

## A. INSTRUCTIONS TO TENDERERS

### PUBLICATION REF.: CN – SO 2.2 – SC 008 / TD3

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

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

### 1. Supplies to be provided

- 1.1 The subject of the contract is:  
the supply and delivery, of the following supplies:

Item No.	General description of supplies	Unit	Quantity requested
1.	Landfill bulldozer	psc	1

at the premises of the Contracting Authority, Public Communal Enterprise “Proleter” address: St. Obikolna 22 Resen. The implementation period is 35 days DDP, additional information about the contract notice.

- 1.2 The supplies must comply fully with the technical specifications set out in the tender dossier (technical annex) and conform in all respects with the drawings, quantities, models, samples, measurements and other instructions.
- 1.3 Tenderers are not authorised to tender for a variant solution in addition to the present tender.

### 2. Timetable

	DATE	TIME*
Clarification meeting / site visit (if any)	N/A	N/A
Deadline for requesting clarifications from the contracting authority	19.04.2021	14:00
Last date on which clarifications are issued by the contracting authority	29.04.2021	-
Deadline for submission of tenders	10.05.2021	12:00
Tender opening session	11.05.2021	12:00
Notification of award to the successful	14.05.2021	-

tenderer		
Signature of the contract	26.05.2021	-

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

### 3. Participation

3.1 Participation is open to all natural persons who are nationals of and legal persons (participating either individually or in a grouping –consortium– of tenderers) which are effectively established in a Member State of the European Union or in a eligible country or territory as defined under the Regulation (EU) No 236/2014 establishing common rules and procedures for the implementation of the Union's instruments for external action (CIR) for the applicable instrument under which the contract is financed (see also the additional information about contract notice). Participation is also open to international organisations. All supplies under this contract must originate in one or more of these countries. However, they may originate from any country when the amount of the supplies to be purchased (as a whole or, if divided into lots, per lot) is below EUR 100 000.]

For UK candidates or tenderers: Please be aware that following the entry into force of the EU-UK Withdrawal Agreement\* on 1 February 2020 and in particular Articles 127(6), 137 and 138, the references to natural or legal persons residing or established in a Member State of the European Union and to goods originating from an eligible country, as defined under Regulation (EU) No 236/2014\*\* and Annex IV of the ACP-EU Partnership Agreement\*\*\*, are to be understood as including natural or legal persons residing or established in, and to goods originating from, the United Kingdom \*\*\*\*. Those persons and goods are therefore eligible under this call.

\* Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.

\*\* Regulation (EU) No 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.

\*\*\* Annex IV to the ACP-EU Partnership Agreement, as revised by Decision 1/2014 of the ACP-EU Council of Ministers (OJ L196/40, 3.7.2014)

\*\*\*\* including the Overseas Countries and Territories having special relations with the United Kingdom, as laid down in Part Four and Annex II of the TFEU]

3.2 These terms refer to all nationals of the above states and to all legal entities, companies or partnerships effectively established in the above states. For the purposes of proving compliance with this rule, tenderers being legal persons, must present the documents required under that country's law.

3.3 The eligibility requirement detailed in subclauses 3.1 and 3.2 applies to all members of a joint venture/consortium and all subcontractors, as well as to all entities upon whose capacity the tenderer relies for the selection criteria. Every tenderer, member of a joint venture/consortium, every capacity-providing entity, every subcontractor must certify that they meet these conditions. They must prove their eligibility by a document dated less than one year earlier than the deadline for submitting tenders, drawn up in accordance with their national law or practice or by copies of the original documents stating the constitution and/or legal status and the place of registration and/or statutory seat and, if it is different, the place of central administration. The contracting authority may accept other satisfactory evidence that these conditions are met.

3.4 Natural or legal persons are not entitled to participate in this tender procedure or be awarded a contract if they are in any of the situations mentioned in Sections 2.4. (EU restrictive

measures), 2.6.10.1. (exclusion criteria) or 2.6.10.1.2. (rejection from a procedure) of the practical guide. Should they do so, their tender will be considered unsuitable or irregular respectively. In the cases listed in Section 2.6.10.1. of the practical guide tenderers may also be excluded from EU financed procedures and be subject to financial penalties up to 10% of the total value of the contract in accordance with the Financial Regulation in force. This information may be published on the Commission website in accordance with the Financial Regulation in force. Tenderers must provide declarations on honour<sup>1</sup> that they are not in any of these exclusion situations. Such declarations must also be submitted by all the members of a joint venture/consortium, by any sub-contractor and by any capacity providing entities. Tenderers who make false declarations may also incur financial penalties and exclusion in accordance with the Financial Regulation in force. Their tender will be considered irregular.

