

INSTRUCTIONS TO TENDERERS

FWC SERVICES FOR THE IMPLEMENTATION OF EXTERNAL AID

PUBLICATION REFERENCE: EuropeAid/138778/DH/SER/Multi

When submitting their tenders, tenderers must follow all instructions, forms, terms of reference, contract provisions and specifications contained in this tender dossier. Failure to submit a tender containing all the required information and documentation within the deadline specified may lead to the rejection of the tender.

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

1. Services to be provided

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

2. Timetable

	DATE	TIME*
Site visit (if any)	Not applicable	Not applicable
Information meeting (if any)	Not applicable	Not applicable
Deadline for requesting clarification from the Contracting Authority	18/08/2017	Midnight
Last date for the Contracting Authority to issue clarification	28/08/2017	Midnight
Deadline for submitting tenders	08/09/2017	16:00 CET
Interviews (if any)	Not applicable	Not applicable
Completion date for evaluating technical offers	20/10/2017 [§]	-
Notification of award	27/10/2017 [§]	-
Contract signature	22/11/2017 [§]	-
Start date	January 2018 [§]	-

* All times are those of the Contracting Authority (Belgium)

[§] Provisional date

3. Participation, experts and subcontracting.

- a) All eligible natural and legal persons (as per point 5 below) or groupings of such persons (consortia) may apply.

A consortium may be a permanent, legally-established grouping or a grouping which has been constituted informally for a specific tender procedure. All members of a

consortium (i.e., the leader and all other members) are jointly and severally liable to the Contracting Authority.

The participation of an ineligible natural or legal person (as per point 5 below) will result in the automatic exclusion of that person. In particular, if that ineligible person belongs to a consortium, the whole consortium will be excluded.

- b) **No more than 1 tender per lot can be submitted by a natural or legal person** whatever the form of participation (as an individual tender or as leader or member of a consortium submitting a tender).

A legal group cannot be represented within one lot in more than one tender. A natural or legal person member of a legal group (for example an EEIG), cannot participate individually in a tender and through the legal group in a second tender for the same lot.

In the event that a natural or legal person submits more than one tender per lot, all tenders in which that person has participated will be excluded.

The tenderers may submit tenders for 2 lots maximum either as an individual tenderer or as leader of a consortium submitting a tender. There is no limit to the number of lots a tenderer can apply as member of a consortium (i.e. not as leader or individual tenderer). Tenderers submitting offers for two lots must submit their offers for each lot separately.

- c) 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 2.3.3.1 or 2.3.3.2 of the **Practical Guide**. Should they do so, their tender will be considered unsuitable or irregular respectively.
- d) In the cases listed in Section 2.3.3.1 of the **Practical Guide** tenderers may be excluded from EU financed procedures and be subject to financial penalties representing 2% to 10% of the total value of the contract in accordance with the conditions set in Section 2.3.4 of the **Practical Guide**. This information may be published on the Commission website in accordance with the conditions set in Section 2.3.4 of the Practical Guide.
- e) Subcontracting of the Management Team services to be provided at the level of the Framework Contract is not allowed. For this purpose, individual experts recruited as Management Team members are not regarded as subcontractors.

For services to be provided at the level of the Specific Contract, subcontracting is permitted on condition that no subcontract is given to another FWC Contractor of the same lot. Neither will the FWC Contractor be permitted to use another FWC Contractor of the same lot as a service provider for reimbursable costs under incidental expenditure during implementation of Specific Contracts.

- f) Even when subcontracting is allowed, the tenderer must intend to provide the majority of the services itself except for the tasks entrusted to experts either as natural persons or single-member companies.
- g) If the tenderer or contractor intends to subcontract one or more parts of the contracted services, this must be clearly stated in the Global Organisation and Methodology and, concerning eligibility, in the Tender submission form submitted for the current tender procedure for the Framework Contract (if the tenderer intends to subcontract services provided at the level of the Framework Contract¹), or in the Specific Offer submitted

¹ Please note that subcontracting of the Management Team services to be provided at the level of the Framework Contract is not allowed.

following a Request for Services for a Specific Contract (if the contractor intends to subcontract services provided at the level of a specific contract).

