



## **INSTRUCTIONS TO TENDERERS**

**PUBLICATION REF.: AID 010601/FGPII/TAP 02-2016**

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>).

### **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.

#### **1.2 Timetable**

	<b>DATE</b>	<b>TIME*</b>
<b>Clarification meeting / site visit (if any)</b>	21.12.2016	10.00 a.m.
<b>Deadline for requesting clarifications from the Contracting Authority</b>	27.12.2016	11.00 a.m.
<b>Last date on which clarifications are issued by the Contracting Authority</b>	06.01.2017	-
<b>Deadline for submission of tenders</b>	17.01.2017	11.00 a.m.
<b>Tender opening session</b>	18.01.2017	10.00 a.m.
<b>Notification of award to the successful tenderer</b>	January 2017	-
<b>Signature of the contract</b>	January 2017	-

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

#### **2. FINANCING**

The project is financed by Italian Agency for Development Cooperation, in accordance with the agreement AID 10601 – Dec. n. 2015/337/002729/2 on 24.9.2015, registered at UCB on 14.10.2015, n. 10232. Project code Aid 10601/FGPII/TAP

#### **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) N°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 heading 22 of the 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 is below EUR 100 000.

- 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 providing more than 10 % of the supplies 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 persons, companies or undertakings falling into a situation set out in section 2.3.3.1 ('exclusion from participation in procurement procedures') and section 2.3.3.2 ('rejection from a given procedure') of the Practical Guide, are not entitled to participate in this tender procedure or be awarded a contract. Should they do so, their tender will be considered unsuitable or irregular respectively. 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. The declarations must cover all the members of a joint venture/consortium. Tenderers guilty of making false declarations may also incur financial penalties and exclusion in accordance with section 2.3.4 of the Practical Guide.
- 3.5 The exclusion situation referred to in subclause 3.4 applies to all members of a joint venture/consortium, all subcontractors and all suppliers to tenderers, as well as to all entities upon whose capacity the tenderer relies for the selection criteria.
- 3.6 The upper limit authorised for subcontracting is 30 % of the value of the tender<sup>1</sup>.

#### **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. 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 preparing and submitting the tender. The Contracting Authority will not be responsible or liable for such costs, whatever the conduct or outcome of the procedure.
- 5.2 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.

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



## 6. CLARIFICATION MEETING / SITE VISIT

- 6.1 The tenderer is strongly advised to visit and inspect the site of the works and its surroundings for the purpose of assessing, at its own responsibility, expense and risk, the factors necessary for preparing its tender and signing the contract for the works.
- 6.2 A clarification meeting and site visit will be held on Wednesday 21.12.2016, at 10.00 a.m., in the Chamber of Commerce of Jericho, Al Quds Main street, 2nd floor, Next to Al Manar Supermarket, Jericho/West Bank/ Occupied Palestinian Territory
- 6.3 Minutes will be taken during the meeting and these will be published on the John Paul II Foundation - <http://www.fondazionegp2.org/?p=8946> together with any clarifications in response to written requests which are not addressed during the meeting — at the latest 11 calendar days before the deadline for submission of tenders. No further clarification will be provided after this date. All the costs of attending this meeting will be borne by the tenderers.

## TENDER DOCUMENTS

### 7. CONTENT OF TENDER DOCUMENTS

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

### 8. EXPLANATIONS CONCERNING TENDER DOCUMENTS

- 8.1 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 up to 21 days before the deadline for submission of tenders, specifying the **publication reference** (AID 010601/FGPII/TAP 02-2016) and **the contract title** (Supply and Installation of refrigerated rooms):

John Paul II Foundation,  
Jerusalem Hebron St. P.O. Box 24, Bethlehem-West Bank- Occupied Palestinian Territory  
Att. Ms. Linda Fantinati

**E-mail: [tender.aid10601@gmail.com](mailto:tender.aid10601@gmail.com)**

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

- 8.2 Any clarification of the tender dossier will be published on John Paul II Foundation website at <http://www.fondazionegp2.org/?p=8946> 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.

### 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 submitting tenders.
- 9.2 Each modification published will constitute a part of the tender documents and will be published on John Paul II Foundation website at <http://www.fondazionegp2.org/?p=8946> at the latest 11 days before the deadline for submission of tenders.
- 9.3 The Contracting Authority may, as necessary and in accordance with Clause 18, extend the deadline for submitting tenders to give tenderers sufficient time to take modifications into account when preparing their tenders.





## TENDER PREPARATION

### 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.
- 10.2 If 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 the language of the call for tenders, in order to facilitate the evaluation of the documents.

### 11. CONTENT AND PRESENTATION OF TENDER

#### 11.1 Tenders must satisfy the following conditions:

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

The tender must be signed by a person or persons empowered by power of attorney submitted in accordance with Form Power of attorney.

