

VOLUME 1

SECTION 1: INSTRUCTIONS TO TENDERERS

SECTION I INSTRUCTIONS TO TENDERERS

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

These Instructions set out the rules for the submission, selection and implementation of contracts financed under this call for tenders, in conformity with the provisions of the Practical Guide to contract procedures for EU external actions, which is applicable to the present call (available on the Internet at this address: http://ec.europa.eu/europeaid/work/procedures/index_en.htm).

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GENERAL PART

1 GENERAL INSTRUCTIONS

- 1.1. Tenderers must tender for the whole of the works required by the dossier. Tenders will not be accepted for incomplete lots.
- 3.1 Timetable:

	DATE	TIME*
Clarification meeting	22.03.2011.	12:00
Site visit	n/a	n/a
Deadline for request for any additional information from the Contracting Authority	15.04.2011.	15.00
Last date on which additional information are issued by the Contracting Authority	26.04.2011.	15.00
Deadline for submission of tenders	06.05.2011.	13.00
Tender opening session	09.05.2011.	11.00
Notification of award to the successful tenderer	10.05.2011.	-
Signature of the contract	13.05.2011.	-

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

[⊗] Provisional date

2 FINANCING

The project is co-financed by the European Union, in accordance with the rules of IPA HU – SRB CBC Programme.

3 PARTICIPATION

1.1

Participation in tendering is open to all legal persons [participating either individually or in a grouping (consortium) or tenderers] which are established in one of the Member States of the European Union or in a country or territory of the regions covered and/or authorised by the specific instruments applicable to the IPA programme under which the contract is financed. Participation is also open to international organisations. Participation of natural persons is directly governed by the specific instruments applicable to the programme under which the contract is financed.

- 1.2 These terms refer to all nationals of the said states and to all legal entities, companies or partnerships constituted under, and governed by, the civil, commercial or public law of such states and having their statutory office, central administration or principal place of business there. A legal entity, company or partnership having only its statutory office there must be engaged in an activity which has an effective and continuous link with the economy of the state concerned. Tenderers must provide evidence of their status.

- 1.3 The eligibility requirement detailed in subclause 3.1 and 3.2 applies to all members of a joint venture/consortium, all subcontractors and all suppliers to tenderers. Every tenderer, member of a joint venture/consortium, every subcontractor providing more than 10% or the

works and every supplier providing more than 10% of the works must certify that they meet these conditions and prove their eligibility by a document dated less than 1 year earlier than the deadline for the submission of tenders, drawn up in accordance with their national law or practice or by copies of the original documents defining the constitution and/or legal status and establishing 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.

3.1 Natural persons, companies or undertakings falling into a situation set out in section 2.3.3 of the Practical Guide to contract procedures for EU external actions are excluded from participation in and the award of contracts. Tenderers must provide declarations to the effect that they are not in any of the exclusion situations listed in section 2.3.3 of the Practical Guide to contract procedures for EU external actions. The declarations must cover all the members of a joint venture/consortium. Tenderers who have been guilty of making false declarations may also incur financial penalties and exclusion in accordance with section 2.3.4 of the Practical Guide.

3.1 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.

3.1 The upper limit authorised for subcontracting is 30% of the value of the tender.¹

4 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. Submission or 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.

5 TENDER EXPENSES

5.1. The tenderer will bear all costs associated with the preparation and submission of the tender. The Contracting Authority will in no case be responsible or liable for such costs, whatever the conduct or outcome of the procedure.

5.1. 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.

6 SITE INSPECTION

6.2. 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, factors necessary for the preparation of its tender and the signing of the contract for the works. Date, time and place, see point 12 of the procurement notice.

6.2. A clarification meeting will be held by the Contracting Authority 22.03.2011. 12:00 LED Office, Trg Slobode 1 24000 Subotica, see point 13 of the procurement notice.

¹ If the offer includes subcontracting, it is recommended that the contractual arrangements between the tenderer and its subcontractors include mediation, according to national and international practices, as a method of dispute resolution.