- h) In both cases, the tenderer or contractor must explicitly state that it is the sole party that will be contractually liable.
- i) All subcontractors must be eligible for the contract². If the identity of the intended subcontractor is already known at the time of submitting the tender or Specific Offer, the tenderer or contractor must furnish a statement guaranteeing the eligibility of the subcontractor. If any subcontractor identified in this way does not meet the eligibility criteria, the tender shall be rejected. If the identity of the subcontractor is not known at the time of submitting the tender or Specific Offer, any subcontract must be awarded according to Article 4 of the General Conditions of the contract.
- j) Subcontractors cannot be in any of the exclusion situations listed in Section 2.3.3 of the Practical Guide. Whenever requested by the Contracting Authority, the successful tenderer/contractor shall submit a declaration from the intended subcontractor that it is not in one of the exclusion situations. In the event of doubt, the Contracting Authority shall request documentary evidence that the subcontractor is not in a situation of exclusion.
- k) If the offer includes subcontracting, it is recommended that the contractual arrangements between the tenderer and its subcontractors include mediation, according to national and international practices, as a method of dispute resolution.

4. Exclusion

As part of the tender submission form, tenderers must submit a signed declaration, (Annex 4 of Annex D – Tender submission form) to the effect that they are not in any of the exclusion situations listed in Section 2.3.3 of the PRAG. Furthermore, the tenderer must provide, **in electronic format only**, the documentary evidence that they do not fall into any of the exclusion situations, that is listed in point VI of the aforementioned declaration. The documentary evidence will be included in the electronic copy of the offer requested in point 7.

In the case of award of a contract, following the notification of award, the successful tenderer(s) to which the contract is to be awarded (including consortium members) may be required to provide the original versions of the documentary evidence to the Contracting Authority.

5. Eligibility

FWC tender:

For non-leading members of a consortium submitting a tender, participation in the FWC tender is open to all natural and legal persons which are established in a Member State of the European Union or in a country or territory eligible for at least one ongoing EU External Aid Programmes³. Participation is also open to International Organisations.

² Subcontractors that are natural or legal persons established in a Member State of the European Union or in a country eligible for all current EU External Aid Programs will be eligible for subcontracting of services to be provided at the level of the framework contract. For subcontracting of services provided under a Specific Contract the eligibility in terms of nationality will be governed by the specific EU External Aid Program under which the Specific Contract is financed. See point 5.

³ 'EU External Aid Programmes' includes the EDF. For precise information on the countries eligible for the different EU External Programmes, please refer to annex A2a of the Practical Guide, PRAG, available at <http://ec.europa.eu/europeaid/prag/annexes.do?chapterTitleCode=A>

For the leader of a consortium submitting a tender, or for tenderers participating individually, participation in the FWC tender is open to natural or legal persons that are established in a Member State of the European Union or in a country eligible for **all** ongoing EU External Aid Programmes. Participation as a lead member is also open to International Organisations.

Specific Contracts to be signed under the FWC:

For each Specific Contract, the eligibility in terms of nationality will be governed by the specific EU External Aid Program under which the Specific Contract will be financed. In case a consortium member is not eligible for the Programme financing the Specific Contract, that member shall not be eligible to participate in any task related to that Specific Contract.

6. Selection criteria

The following selection criteria will be applied to tenderers. In the case of tenders submitted by a consortium, these selection criteria will be applied to the consortium. The selection criteria will not be applied to natural persons and single-member companies when they are sub-contractors.

- 1) **Economic and financial capacity of tenderer** (based on point 3 of the Tender submission form)

In case of a tenderer being a public body, equivalent information should be provided. The reference period which will be taken into account will be the last three years for which accounts have been closed.

The tenderer's average annual turnover for the last three years must exceed the amounts indicated below:

Lot 1: 37,500,000 EUR

Lot 2: 46,500,000 EUR

Lot 3: 46,200,000 EUR

Lot 4: 21,900,000 EUR

Lot 5: 18,900,000 EUR

Lot 6: 24,000,000 EUR

The tenderer will complete point 3 of the Tender submission form and each consortium member will complete the table regarding financial data in their declaration referred to in point 6 of the Tender submission form.