The relevant pages of the documents specified in clause 12 must be signed as indicated.

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

- 11.2 The works are not divided into lots. Tenders must be for all the quantities indicated.

### 12. INFORMATION/DOCUMENTS TO BE SUPPLIED BY THE TENDERER

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

✓ **B5 MANUFACTURE AND BILLS OF QUANTITIES**

- B5.1 Architecture/Civil
- B5.2 Electrical
- B5.3 Mechanical

The prices deemed to have been set on the basis of the conditions in force 30 days prior to the deadline for submitting tenders.

The Detailed Breakdown of Prices must be used when required for any purpose under the contract, notably to provide the coefficients for applying the price revision formula referred to in Article 48.2 of the Special Conditions. The tenderer must provide clear arithmetical calculations for the proposed coefficients. All offers will be with V.A.T.

✓ **B6 PERFORMANCE GUARANTEE**

✓ **B7 QUESTIONNAIRE (Additional notice to tenderers)**

- B 7.1 General information about the tenderer
- B 7.2 Organisation chart
- B 7.3 Power of attorney
- B 7.4 Financial statement

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



- B 7.5 Financial identification form
- B 7.6.1/2/3 Legal entity files

If the tenderer has already signed another contract financed by the European Union, it may provide instead of the forms and supporting documents either the file numbers received or copies of the forms provided on that occasion, unless a change occurred in the meantime.

✓ **B 7.7 TECHNICAL QUALIFICATIONS:**

This information include:

- Staff: a presentation of the tenderer's organisation, including the total number of staff employed and a list of the staff proposed for execution of the contract, with the CVs of key staff and a list of the staff proposed for execution of the contract, with the CVs of key staff.
- Plant: a list of plant for execution of the contract. The descriptions must demonstrate the tenderer's ability to complete the works.
- Work plan and programme: the tenderer must indicate whether this equipment is owned, hired or used by a subcontractor. Manufacturer's documents fully describing the equipment must be submitted with the tender.
  - a list of materials and any supplies intended for use in the works, stating their origin;
  - a work plan with brief descriptions of the main tasks, showing the sequence and proposed timetable for implementing the tasks. In particular, the proposal must detail the temporary and permanent works to be constructed. The tenderer must take account of weather conditions and the requirement to prepare designs and obtain building permits prior to carrying out 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 staff it proposes to use on the main areas of work;
  - a critical milestone bar chart showing times and duties allocated for employees for this contract ;
  - data on subcontractors and the percentage of works to be subcontracted;
- Experience as contractor:
  - evidence of relevant experience in carrying out works of a similar nature, including the nature and value of the contracts, works in hand and contractually committed. The evidence must 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;
- Information on joint ventures: information on tenderers involved in a joint venture/consortium (if have).
- Litigation history: details of their litigation history over the last 3 years.
- Quality assurance system(s): an outline of the quality assurance system(s) to be used
- Accommodation for the supervisor: details of the accommodation and facilities to be provided for the Supervisor.
- Further information: any other information.

✓ **D1 TENDER SUBMISSION FORM**

✓ **D2 TENDER GUARANTEE**

✓ **D3 DECLARATION OF HONOUR**

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



Unless otherwise provided in the contract, all goods purchased under the contract must originate in a Member State 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.

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 the goods must be determined according to the relevant international agreements (notably WTO agreements), which are reflected in EU legislation on rules of origin for customs purposes: the Customs Code (Council Regulation (EEC) No 2913/92) in particular its Articles 22 to 26 thereof, and the Code's implementing provisions (Commission Regulation (EEC) No 2454/93).

**Tenderers must provide an undertaking signed by their representative certifying compliance with this requirement. For more details, see point 2.3.1 Practical Guide.**

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

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

12.2.1 The selection criteria for each tenderer are as follows:

*Economic and financial capacity of tenderer*. In case of 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.

Criteria for legal persons:

- the average annual turnover of the tenderer must exceed the annualised maximum budget of the contract (minimum annual turnover requested may not exceed 2 times the estimated annual contract value, except in duly justified cases motivated in the tender dossier); and
- Current ratio (current assets/current liabilities) in the last year for which accounts have been closed must be at least 1. In case of a consortium, this criterion must be fulfilled by each member.

Criteria for natural persons:

- the available financial resources of the tenderer must exceed the annualised maximum budget of the contract and
- the financial situation of the tenderer should not be in deficit, taken into account debts, at the beginning and end of year.

*Professional capacity of tenderer*. The reference period which will be taken into account will be the last 3 years from submission deadline.