The exclusion situations referred to above also apply to all members of a joint venture/consortium, all subcontractors and all suppliers to tenderers, as well as to all entities upon whose capacity the tenderer relies for the selection criteria. In cases of doubt over declarations, the contracting authority will request documentary evidence that subcontractors and/or capacity providing entities are not in a situation that excludes them.

3.5 To be eligible to take part in this tender procedure, tenderers must prove to the satisfaction of the contracting authority that they comply with the necessary legal, technical and financial requirements and have the means to carry out the contract effectively.

3.6 Subcontracting is allowed but the contractor will retain full liability towards the contracting authority for performance of the contract as a whole.

## **4. Origin**

4.1 All supplies under this contract may originate from any country.

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

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

## **5. Type of contract**

Lump sum

## **6. Currency**

Tenders must be presented in Euro.

## **7. Lots**

This tender procedure is not divided into lots.

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<sup>1</sup>See PRAG Section 2.6.10.1.3 A)

## 8. Period of validity

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

## 9. Language of tenders

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

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

## 10. Submission of tenders

- 10.1 Tenders must be sent to the contracting authority before the deadline specified in 10.3. They must include all the documents specified in point 11 of these Instructions and be sent to the following address:

**Address:** Public Communal Enterprise “Proleter”,  
St. “Obikolna” 22,  
7310 Resen  
The Republic of North Macedonia  
Attention to Mrs. Hristina Jonovska

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

Attention to Mrs. Hristina Jonovska  
Address: Public Communal Enterprise “Proleter”,  
St. “Obikolna” 22,  
7310 Resen  
The Republic of North Macedonia

opening hours: 09:00- 14:00 local time

Tenders must comply with the following conditions:

- 10.2 All tenders must be submitted in one original, marked ‘original’, and one copy signed in the same way as the original and marked ‘copy’.

10.3 All tenders must be submitted to Public Communal Enterprise “Proleter”, St. “Obikolna” 22, 7310 Resen, before the deadline 10.05.2021, at 12:00 CET.

(a) either by post or by courier service, in which case the evidence shall be constituted by the postmark or the date of the deposit slip<sup>2</sup>

(b) or by hand-delivery to the premises of the contracting authority by the participant in person or by an agent, in which case the evidence shall be constituted by the acknowledgment of receipt.

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

10.4 All tenders, including annexes and all supporting documents, must be submitted in a sealed envelope bearing only:

- a) the above address;
- b) the reference code of this tender procedure, (i.e. CN – SO 2.2 – SC 008 / TD3);
- c) where applicable, the number of the lot(s) tendered for;
- d) the words ‘Not to be opened before the tender opening session’ in the language of the tender dossier and “Да не се отвара пред јавно отворање на понудите”;
- e) the name of the tenderer.

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

## 11. Content of tenders

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

### **Part 1: Technical offer:**

- a detailed description of the supplies tendered in conformity with the technical specifications, including any documentation required.

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

### **Part 2: Financial offer:**

- A financial offer calculated on a DDP basis for the supplies tendered.

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

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<sup>2</sup> It is recommended to use registered mail in case the postmark would not be readable

### **Part 3: Documentation:**

To be supplied using the templates attached\*:

- The "Tender form for a supply contract", together with its Annex 1 "Declaration on honour on exclusion criteria and selection criteria", both duly completed, which includes the tenderer's declaration, point 7, (from each member if a consortium):
- The details of the bank account into which payments should be made (financial identification form – document c4o1\_fif\_en) (tenderers that have already signed another contract with the European Commission, may provide their financial identification form number instead of the financial identification form, or a copy of the financial identification form provided on that occasion, if no change has occurred in the meantime.)
- The legal entity file (document c4o2\_lefind\_en) and the supporting documents (tenderers that have already signed another contract with the European Commission, may provide their legal entity number instead of the legal entity sheet and supporting documents, or a copy of the legal entity sheet provided on that occasion, if no change in legal status has occurred in the meantime).

To be supplied in free-text format:

- A description of the warranty conditions, which must be in accordance with the conditions laid down in Article 32 of the general conditions.
- A statement by the tenderer attesting the origin of the supplies tendered (or other proofs of origin).
- Duly 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 or consortium is duly authorised to do so.

Remarks:

Tenderers are requested to follow this order of presentation.

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

## **12. Taxes and other charges**

The applicable tax and customs arrangements are the following:

The European Commission and the Republic of North Macedonia have agreed in Financing Agreement Ref.no 20-21842/1 to allow full exemption from the following taxes customs and other duties, excise tax and value added tax (VAT). The procedure is pursued by the entities responsible for implementation of projects financed with irreversible funds by foreign donors, for which the Government of the Republic of North Macedonia and the foreign donors have signed agreements containing a clause that the donations cannot at the Cross-Border Regioebe used for payment of public fees in the Republic of North Macedonia. The invoices have to be issued through the system of Public Revenue Office of the Republic of North Macedonia as the Project "Development of an Action Plan for the Management of Bio-wastes– Less Waste II" is excluded from the tax system.