- 2) **Professional capacity of tenderer (a)** (based on point 4 (a) of the Tender submission form and its Annex 1)

The tenderer must employ at the date of the deadline for submission of the tender minimum 24 permanent experts who cover at least the following minimum number of B-Sectors⁴ of the lot for which the tenderer is making an offer:

Lot 1 – minimum number of B-Sectors: 29

Lot 2 - minimum number of B-Sectors: 54

⁴ See Tender dossier Annex B II b 'Detailed Description of Lots' for list of B-sectors for each lot.

Lot 3 - minimum number of B-Sectors: 15

Lot 4 - minimum number of B-Sectors: 24

Lot 5 - minimum number of B-Sectors: 27

Lot 6 - minimum number of B-Sectors: 22

At least one B-sector in each heading of the lot must also be covered.

- 3) **Professional capacity of tenderer (b)** (based on point 4 (b) of the Tender submission form and its Annex 5)

The tenderer must demonstrate its capacity to ensure a management team with the requisite skills and experience to carry out the services required under Annex B–II-a (Global terms of reference) by proposing a Project Director and substitute that meet the minimum requirements set out in the Global terms of reference.

- 4) **Technical capacity of tenderer** (based on point 5 of the Tender submission form and its Annexes 2 and 3)

The tenderer must have implemented minimum 24 reference projects which together cover at least:

- all A-sectors, and
- the following minimum number of B-Sector of the lot,

Lot 1 – minimum number of B-Sectors: 29

Lot 2 - minimum number of B-Sectors: 54

Lot 3 - minimum number of B-Sectors: 15

Lot 4 - minimum number of B-Sectors: 24

Lot 5 - minimum number of B-Sectors: 27

Lot 6 - minimum number of B-Sectors: 22

- At least one B-sector in each heading of the lot must also be covered.
- minimum 2 reference projects per geographical zone (based on item b of the Tender submission form's Annex 3):
 - a) Neighbourhood countries
 - b) Latin-American and Caribbean countries
 - c) Asian and Pacific countries
 - d) sub-Saharan African countries
 - e) Pre-accession countries

Reference projects must fulfil the following conditions:

- be finalised within 3 years before the final date for submission of the tenders; and
- be carried out in the interest of a Beneficiary Country of an ongoing EU External Aid Programme (see details on EU External Aid Programmes at link below),

- be minimum for 30% of the overall contract value carried out by the tenderer itself (based on item e of the Tender submission form's Annex 3), and
- 5 of the reference projects must have an overall contract value of 750,000 EUR or more (based on item c of the Tender submission form's Annex 3).

For the definition of the geographical zones:

- a) Neighbourhood countries: see Annex to Regulation No 232/2014;
- b) Latin-American and Caribbean countries: see the countries in Latin-America and the Caribbean, listed in Article 1 to Regulation No 233/2014 – Caribbean countries, the non-EU signatories to the Cotonou Agreement and Annex II to the TFEU;
- c) Asian and Pacific countries: see the countries in Asia and the Pacific, listed in Annex I to Regulation No 233/2014 , the non-EU signatories to the Cotonou Agreement and Annex II to the TFEU;
- d) sub-Saharan African countries: see the countries in Africa listed in the non-EU signatories to the Cotonou Agreement, as well as South-Africa
- e) Pre-accession countries: see the countries Annex I to Regulation No 231/2014;

Details of these EU External Aid Programs can be found at the following website https://ec.europa.eu/europeaid/funding/instruments-programming_en

Previous experience which caused breach of contract and termination by a Contracting Authority shall not be used as a reference.

For the selection criteria (economic and financial, professional and technical capacity) criteria, the tenderer may not rely on the capacities of other entities and the criteria must be satisfied by the tenderer (in the case of a joint tender, by the consortium as a whole).

7. Content of tenders

Offers, 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.