TENDERS DOCUMENTS

7 CONTENT OF TENDER DOCUMENTS

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

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

8 EXPLANATIONS CONCERNING TENDER DOCUMENTS

- 8.1. Tenderers may submit questions in writing up to 21 days before the deadline for submission of tenders, specifying the publication reference and the contract title:

Jadranka Stantić
Office for Local Economic Development, City of Subotica,
Trg Slobode 1, 24000 Subotica
Fax No. 024/525 424
ler@subotica.rs

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.

- 8.2. The questions and answers will be published on the Contracting Authority website www.subotica.rs, and sent via e mail to all concerned companies.

9 MODIFICATIONS TO TENDER DOCUMENTS

- 9.1. The Contracting Authority may amend the tender documents by publishing modifications up to 11 days before the deadline for submission of tenders.
- 9.2. Each modification published will constitute a part of the tender documents and will be published on the www.subotica.rs
- 9.3. The Contracting Authority may, as necessary and in accordance with Clause 18, extend the deadline for submission of tenders to give tenderers sufficient time to take modifications into account when preparing their tenders.

TENDERS PREPARATION

10 LANGUAGE OF TENDERS

- 10.1. The tender and all correspondence and documents related to the tender exchanged by the tenderer and the Contracting Authority must be written in the language of the procedure which is English. All correspondence relating to payments, including invoices and interim and final payment certificates, must also be sent to the Contracting Authority in English.
- 10.3. 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 the one of the procedure, it is however strongly recommended to provide a translation into the language of the call for tenders, in order to facilitate the evaluation of the documents.

11 CONTENT AND PRESENTATION OF TENDER

- 11.2. Tenders must satisfy the following conditions:
 - 11.1.1. Tenders must comprise the documents and information in clause 12 below.
 - 11.0.1. The tender must be signed by a person or persons empowered by the power of attorney submitted in accordance with Form 4.3 of Volume 1, Section 4 of the tender dossier.
 - 11.0.1. The relevant pages of the documents specified in clause 12 must be signed as indicated.
 - 11.0.1. The tenderer must provide all documents required by the provisions of the tender dossier. All such documents, without exception, must comply strictly with these conditions and provisions and contain no alterations made by the tenderer. Tenders which do not comply with the requirements of the tender dossier may be rejected.

12 INFORMATION/DOCUMENTS TO BE SUPPLIED BY THE TENDERER

- 12.1 All tender must comprise the following information and duly completed documents:
 - 12.1.3 Tender form and appendix, in accordance with the forms provided in Volume 1, section 2;
 - 12.1.3 Documentation as required in the questionnaire in Volume 1, Section 4, including all forms attached;
 - 12.1.3 The forms provided in Volume 4:
 - Volume 4.2.2 – Recapitulation;
 - Volume 4.2.3 - Breakdown of the Lump-sum Price;

The Breakdown of the Lump-sum Price and the Detailed Breakdown of Prices do not derogate in any way to the clause according to which, in a lump-sum contract, the total contract price remains fixed irrespective of the quantities of work actually carried out.
 - 12.1.3.1 The prices filled in Volume 4 are deemed to have been determined on the basis of the conditions in force 30 days prior to the latest date fixed for submission of tenders.

The Detailed Breakdown of Prices shall be used when required for any purpose under the contract, notably to provide the coefficients for the application of the price revision formula referred to in article 48.2 of the Special Conditions.