## **13. Additional information before the deadline for submission of tenders**

The tender dossier should be so clear that tenderers do not need to request additional information during the procedure. If the contracting authority, on its own initiative or in

response to a request from a prospective tenderer, provides additional information on the tender dossier, it must send such information in writing to all other prospective tenderers at the same time.

Tenderers may submit questions in writing to the following address: [jkpresen@gmail.com](mailto:jkpresen@gmail.com) up to 21 days before the deadline for submission of tenders, specifying the publication reference and the contract title.

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

Any clarification of the tender dossier will be published on the official web page of municipality of Resen <http://www.resen.gov.mk> at the latest 11 days before the deadline for submission of tenders.

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

## **14. Clarification meeting / site visit**

- 14.1 No clarification meeting / site visit planned. Visits by individual prospective tenderers during the tender period cannot be organised.

## **15. Alteration or withdrawal of tenders**

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

## **16. Costs of preparing tenders**

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

## **17. Ownership of tenders**

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

## **18. Joint venture or consortium**

- 18.1 If a tenderer is a joint venture or consortium of two or more persons, the tender must be a single one with the object of securing a single contract, each person must sign the tender and will be jointly and severally liable for the tender and any contract. Those persons must

designate one of their members to act as leader with authority to bind the joint venture or consortium. The composition of the joint venture or consortium must not be altered without the prior written consent of the contracting authority.

- 18.2 The tender may be signed by the representative of the joint venture or consortium only if it has been expressly so authorised in writing by the members of the joint venture or consortium, and the authorising contract, notarial act or deed must be submitted to the contracting authority in accordance with point 11 of these instructions to tenderers. All signatures to the authorising instrument must be certified in accordance with the national laws and regulations of each party comprising the joint venture or consortium together with the powers of attorney establishing, in writing, that the signatories to the tender are empowered to enter into commitments on behalf of the members of the joint venture or consortium. Each member of such joint venture or consortium must provide the proof required under Article 3.5 as if it, itself, were the tenderer.

## **19. Opening of tenders**

- 19.1 The purpose of the opening session is to check whether the tenders are complete, whether the requisite tender guarantees have been provided, whether the required documents have been properly included and whether the tenders are generally in order.
- 19.2 The tenders will be opened in public session on 11.05.2021 12:00 CET at the premises of of the Public Communal Enterprise “Proleter”, St.Obikolna 22, 7310 Resen by the appointed committee. The committee will draw up minutes of the meeting, which will be available on request.

In the case that at the date of the opening session some tenders have not been delivered to the contracting authority but their representatives can show evidence that it has been sent on time, the contracting authority will allow them to participate in the first opening session and inform all representatives of the tenderers that a second opening session will be organised.

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

## **20. Evaluation of tenders**

- 20.1 Examination of the administrative conformity of tenders

The aim at this stage is to check that tenders comply with the essential requirements of the tender dossier. A tender is deemed to comply if it satisfies all the conditions, procedures and



specifications in the tender dossier without substantially departing from or attaching restrictions to them.

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

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

## 20.2 Technical evaluation

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

The minimum qualifications required (see selection criteria in the additional information about the contract notice) are to be evaluated at the start of this stage.

Where contracts include after-sales service and/or training, the technical quality of such services will also be evaluated by using yes/no criteria as specified in the tender dossier.

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

## 20.4 Financial evaluation

a) Tenders found to be technically compliant will be checked for any arithmetical errors in computation and summation. Errors will be corrected by the evaluation committee as follows:

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

b) Amounts corrected in this way will be binding on the tenderer. If the tenderer does not accept them, its tender will be rejected.

c) Unless specified otherwise, the purpose of the financial evaluation process is to identify the tenderer offering the lowest price. Where specified in the technical specifications, the evaluation of tenders may take into account not only the acquisition costs but, to the extent relevant, costs borne over the life cycle of the supplies (such as for instance maintenance costs and operating costs), in line with the technical specifications. In such case, the contracting authority will examine in detail all the information supplied by the tenderers and will formulate its judgment on the basis of the lowest total cost, including additional costs.

## 20.5 Variant solutions

Variant solutions will not be taken into consideration.

## 20.6 Award criteria

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

## 21. Notification of award

The contracting authority will inform all tenderers simultaneously and individually of the award decision. The tender guarantees of the unsuccessful tenderers will be released once the contract is signed.

## 22. Signature of the contract and performance guarantee

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

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

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

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

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

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

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

22.4 The contracting authority reserves the right to vary quantities specified in the tender by +/- 100 % at the time of contracting and during the validity of the contract. The total value of the

supplies may not, as a result of the variation rise or fall by more than 25% of the original financial offer in the tender. The unit prices quoted in the tender shall be used.