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

The tender must comprise of a Technical offer and a Financial offer, which must be submitted in separate envelopes (see point 11). Each Technical offer and Financial offer must contain one original, clearly marked '**Original**', and 3 copies, each marked '**Copy**', and an electronic copy on CD ROM or USB device. Failure to fulfil the requirements in points 7.1, 7.2 and 11 will constitute an irregularity and may result in rejection of the tender.

7.1. Technical offer

The Technical offer must include the following documents:

- (1) **Tender submission form** (see Part D of this tender dossier) including:
 - a) Signed statements of exclusivity and availability (using the template included with the tender submission form) for the Project Director and substitute, the purpose of which are as follows:
 - ❑ As evidence that the tenderer satisfies the selection criteria 'professional capacity (b)' as set out in point 6.3) above.

- ❑ The Project Director and substitute proposed in this tender must not be part of any other tender submitted for the same lot of this tender procedure. They must therefore commit themselves, per lot, exclusively to the tenderer of the lot.
- ❑ The Project Director and substitute must also undertake to be available, able and willing to work for the whole period scheduled for his/her input to implement the tasks set out in the Global Terms of Reference and/or in the Organisation and methodology.

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

The Project Director and substitute, and the profiles of the management team members set out by the tenderer in the Global Organisation and Methodology, may participate in several lots of this tender procedure. When this is the case, the Global Organisation and Methodology will indicate in which other lot(s) they are present and how they will proceed to fulfil their assignment in several lots.

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

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

- b) A signed **declaration** from each legal entity identified in the tender submission form, using the format attached to the tender submission form.
- c) A completed **Financial Identification form** (see Annex VI to the draft contract) to indicate the bank account into which payments should be made if the tender is successful. (If the tenderer has already signed another contract with the European Commission, it may provide instead either its financial identification form number or a copy of the financial identification form provided on that occasion, unless it has changed in the meantime).
- d) The **legal entity file** and supporting documents from each legal entity identified in the tender submission form i.e. the leader and each member of the consortium in the case of tenders submitted by a consortium, (if the tenderer has already signed another contract with the European Commission, it may provide instead either its legal entity number or a copy of the legal entity file provided on that occasion, unless it has changed its legal status in the meantime).

- e) Duly authorised signature: an official document (statutes, power of attorney, notary statement, etc.) proving that the person who signs on behalf of the company/joint venture/consortium is duly authorised to do so.
- (2) **Global Organisation and Methodology** (will become Annex III to the contract), to be drawn up by the tenderer using the format in Annex III to the draft framework contract.

As part of their Organisation and Methodology, the tenderers must list, following the template of Annex B 3 III b, the Quality control and backstopping functions within their consortium, including a list of departments and profiles of staff who will ensure that function.

- (3) **Management Team members:** Their positions and responsibilities are defined in the Global Terms of Reference Annex II to the draft Framework Contract, and are set out in the tenderer's Global Organisation and Methodology. It will include the profiles of the members (qualifications and experience), their position and their responsibilities. No specific individual should be proposed, nor a specific CV submitted as part of the tender (with the exception of the Project Director and the substitute - see above point 6.3). If the tender is successful and a contract is awarded, the contractor will be obliged to ensure that each management team profile proposed in their offer is filled throughout the total duration of the contract by an expert with the requisite qualifications, experience and skills (i.e. that the expert matches the proposed profile). The contractor will provide the Contracting Authority after notification of award of the contract and/or after signature of the contract with the name, CV and contract details of each management team member, and ensure any changes during implementation of the framework contract are immediately notified to the Contracting Authority.
- (5) A signed declaration from each legal entity identified in the tender submission form, using the template found in Annex 4 to the Tender submission form to the effect that they are not in any of the exclusion situations listed in Section 2.3.3 of the PRAG (see point 4 above), as well as the documentary evidence that they do not fall into any of the exclusion situations, that is listed in point VI of the aforementioned declaration, in electronic format only.
- (6) Documentary evidence of the financial and economic capacity as well as the technical and professional capacity according to the selection criteria specified in point 6 of the Instructions to tenderers and the Tender submission form.

