunalne i inspekcijske poslove,**

**Služba za gospodarstvo/privredu,**

**Brace Fejica br. 51, 88000 Mostar, BiH**

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

**GRAD MOSTAR,**

**Centar za usluge gradjana (Protokol),**

**Adema Buca 19, 88000 Mostar, BiH**

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

1. the above address;
2. the reference code of this tender procedure, (i.e., 08-11-15330/20-66);
3. where applicable, the number of the lot(s) tendered for;
4. the words ‘Not to be opened before the tender opening session’ in the language of the tender dossier and ‘Ne otvarati do postupka otvaranja tendera’.
5. the name of the tenderer.

## EXTENSION OF THE DEADLINE FOR SUBMITTING TENDERS

The Contracting Authority may, on its own discretion, extend the deadline for submitting tenders by issuing an amendment in accordance with Clause 9. In such cases, all rights and obligations of the Contracting Authority and the tenderer regarding the original date specified in the contract notice will be subject to the new date.

## LATE TENDERS

### All tenders received after the deadline for submission specified in the contract notice or these instructions will be kept by the Contracting Authority. The guarantees will be returned to the tenderers.

### No liability can be accepted for late delivery of tenders. Late tenders will be rejected and will not be evaluated.

## ALTERING AND WITHDRAWING TENDERS

### 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.

### Any notification of alteration or withdrawal must be prepared and submitted in accordance with Clause 17, and the envelope must be marked ‘alteration’ or ‘withdrawal’, as appropriate.

### Withdrawal of a tender in the period between the deadline for submission and the date of expiry of the validity of the tender will result in forfeiture of the tender guarantee.

# OPENING AND EVALUATING TENDERS

## OPENING TENDERS

### The purpose of opening and examining tenders is to check whether the tenders are complete, whether the requisite tender guarantees have been furnished, whether the required documents are included and whether the tenders are generally in order.

### Tenders will be opened in public session on the date and venue specified in point 20 of the Contract notice by the committee appointed for that purpose. The committee will draw up minutes of the meeting, which must be available to tenderers on request.

### At the tender opening session, the tenderers’ names, the tender prices, any discounts offered, written notifications of alteration and withdrawal, the presence of the tender guarantee (if required) and such other information the Contracting Authority may consider appropriate may be announced.

### 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.

## EVALUATING TENDERS

The Contracting Authority reserves the right to ask a tenderer to clarify any part of its tender that the evaluation committee considers necessary to evaluate it. Such requests and the responses to them must be made in writing. They may in no circumstances alter or try to change the price or content of the tender, except to correct arithmetical errors discovered by the evaluation committee when analysing tenders.

The Contracting Authority reserves the right to check information submitted by the tenderer if the evaluation committee considers it necessary.

### Examination of the administrative compliance of tenders

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

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

The evaluation committee will check that each tender:

* has been properly signed;
* includes a correct tender guarantee (if required);
* meets the requirements as set out in the administrative compliance grid;
* has complete documentation and information;
* substantially complies with the requirements of these tender documents.

If a tender does not meet the requirements set out in the administrative compliance grid, it may be rejected by the evaluation committee when checking admissibility.

Contracting Authority (Project partner) may request clarification and supplement of the documents related to the administrative conformity.

### 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.

### Financial evaluation

Once the technical evaluation has been completed, the evaluation committee checks that the financial offers contain no arithmetical errors. If the tender procedure contains several lots, financial offers are compared for each lot. The financial evaluation will have to identify the best financial offer for each lot, taking due account of any discounts offered.

When analysing the tender, the evaluation committee will calculate the final tender price after adjusting it on the basis of Clause 23.

## CORRECTING ERRORS

### 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;

### 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

## AWARD CRITERIA

The most economically advantageous tender is the technically compliant tender with the lowest price.

## Notification of award, contract clarifications

Prior to the expiry of the validity period of tenders, the Contracting Authority will notify the successful tenderer, in writing, that its tender has been selected and draw its attention to any arithmetical errors corrected during the evaluation process. This notification may take the form of an invitation to clarify certain contractual questions raised therein, to which the tenderer must be prepared to reply. This clarification will be confined to issues that had no direct bearing on the choice of the successful tender. The outcome of such clarification will be set out in a memorandum of clarification, to be signed by both parties and incorporated into the contract.

Documentary evidence required from the successful tenderer:

Before the Contracting Authority signs the contract with the successful tenderer, the successful tenderer must, if required to do so by the Contracting Authority, provide the **documentary proof** or statements required under the law of the country in which the company (or, for consortia, each of the companies) is established, to show that it does not fall into any of the exclusion situations listed the Tender Dossier. This evidence, documents or statements must carry a date, which cannot be more than one year before the date of submission of the tender. In addition, a statement must be furnished stating that the situations described in these documents have not changed since then. The above-mentioned documents must be submitted for the tenderer, every member of a joint venture/consortium, all subcontractors and every supplier. In the event of doubt on this declaration of honour, the Contracting Authority must request documentary evidence that they are not in a situation of exclusion.

Evidence of financial, economic, technical 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 is required to provide documentary proof, but fails to provide this documentary proof or statement within 15 calendar days following notification of award or if the successful tenderer is found to have provided false information, the award will be considered null and void. In this case, the Contracting Authority may award the tender to the next lowest tenderer or cancel the tender procedure.

After the contract has been signed and the successful tenderer has provided the performance guarantee, in accordance with Clause 26, the Contracting Authority will promptly notify the other tenderers that their tenders have not been successful and release their tender guarantees.

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

## CONTRACT SIGNING AND PERFORMANCE GUARANTEE

### Within max. 10 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.

### If it fails to sign and return the contract and any financial guarantee required within 10 days after receipt of notification, the Contracting Authority may consider the acceptance of the tender to be cancelled, without prejudice to the Contracting Authority’s right to invoke the guarantee, claim compensation or pursue any other remedy in respect of such failure, and the successful tenderer will have no claim whatsoever on the Contracting Authority.

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

## CANCELLATION OF THE TENDER PROCEDURE

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

Cancellation may occur, for example, where:

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

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

## ETHICS CLAUSES AND CODE OF CONDUCT

28.1 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.

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

The tenderer and its staff must comply with human rights. 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.

28.3 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.

28.4 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.

28.5 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.

1. If the tender includes subcontracting, it is recommended that the contractual arrangements between the tenderer and its subcontractors include mediation, according to national and international practices, as a method of dispute resolution. [↑](#footnote-ref-1)