- 12.1.3 Cashflow statements;
- 11.0.4. Copies of the most recent documents showing the organisation chart, legal status and place of registration of the headquarters of the tenderer, a power of attorney empowering the person signing the tender and all related documentation. These documents must correspond to the forms in Volume 1, Section 4 of the tender dossier:
To be completed in accordance with the questionnaire in Volume 1, Section 4
- general information about the tenderer (Form 4.1)
 - organisation chart (Form 4.2)
 - power of attorney (Form 4.3).
- 11.0.4. Evidence showing that the liquid assets and access to credit facilities are adequate for this contract, confirmed by a financial statement for the last 3 years verified by a chartered accountant. This evidence must be provided using Form 4.4, Financial statement, in Volume 1, Section 4 of the tender documents.
- 11.0.4. Financial projections for the two years ahead. This information must follow Form 4.4, Financial statement, provided in accordance with Volume 1, Section 4 of the tender documents.
- 11.0.7 Financial identification form (Form 4.5a, Volume 1) and Legal Entity File (Form 4.5b, Volume 1), supported by copy of legal registration.
- 12.1.12. Information about the tenderer's technical qualifications. This information must follow the forms in Volume 1, Section 4 of the tender documents and include:
- a presentation of the tenderer's organisation, including the total number of staff employed (Form 4.6.1.1),
 - a list of the staff proposed for the execution of the contract, with the CVs of key staff (Forms 4.6.1.2 and 4.6.1.3),
 - a list of plant for execution of the contract. The descriptions must demonstrate the tenderer's ability to complete the works and should include inter alia:
 - One asphalt plant 150t/h at maximum 60 km away from the site
 - One asphalt paver and paver finisher of minimum 6 meter width
 - Minimum 3 vibratory rollers - steel
 - Minimum 2 vibratory rollers - rubber
 - Two bulldozers
 - Two grader
 - One pad foot drum vibratory roller
 - One special vehicle vibrating plate
 - One loader
 - Minimum 4 trucks of 20 t capacity
 - One water tanker truck of minimum 8.000 L
 - One truck emulsion tanker
 - One excavator
- The tenderer must indicate whether such equipment is owned, hired or used by a subcontractor. Manufacturer's documents fully describing the equipment must be submitted with the tender (Form 4.6.2);

- a list of materials and any supplies intended for use in the works, stating their origin;
- a work plan with brief descriptions of major activities (Form 4.6.3), showing the sequence and proposed timetable for the implementation of the tasks. In particular, the proposal shall detail the temporary and permanent works to be constructed. The tenderer must take account of the prevailing weather conditions and the requirement to prepare designs and obtain building permits prior to the execution of construction works. The tenderer must also submit a comprehensive method statement, with drawings if necessary, showing the methods by which it proposes to carry out the works. In particular, the tenderer must indicate the numbers, types and capacities of the plant and personnel it proposes to use on the major activities of work;
- a critical milestone bar chart showing times and duties allocated for employees for this contract (Form 4.6.3);
- data concerning subcontractors and the percentage of works to be subcontracted (Form 4.6.3);
- evidence of relevant experience in execution of works of a similar nature, including the nature and value of the relevant contracts, as well as works in hand and contractually committed (Form 4.6.4). The evidence shall include successful experience as the prime contractor in construction of at least 3 projects of the same nature and complexity comparable to the works concerned by the tender during the last 3 years;
- information regarding the proposed main site office (Form 4.6.3);
- an outline of the quality assurance system(s) to be used (Form 4.6.7).
- if applicable, information about tenderers involved in a joint venture/consortium (Form 4.6.5);
- details of their litigation history over the last 2 years (Form 4.6.6);
- details of the accommodation and facilities to be provided for the Supervisor (Form 4.6.8);
- any other information (Form 4.6.9).

12.1.12. Proof documents, declarations and undertakings according to clauses 3.1-3.6 above. These documents should cover all members of a joint venture/consortium, all subcontractors and all suppliers to tenderers as specified.

12.1.13 Unless otherwise provided in the contract, all goods purchased under the contract must originate in a Member States 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. Tenderers must provide an undertaking signed by their representative certifying their compliance with this requirement. For more details see point 2.3.1 PRAG.

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 goods must be determined according to the Community Customs Code or the international agreements to which the country concerned is a signatory.

12.1.13 Modifications (if any);

12.1.13 Tender guaranty is not needed

12.1.14. If obligatory site visit: All tenderers must include the certificate of their site visit in their tender.

- 12.1 In order to be considered eligible for the award of the contract, tenderers must provide evidence that they meet the selection criteria. This evidence must be provided by tenderers in the form of the information and documents described in Subclause 12.1 above and in whatever additional form tenderers may wish to utilise.