If the documentary evidence submitted is not written in the language of the procedure, then a translation must be attached. Documentary proof or statements may be in original or copy. If copies are submitted, the originals must be available to send to the Contracting Authority upon request.

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

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

The tenders must be divided into at least two separate folders/booklets: one containing the tender submission form and supporting documents (including for selection criteria), and the other containing only the **Organisation and Methodology and its annexes, management team experts, and local partner network**.

7.2. Financial offer

Tenderers will submit a Global Financial offer, presented in Euro, dated and signed by the tenderer (**original hand written signature**) and submitted by using the template annexed to the draft Framework Contract (Part B, Annex V).

In order to make a consistency check of each tenderer's Global Financial offer towards the level of services required, tenderers are asked to provide their pricing methodology regarding the fees for each category of expert through a specific, separate document, attached to the financial offer as an annex.

This Pricing Methodology Document should include a brief reference and description on all elements that constitute the price (i.e. the global fee rate per category proposed). The document must include detailed information regarding the expenditure foreseen for experts, as well as all other elements that have been taken into account to formulate the global financial offer such as overheads, accommodation, subsistence costs etc., accompanied by estimated price references per item.

An original and 3 copies of the Global Financial offer and its annexes must be submitted. All these documents must be submitted in the sealed envelope described in point 7 and point 11.

The maximum fees defined in that Global Financial Offer will not be revised for the duration of the execution of the Framework Contract.

8. Variant solutions

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

9. Period during which tenders are binding

Tenderers are bound by their tenders for 90 days after the deadline for submitting tenders or until they have been notified of non-award. In exceptional cases, before the period of validity expires, the Contracting Authority may ask tenderers to extend the period for a specific number of days, which may not exceed 40.

The selected tenderers must maintain their tenders for a further 60 days. This 60-day period is added to the validity period irrespective of the date of notification. This period can be further extended when the Contracting Authority is required to obtain the recommendation of the panel referred to in section 2.3.3.1. of the Practical Guide, up to the adoption of that recommendation.

10. Additional information before the deadline for submitting tenders

The tender dossier should be clear enough to avoid tenderers having to request additional information during the procedure. If the Contracting Authority, either on its own initiative or in response to a request from a potential tenderer, provides additional information on the tender dossier, it will publish such information on the e-tendering website for this procedure:

<https://etendering.ted.europa.eu/cft/cft-display.html?cftId=2380>

Tenderers may submit questions in writing up to 21 days before the deadline for submission of tenders at the above address in the "questions and answers" tab, by clicking "create a question". The tenderer must specify in the 'subject' field the document in the tender dossier to which the question refers and, if the question is specific to a lot, the number of the lot.

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

The website will be updated regularly and it is the tenderers' responsibility to check for updates and modifications during the tendering period.

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

No information meeting is planned. No site visit is planned. Visits by individual prospective tenderers during the tender period are not organised.

11. Submission of tenders

Tenders must be delivered to the Contracting Authority for **receipt** before the date and hour fixed in the timetable under point 2 above. Any tender received by the Contracting Authority after this deadline will not be considered. They must include the requested documents in point 7 above and be sent:

- **EITHER** by recorded delivery (official postal service) to:

European Commission
Directorate-General International Cooperation and Development,
Unit R 5,
Office L-41 6/167
For the attention of Jean-Hervé Ramat
B – 1049 Brussels
Belgium

In this case, the delivery record makes proof of compliance with the time-limit for receipt.

- **OR** hand delivered (including courier services) directly to the Contracting Authority against a signed and dated receipt to:

European Commission
Directorate General International Cooperation and Development,
Unit R 5,
Office L-41 6/167
For the attention of Jean-Hervé Ramat
Avenue du Bourget 1
B-1140 Brussels (Evere)
Belgium

In this case, the acknowledgment of receipt makes proof of compliance with the time-limit for receipt.

In case of hand delivery, please note that the Commission's central mail department is open from 07.30 to 17.30 Monday to Fridays. The service is closed on Saturdays, Sundays and official holidays of the Contracting Authority.