- has a professional certificate appropriate to this contract, such as as Contractor Association - Third-Class or higher in the field of Construction and electromechanical Works;
- at least 4 staff currently work for the tenderer in fields related to this contract: construction, mechanical and electromechanical and specialized engineers in cold and refrigerator rooms ;
- it must carry out at least 70 % of the contract works using its own resources, which means that it must have the equipment, materials, human and financial resources necessary to carry out that percentage of the contract.
- if it is the lead member of a joint venture/consortium, it must be able to carry out at least 50 % of the contract works using its own means.
- if it is a partner of a joint venture/consortium (i.e. not the lead member) it must be able to carry out at least 10 % of the contract works using its own means.

Documents of qualification shall be presented upon the purchase of the Tender Documents.



*Technical capacity of tenderer.* The reference period which will be taken into account will be the last 3 years from submission deadline.

Technical criterion for legal and natural persons:

- Has satisfactorily completed at least one (1) contract, with a value at least one hundred thousand EURO, in the past 3 years, for the supply, installation, and technical support of similar characteristics as for those requested .
- List of relevant applications realized during last three years (3 implementations required as minimum) should be provided (as statutory declaration) and contain following data: name of legal entity, country, overall supply value, proportion supplied by legal entity, n. of staff provided, name of client, origin of funding, dates, name of members if any.

This means that the contract the tenderer refers to could have been started or completed at any time during the indicated period but it does not necessarily have to be started and completed during that period, nor implemented during the entire period. Tenderers are allowed to refer either to projects completed within the reference period (although started earlier) or to projects not yet completed. In the first case the project will be considered in its whole if proper evidence of performance is provided (statement or certificate from the entity which awarded the contract, final acceptance). In case of projects still on-going only the portion satisfactorily completed during the reference period will be taken into consideration. This portion will have to be supported by documentary evidence (similarly to projects completed) also detailing its value.

#### 12.2.2 Capacity-providing entities:

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 a commitment 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.

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

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

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

- The tender must include all the information required in 12.1 above for each member of the joint venture/consortium and summary data for execution of works by the tenderer.
- The tender must be signed in a way that legally binds all members. One member must be appointed lead member and that appointment confirmed by submission of powers of attorney signed by legally empowered signatories representing all members..
- All members of the joint venture/consortium are bound to remain in the joint venture/consortium for the whole execution period of the contract. See the declaration in the tender form.

### 13. TENDER PRICES

#### 13.1 The currency of the tender is the EURO



- 13.2 The tenderer must provide: a Bill of Quantities and Price Schedule in euro The tender price must cover all works as described in the tender documents. All sums in: the Bill of Quantities 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.
- 13.3 Tenderers must quote all components of: the Bill of Quantities and Price Schedule. 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 and Price Schedule.
- 13.4 If a discount is offered by the tenderer, it must be clearly specified in the Bill of Quantities and Price Schedule and indicated in the Tender Form. The discount must be quoted for all works.
- 13.5 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.
- 13.6 The applicable tax and customs arrangements are the following:  
There is no agreement between the Contracting Authority and Local Government, allowing full exemption from taxes. **All offers will be with V.A.T.**

#### 14. PERIOD OF VALIDITY OF TENDERS

- 14.1 Tenders must remain valid for a period of 90 days after the deadline for submitting tenders indicated in the contract notice, the invitation to tender or as amended in accordance with Clauses 9 and/or 18.
- 14.2 In exceptional circumstances, the Contracting Authority may, before the validity period expires, request that tenderers extend the validity of tenders for a specific period, which may not exceed 40 days. Such requests and the responses to them must be made in writing. A tenderer may refuse to comply with such a request without forfeiting its tender guarantee. If the tenderer decides to accept the request, it may not amend its tender and it is bound to extend the validity of its tender guarantee for the revised period of validity of the tender. In case the contracting authority is required to obtain the recommendation of the panel referred to in section 2.3.3.1 of the Practical Guide, the contracting authority may request an extension of the validity of the tenders up to the adoption of that recommendation.
- 14.3 The successful tenderer must maintain its tender for a further 60 days. This period is in addition to the validity period, irrespective of the date of notification.

#### 15. TENDER GUARANTEE

- 15.1 Tenderers must provide a tender guarantee of 2.000 euro (two thousand euro) when submitting their tender. This guarantee will be released to unsuccessful tenderers once the tender procedure has been completed and to the successful tenderer[s] upon signature of the contract by all parties. This guarantee will be called upon if the tenderer does not fulfil all obligations stated in its tender.
- 15.2 It may be provided in the form of a bank guarantee, a banker's draft, a certified cheque, a guarantee provided by an insurance and/or guarantee company or an irrevocable letter of credit made out to the Contracting Authority.
- 15.3 The tender guarantee must remain valid for 45 days beyond the period of validity of the tender, including any extensions, and be issued to the Contracting Authority for the requisite amount.
- 15.4 The tender guarantees of unsuccessful tenderers will be returned together with the information letter that the tenderer has been unsuccessful.