In the case of a tender submitted by a consortium, unless specified, these selection criteria will be applied to the consortium as a whole:

The selection criteria for each tenderer are as follows:

Economic and financial capacity of candidate:

- the average annual turnover of the tenderer in the past 3 years must be at least EUR 1.000.000,00

Technical and professional capacity of candidate:

- it must have completed at least 3 projects of the same nature/amount/complexity comparable to the works concerned by the tender which were implemented during the following period: 5 years from the submission deadline. The Contracting Authority reserves the right to ask for copies of the respective certificates of final acceptance signed by the supervisors/contracting authority of the projects concerned.
- it must carry out at least 70% of the contract works by own resources, which means that it must have the equipment, materials, human and financial resources necessary to enable it to carry out that percentage of the contract.
- all its key personnel must have at least 5 years' appropriate experience and proven qualifications relevant to works of a similar nature to this project.
- Site engineer with licence number: 412 or, 415

An economic operator may, where appropriate and for a particular contract, rely on the capacities 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 rely in majority on the capacities of other entities or when they rely on key criteria. If the tenderer rely on other entities it must prove to the Contracting Authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those 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 data for this third entity for the relevant selection criterion should be included in the tender in a separate document. Proof of the capacity will also have to be furnished when requested by the Contracting Authority.

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

- The tender must include all the information required by Subclause 12.1 above for each member of the joint venture/consortium and the summary data for execution of works by the tenderer.
- The tender must be signed in a way that legally binds all members. One member must be appointed lead member and that appointment confirmed by submission of powers of attorney signed by legally empowered signatories representing all the individual members. See Form 4.6.5 in Volume 1 and the tender form.

- All members of the joint venture/consortium are bound to remain in the joint venture/consortium for the whole execution period of the contract. See the declaration in the tender form.

13 TENDER PRICES

- 13.6. The currency of the tender is the national currency².
- 13.6. The tenderer must provide a Bill of Quantities/breakdown and Price Schedule. The tender price must cover the whole of the works as described in the tender documents. All sums in the Bill of Quantities/breakdown and Price Schedule, the questionnaire 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 the bill of quantities/breakdown of the overall price exclusive of taxes and customs and import duties. 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.

- 13.6. If a discount is offered by the tenderer, it must be clearly specified in the Bill of Quantities and Price Schedule in Volume 4 and indicated in the tender form in Volume 1, Section 1.2. The discount must be quoted for the whole of the works.
- 13.6. If the tenderer offers a discount, the discount must be included on each interim payment certificate and calculated on the same basis as in the tender.

14 PERIOD OF VALIDITY OF TENDERS

- 14.1. Tenders must remain valid for a period of 90 days after the deadline for submission of tenders indicated in the procurement notice, the invitation to tender or as modified in accordance with Clauses 9 and/or 18.
- 14.1. In exceptional circumstances the Contracting Authority may, before the period of validity expires, request that tenderers extend the validity of tenders for a specific period, which may not exceed 40 days. Such requests and the responses to them must be made in writing. A tenderer may refuse to comply with such a request without forfeiting its tender guarantee. If the tenderer decides to accede to such a request, it may not modify its tender and it is bound to extend the validity of its tender guarantee for the revised period of validity of the tender.
- 14.1. The successful tenderer must maintain its tender for a further 60 days. The further period is added to the validity period irrespective of the date of notification.

15 TENDER GUARANTEE

No tender guarantee is required.

16 VARIANT SOLUTIONS

Variant solutions will not be taken into consideration.

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

SUBMISSION OF TENDERS

17 SEALING, MARKING AND SUBMISSION OF TENDERS

17.0. The complete tender must be submitted in one original, clearly marked "original" and 4 copies, also clearly marked "copy". In the event of any discrepancy between them the original will prevail.

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

17.0. All tenders must be received by the Contracting Authority before the deadline specified in point 19 or the Procurement Notice, by registered letter with acknowledgement of receipt or hand-delivered against receipt signed by Project coordinator or its representative.