Tenders submitted by any other means will not be considered. Tenders must be submitted using the double envelope system, i.e. in an outer parcel or envelope containing two separate, sealed envelopes, one bearing the words '**Envelope A — Technical offer**' and the other '**Envelope B — Financial offer**'. All parts of the tender other than the financial offer must be submitted in Envelope A (i.e., including the tender submission form, statements of exclusivity and availability and declarations).

Any infringement of these rules (e.g., unsealed envelopes or references to price in the technical offer) constitutes an irregularity which will lead to rejection of the tender.

The outer envelope should provide the following information:

- a) the address for submitting tenders indicated above;
- b) the reference code of the tender procedure (i.e. EuropeAid/138778/DH/SER/Multi);
- c) the words 'Not to be opened before the tender-opening session'
- d) the name of the tenderer.

Each envelope must include an index of its contents. The pages of the Technical and Financial offers must be numbered.

12. Amending or withdrawing tenders

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

Any such notification of amendment or withdrawal must be prepared and submitted in accordance with point 11 above. The outer envelope (and the relevant inner envelope) must be marked 'Amendment' or 'Withdrawal' as appropriate.

13. Costs for preparing tenders

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

14. Ownership of tenders

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

15. Evaluation of tenders

15.1. Evaluation of technical offers

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

15.2. Interviews

No interviews are foreseen.

15.3. Evaluation of financial offers

Upon completion of the technical evaluation, the envelopes containing the financial offers for tenders that were not eliminated during the technical evaluation will be opened (i.e. those with an overall score of 75 points or more, **and** those have which have the required minimum scores for the specific quality criteria).

The comparison of the financial offers will be based on the maximum Global fees using the following weights:

- **50/100** (50%) for experts' Category I maximum fee
- **30/100** (30%) for experts' Category II maximum fee
- **15/100** (15%) for experts' Category III maximum fee
- **05/100** (5%) for administrative assistant maximum fee

The annex of the global financial offer (Pricing Methodology Document) will be checked to ascertain if the offer constitutes or not an abnormally low tender. Further details and/or clarifications of the Pricing Methodology Document may be requested from the tenderer by the Contracting Authority.

15.4. Choice of selected tenderers

The best price-quality ratio is established by weighing technical quality against price on an 80/20 basis. The offers will be ranked according to their final overall score.

As this Framework Contract is a multiple contract, the tenders will be ranked according to the highest quality-price ratio and those with the highest will be awarded the framework contract, with a minimum of 3 and a maximum of 10 Framework Contractors per lot.

15.5. Confidentiality

The entire evaluation procedure is confidential, subject to the Contracting Authority's legislation on access to documents. The Evaluation Committee's decisions are collective and its deliberations are held in closed session. The members of the Evaluation Committee are bound to secrecy. The evaluation reports and written records are for official use only and may be communicated neither to the tenderers nor to any party other than the Contracting Authority, the European Commission, the European Anti-Fraud Office and the European Court of Auditors.

16. Ethics clauses / Corruptive practices

- a) Any attempt by a tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the Evaluation Committee or the Contracting Authority during the process of examining, clarifying, evaluating and comparing tenders will lead to the rejection of its tender and may result in administrative penalties.

- b) The tenderer must not be affected by any conflict of interest and must have no equivalent relation in that respect with other tenderers or parties involved in the project.
- c) The European Commission reserves the right to suspend or cancel project financing if corrupt practices of any kind are discovered at any stage of the award process or during the execution of a contract and if the Contracting Authority fails to take all appropriate measures to remedy the situation. For the purposes of this provision, ‘corrupt practices’ are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or execution of a contract already concluded with the Contracting Authority.
- d) Tenders will be rejected or contracts terminated if it emerges that the award or execution of a contract has given rise to unusual commercial expenses. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a payee who is not clearly identified or commissions paid to a company which has every appearance of being a front company.

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

- e) The Contracting Authority reserves the right to suspend or cancel the procedure, where the award procedure proves to have been subject to substantial errors, irregularities or fraud. If substantial errors, irregularities or fraud are discovered after the award of the Contract, the Contracting Authority may refrain from concluding the Contract.