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

## 16. VARIANT SOLUTIONS

Variant solutions will not be taken into consideration.

## SUBMISSION OF TENDERS

### 17. SEALING, MARKING AND SUBMITTING TENDERS

17.1 The complete tender must be submitted in one original, clearly marked 'original' and 2 (two) copies, clearly marked 'copy'. In the event of any discrepancy between them, the original will prevail.

17.2 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.

17.3 All tenders must be received by the Contracting Authority before the deadline set in point 19 of the Contract notice, by registered letter with acknowledgement of receipt or hand-delivered against receipt signed by **Ms. Linda Fantinati** or its representative.

The tender must be sent to the following address:

**John Paul II Foundation,  
Jerusalem Hebron St. P.O. Box 24, Bethlehem-West Bank- Occupied Palestinian Territory.  
Att. Ms. Linda Fantinati**

If the tenders are hand delivered they should be delivered to the same address during the opening hours: Monday- Friday- 9:00 am – 11:00 am

17.4 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: AID 010601/FGPII/TAP 02-2016;
- 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 in Arabic language ( لا يفتح قبل موعد جلسة فتح العطاء ).
- e) the name of the Tenderer.

### 18. EXTENSION OF THE DEADLINE FOR SUBMITTING TENDERS

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

### 19 LATE TENDERS

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

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



## 20. ALTERING AND WITHDRAWING TENDERS

- 20.1 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.
- 20.2 Any notification of alteration or withdrawal must be prepared and submitted in accordance with Clause 17, and the envelope must be marked 'alteration' or 'withdrawal', as appropriate. Withdrawal of a tender in the period between the deadline for submission and the date of expiry of the validity of the tender will result in forfeiture of the tender guarantee.

## OPENING AND EVALUATING TENDERS

### 21. OPENING TENDERS

- 21.1 The purpose of opening and examining tenders is to check whether the tenders are complete, whether the requisite tender guarantees have been furnished, whether the required documents are included and whether the tenders are generally in order.
- 21.2 Tenders will be opened in public session on Wednesday 18.01.2017, at 10.00 am (Local Time –West Bank) at the address of :The Chamber of Commerce of Jericho, AL Quds Main street , 2nd floor , Next to Al Manar Supermarket, Jericho/West Bank/ Occupied Palestinian Territory, by the committee appointed for that purpose. The committee will draw up minutes of the meeting, which must be available to tenderers on request.
- 21.3 At the tender opening session, the tenderers' names, the tender prices, any discounts offered, written notifications of alteration and withdrawal, the presence of the tender guarantee and such other information the Contracting Authority may consider appropriate may be announced.
- 21.4 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. EVALUATING TENDERS

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

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

#### 22.1 Examination of the administrative compliance of tenders

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

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



justified in the evaluation minutes.

The evaluation committee will check that each tender:

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

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

## 22.2 Technical evaluation

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

At this step of the evaluation procedure, the Committee will analyse the tenders' technical conformity in relation to the technical specifications, classifying them technically compliant or non-compliant.

## 22.3 Financial evaluation

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

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

## 23. CORRECTING ERRORS

23.1 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.

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

### 25. Notification of award, contract clarifications

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

After the contract has been signed and the successful tenderer has provided the performance guarantee, in accordance with Clause 26, the Contracting Authority will promptly notify the other



tenderers that their tenders have not been successful and release their tender guarantees. By submitting a tender, each tenderer accepts to receive notification of the outcome of the procedure by electronic means. Such notification shall be deemed to have been received on the date upon which the contracting authority sends it to the electronic address referred to in the offer.

## 26. CONTRACT SIGNING AND PERFORMANCE GUARANTEE

- 26.1 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.
- 26.2 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 invoke the guarantee, claim compensation or pursue any other remedy in respect of such failure, and the successful tenderer will have no claim whatsoever on the Contracting Authority.
- 26.3 The performance guarantee referred to in the General Conditions is set at 10 % of the amount of the contract and must be presented in the form specified in the annex to the tender dossier, except where it takes the form of a certified cheque or a cash deposit. It will be released in accordance with the Special Conditions.

## 27. CANCELLATION OF THE TENDER PROCEDURE

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

Cancellation may occur, for example, where:

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

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

## 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 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 not affected by any 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.
- 28.7 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.
- 28.8 The contract governs the Parties' use of all reports and documents drawn up, received or presented by them during execution of the contract.
- 28.9 The Contractor must 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.
- 28.10 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.
- 28.11 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. 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.
- 28.12 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.



- 28.13 Contractors found to have paid unusual commercial expenses on projects funded by the European Union are liable, depending on the seriousness of the facts observed, to have their contracts terminated or to be permanently excluded from receiving EU funds.
- 28.14 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.

## 25. 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.