The tender shall be sent to the following address:

City of Subotica, Office for Local Economic Development

Trg Slobode 1,

24000 Subotica

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

City of Subotica, Office for Local Economic Development

Trg Slobode 1,

24000 Subotica

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

- (c) the above address;
- (c) the reference code of this tender procedure, (i.e., HU-SRB/0901/111/005/010);
- (c) where applicable, the number of the lot(s) tendered for;
- (c) the words "Not to be opened before the tender opening session" in the language of the tender dossier and "Ne otvarati pre sastanka za otvaranje ponuda".
- (c) the name of the tenderer.

18 EXTENSION OF THE DEADLINE FOR SUBMISSION OF TENDERS

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

19 LATE TENDERS

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

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

20 ALTERATION AND WITHDRAWAL OF TENDERS

- 20.3. Tenderers may alter or withdraw their tenders by written notification prior to the above deadline. No tender may be altered after the deadline for submission. Withdrawals must be unconditional and will end all participation in the tender procedure.
- 20.3. Any such notification of alteration or withdrawal must be prepared and submitted in accordance with Clause 17, and the envelope must also be marked with "alteration" or "withdrawal" as appropriate.
- 20.3. The withdrawal of a tender in the period between the deadline for submission and the date of expiry of the validity of the tender will result in forfeiture of the tender guarantee.

OPENING AND EVALUATION OF TENDERS

21 OPENING OF TENDERS

- 20.0 The opening and examination of tenders is for the purpose of checking whether the tenders are complete, whether the requisite tender guarantees have been furnished, whether the required documents have been properly included and whether the tenders are generally in order.
- 20.0 Tenders will be opened in public session on date and venue specified in point 20 of the Procurement Notice by the committee appointed for the purpose. The committee will draw up minutes of the meeting, which shall be available to tenderers on request.
- 20.0 At the tender opening, the tenderers' names, the tender prices, any discounts offered, written notifications of alteration and withdrawal, the presence of the tender guarantee (if required) and such other information the Contracting Authority may consider appropriate may be announced.
- 20.3 After the public opening of the tenders, no information relating to the examination, clarification, evaluation or comparison of tenders or recommendations concerning the award of contract can be disclosed until after the contract has been awarded.

Any attempt by a tenderer to influence the evaluation committee in the process of examination, clarification, evaluation and comparison of tenders, to obtain information on how the procedure is progressing or to influence the Contracting Authority in its decision concerning the award of the contract will result in the immediate rejection of its tender.

22 EVALUATION OF TENDERS

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

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

- 22.0. Examination of the administrative conformity of tenders

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

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

The evaluation committee will check that each tender:

- has been properly signed;
- includes a correct tender guarantee (if required);
- all the elements in the administrative compliance grid are acceptable;
- has complete documentation and information;
- substantially complies with the requirements of these tender documents.

If a tender does not comply with the requirements of the administrative compliance grid, it may be rejected by the evaluation committee when checking admissibility.

21.1 Technical evaluation

The evaluation committee must evaluate only those tenders considered substantially compliant in accordance with Clause 22.1.

The purpose of the evaluation process is to identify the tenderer which for the lowest cost is most likely to enable the Contracting Authority to achieve its objectives of having a facility that is completed on time, meets the published criteria and is within the budget available. The evaluation of tenders may take into account not only the construction costs but, if necessary, the operating costs and resources required (ease of operation and maintenance), in line with the technical specifications. The Contracting Authority will examine in detail all the information supplied by the tenderers and will formulate its judgement on the basis of the lowest total cost, including additional costs.

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.

21.1 Financial evaluation

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

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

23 CORRECTION OF ERRORS

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

- where there is a discrepancy between amounts in figures and in words, the amount in words will prevail;
 - except for lump-sum contracts, where there is a discrepancy between a unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will prevail.
- 23.3. The amount stated in the tender will be adjusted by the evaluation committee in the event of error, and the tenderer will be bound by that adjusted amount. If the tenderer does not accept the adjustment, its tender will be rejected and its tender guarantee forfeited.