17. Signature of contract(s)

17.1. Notification of award

The successful tenderers will be informed in writing that their tenders have been accepted.

The successful tenderer shall then confirm availability or unavailability of their Project Director and substitute within 5 days from the date of the notification of award.

In case of unavailability the tenderer will be allowed to propose replacements. The successful tenderer shall give due justification but the acceptance will not be limited to specific cases. The replacement cannot be a Project Director and substitute proposed by another tenderer in the same call for tender.

The replacement(s) must also meet the minimum requirements for the Project Director set out in the Global Terms of Reference.

If a replacement is not proposed within the 15 days delay or if the replacement is not sufficiently qualified, the Contracting Authority may decide to award the contract to the next best technically compliant tenderer (also giving them a chance to replace a Project Director and substitute should he/she not be available).

17.2. Signature of the contract(s)

Within 30 days of receipt of the contract already signed by the Contracting Authority, the selected tenderers shall sign and date the contract and return it to the Contracting Authority.

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

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

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

The corresponding contract award notice will be published in the Official Journal and on the website:

<https://webgate.ec.europa.eu/europeaid/online-services/index.cfm?do=publi.welcome&nbPubliList=15&orderby=upd&orderbyad=Desc&searchtype=RS&aofr=138778>

18. Cancellation of the tender procedure

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

Cancellation may occur, for example, where:

- the tender procedure has been unsuccessful, i.e., no suitable, qualitatively or financially acceptable tender has been received or there is no valid response at all;
- there are fundamental changes to the economic or technical data of the project;
- exceptional circumstances or force majeure render normal performance of the contract impossible;
- all technically acceptable tenders exceed the financial resources available;
- there have been substantial errors, irregularities or frauds in the procedure, in particular if they have prevented fair competition;
- the award is not in compliance with sound financial management, i.e. does not respect the principles of economy, efficiency and effectiveness (e.g. the price proposed by the tenderer to whom the contract is to be awarded is objectively disproportionate with regard to the price of the market).

In no event shall the Contracting Authority be liable for any damages whatsoever including, without limitation, damages for loss of profits, in any way connected with the cancellation of a tender procedure, even if the Contracting Authority has been advised of the possibility of

damages. The publication of a contract notice does not commit the Contracting Authority to implement the programme or project announced.

19. Appeals

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

20. Data Protection

If processing your reply to the invitation to tender involves the recording and processing of personal data (such as names, addresses and CVs), it will be processed⁵ solely for the purposes of the performance management and monitoring of the tender and of the contract by the data controller without prejudice to possible transmission to the bodies charge with monitoring or inspection tasks in application of Union law. Details concerning processing of your personal data are available on the privacy statement at

<http://ec.europa.eu/europeaid/prag/annexes.do?chapterTitleCode=A>⁶

The Controller of call for tenders is the Head of DEVCO Unit R3.

21. 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 concerned in relation to the award or the execution of a procurement contract.

22. Electronic Management of the Framework Contract

As described in Article 43.3 of Annex B – 0 Draft Framework Agreement and Special Conditions, the framework contract will be managed through an electronic system currently under development. The eventual contractors of the framework contract will be obliged to use this electronic exchange system for the implementation of the contract. The contractual documents will therefore be subject to minor amendments in order to facilitate electronic implementation e.g. contractual clauses will be introduced to allow for, *inter alia*, the electronic signature of contracts and amendments, and for communication between the Contracting Authority and the Contractor, receipt of requests for services and offers and reporting to be done through a single electronic exchange system. The amendments will be made either to the tender dossier published on the website indicated in point 10 before the deadline for submission of tenders, or to the contractual documents before signature of the contracts with the successful tenderers. In exceptional circumstances, amendments may be made after signature of the contract through the means of an addendum. The amendments will not affect the scope or substantial content of the tender. Article 43.3 of Annex B – 0 Draft Framework Agreement and Special Conditions will be deleted once the amendments have been introduced.

⁵ Pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

⁶ This link will lead you to the new "EuropeAid privacy statement" published among the Practical Guide General Annexes (see Annexe A13).