- 22.5 Within 30 days of receipt of the contract signed by the contracting authority, the selected tenderer must sign and date the contract and return it, with the performance guarantee (if applicable), to the contracting authority. On signing the contract, the successful tenderer will become the contractor and the contract will enter into force.
- 22.6 If it fails to sign and return the contract and any financial guarantee required within 30 days after receipt of notification, the contracting authority may consider the acceptance of the tender to be cancelled without prejudice to the contracting authority's right to seize the guarantee, claim compensation or pursue any other remedy in respect of such failure, and the successful tenderer will have no claim whatsoever on the contracting authority.
- 22.7 No performance guarantee is required.

## 23. Tender guarantee

No tender guarantee is required.

## 24. Ethics clauses and code of conduct

### 24.1 Absence of conflict of interest

The tenderer must not be affected by any conflict of interest and must have no equivalent relation in that respect with other tenderers or parties involved in the project. Any attempt by a tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the evaluation committee or the contracting authority during the process of examining, clarifying, evaluating and comparing tenders will lead to the rejection of its tender and may result in administrative penalties according to the Financial Regulation in force.

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

The tenderer and its staff must comply with human rights and applicable data protection rules. In particular and in accordance with the applicable basic act, tenderers and applicants who have been awarded contracts must comply with the environmental legislation including multilateral environmental agreements, and with the core labour standards as applicable and as defined in the relevant International Labour Organisation conventions (such as the conventions on freedom of association and collective bargaining; elimination of forced and compulsory labour; abolition of child labour).

#### **Zero tolerance for sexual exploitation, abuse and harassment:**

The European Commission applies a policy of 'zero tolerance' in relation to all wrongful conduct which has an impact on the professional credibility of the tenderer.

Physical abuse or punishment, or threats of physical abuse, sexual abuse or exploitation, harassment and verbal abuse, as well as other forms of intimidation shall be prohibited.

### 24.3 Anti-corruption and anti-bribery

The tenderer shall comply with all applicable laws and regulations and codes relating to anti-bribery and anti-corruption. The European Commission reserves the right to suspend or cancel project financing if corrupt practices of any kind are discovered at any stage of the

award process or during the execution of a contract and if the contracting authority fails to take all appropriate measures to remedy the situation. For the purposes of this provision, 'corrupt practices' are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or execution of a contract already concluded with the contracting authority.

#### 24.4 Unusual commercial expenses

Tenders will be rejected or contracts terminated if it emerges that the award or execution of a contract has given rise to unusual commercial expenses. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a payee who is not clearly identified or commissions paid to a company which has every appearance of being a front company.

Contractors found to have paid unusual commercial expenses on projects funded by the European Union are liable, depending on the seriousness of the facts observed, to have their contracts terminated or to be permanently excluded from receiving EU funds.

#### 24.5 Breach of obligations, irregularities or fraud

The contracting authority reserves the right to suspend or cancel the procedure, where the award procedure proves to have been subject to breach of obligations, irregularities or fraud. If breach of obligations, irregularities or fraud are discovered after the award of the contract, the contracting authority may refrain from concluding the contract.

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

If a tender procedure is cancelled, tenderers will be notified by the contracting authority. If the tender procedure is cancelled before the tender opening session the sealed envelopes will be returned, unopened, to the tenderers.

Cancellation may occur, for example, if:

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

**In no event will the contracting authority be liable for any damages whatsoever including, without limitation, damages for loss of profits, in any way connected with the cancellation of a tender procedure even if the contracting authority has been**

**advised of the possibility of damages. The publication of a contract notice does not commit the contracting authority to implement the programme or project announced.**

## **26. Appeals**

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

## **27. Data Protection**

If processing your reply to the invitation to tender involves the recording and processing of personal data (such as names, contact details and CVs), they will be processed<sup>3</sup> solely for the purposes of the management and monitoring of the tender and of the contract by the data controller without prejudice to possible transmission to the bodies in charge of monitoring or inspection tasks in application of EU law. In addition, as the contract relates to an external action in Partner Countries outside the EU and as the EU, represented by the European Commission, is acting as contracting authority on behalf and for the benefit of the Partner Countries, transmission of personal data may occur to the Partner Country, solely for the purpose of complying with its obligations under the applicable legislative framework and under the financing agreement concluded between the EU and the Partner Country with regard to this tender procedure. Details concerning processing of your personal data are available on the privacy statement at

<http://ec.europa.eu/europeaid/prag/annexes.do?chapterTitleCode=A><sup>4</sup>

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

## **28. Early detection and exclusion system**

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

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<sup>3</sup> Pursuant to Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC ('Regulation 2018/1725'), Official Journal L 205 of 21.11.2018, p. 39.

<sup>4</sup> This link will lead you to the 'privacy statement' published as annex A13 to the practical guide general annexes.