CONTRACT AWARD

24 AWARD CRITERIA

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

25 NOTIFICATION OF AWARD, CONTRACT CLARIFICATIONS

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

26 CONTRACT SIGNING AND PERFORMANCE GUARANTEE

- 26.5. Within 30 days of receipt of the contract already signed by the Contracting Authority, the selected tenderer must sign and date the contract and return it, with the performance guarantee (if applicable) to the Contracting Authority. On signing the contract, the successful tenderer will become the Contractor and the contract will enter into force.
- 26.5. If it fails to sign and return the contract and any financial guarantee required within 30 days after receipt of notification, the Contracting Authority may consider the acceptance of the tender to be cancelled without prejudice to the Contracting Authority's right to seize the guarantee, claim compensation or pursue any other remedy in respect of such failure, and the successful tenderer will have no claim whatsoever on the Contracting Authority.
- 26.5. The performance guarantee is not required.

27 CANCELLATION OF THE TENDER PROCEDURE

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

Cancellation may occur where:

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

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

28 ETHICS CLAUSES

- 28.1. Any attempt by a candidate or tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the committee or the Contracting Authority during the process of examining, clarifying, evaluating and comparing tenders will lead to the rejection of its candidacy or tender and may result in administrative penalties.
- 28.2. Without the Contracting Authority's prior written authorisation, the Contractor and its staff or any other company with which the Contractor is associated or linked may not, even on an ancillary or subcontracting basis, supply other services, carry out works or supply equipment for the project. This prohibition also applies to any other programmes or projects that could, owing to the nature of the contract, give rise to a conflict of interest on the part of the Contractor.
- 28.3. When putting forward a candidacy or tender, the candidate or tenderer must declare that it is affected by no conflict of interest, and that it has no equivalent relation in that respect with other tenderers or parties involved in the project. Should such a situation arise during execution of the contract, the Contractor must immediately inform the Contracting Authority.
- 28.4. The Contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of its profession. It must refrain from making public statements about the project or services without the Contracting Authority's prior approval. It may not commit the Contracting Authority in any way without its prior written consent.
- 28.5. For the duration of the contract, the Contractor and its staff must respect human rights and undertake not to offend the political, cultural and religious mores of the beneficiary state.

- 28.6. The Contractor may accept no payment connected with the contract other than that provided for therein. The Contractor and its staff must not exercise any activity or receive any advantage inconsistent with their obligations to the Contracting Authority.
- 28.2. The Contractor and its staff are obliged to maintain professional secrecy for the entire duration of the contract and after its completion. All reports and documents drawn up or received by the Contractor are confidential.
- 28.2. The contract governs the Parties' use of all reports and documents drawn up, received or presented by them during the execution of the contract.
- 28.2. The Contractor shall refrain from any relationship likely to compromise its independence or that of its staff. If the Contractor ceases to be independent, the Contracting Authority may, regardless of injury, terminate the contract without further notice and without the Contractor having any claim to compensation.
- 28.2. The Commission reserves the right to suspend or cancel project financing if corrupt practices of any kind are discovered at any stage of the award process and if the Contracting Authority fails to take all appropriate measures to remedy the situation. For the purposes of this provision, "corrupt practices" are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or implementation of a contract already concluded with the Contracting Authority.
- 28.2. All tenders will be rejected or contracts terminated if it emerges that the award or execution of a contract has given rise to unusual commercial expenses. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commissions paid to a company which has every appearance of being a front company.
- 28.2. The Contractor undertakes to supply the Commission on request with all supporting documents relating to the conditions of the contract's execution. The Commission may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in cases of suspected unusual commercial expenses.
- 28.2. 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.
- 30.13 The Contracting Authority reserves the right to suspend or cancel the procedure, where the award procedure proves to have been subject to substantial errors, irregularities or fraud. Where such substantial errors, irregularities or fraud are discovered after the award of the Contract, the Contracting Authority may refrain from concluding the Contract.

29 APPEALS

Tenderers believing that they have been harmed by an error or irregularity during the award process may file a complaint. See further section 2.4.15 of the Practical Guide to contract procedures for EU external actions.