

A. INSTRUCTIONS TO TENDERERS

PUBLICATION REF.: EuropeAid 127347/C/SUP/BA

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

These Instructions set out the rules for the submission, selection and implementation of contracts financed under this call for tenders, in conformity with the provisions of the Practical Guide to contract procedures for EC external actions, which is applicable to the present call (available on the Internet at this address:

http://ec.europa.eu/europeaid/work/procedures/index_en.htm).

1 Supplies to be provided

1.1 The subject of the contract is the delivery by the Contractor of the following goods:

Lot 1 - Printers, Smart card reader / writer, Smart Card, Smart Card Accessories, Hardware Security Module, application software and Digital cameras

Lot 2: Servers, Racks and Notebooks

In two (2) lots to the locations stated in the Annex II to the Technical Specification, **DDP¹** (not including customs duties, import duties, taxes or other equivalent fiscal charges) and time limit for completion within 90 days from signature of the contract by both parties.

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 in addition to the present tender.

2 Timetable

	DATE	TIME*
Clarification meeting / site visit (if any)	Not applicable	

¹ **DDP** (Delivered Duty Paid) - Incoterms 2000 International Chamber of [Commerce](http://www.iccwbo.org/incoterms/id3040/index.html) - <http://www.iccwbo.org/incoterms/id3040/index.html>. Note, the programme for which this contract is awarded is covered by a Financing Agreement between the European Commission and Bosnia and Herzegovina. Through this Agreement "all imports..... will be exempted from customs duties, import duties, taxes or other equivalent fiscal charges". The Contracting Party (in INCOTERMS the 'buyer') shall, at the written request of the Supplier (in INCOTERMS the 'seller'), provide relevant documentation of the Financing Agreement in order that the Supplier (or the Suppliers's forwarding agent) may execute the required customs clearance procedures. The Supplier is advised to initiate steps to obtain documentation required for customs clearance in good time in order to avoid shipment delays at the BiH border crossings.

Deadline for request for any clarifications from the Contracting Authority	13 th April 2009	
Last date on which clarifications are issued by the Contracting Authority	23 rd April 2009	
Deadline for submission of tenders	4 th May 2009	12:00
Tender opening session	4 th May 2009	15:00
Notification of award to the successful tenderer	May 2009 ³	-
Signature of the contract	June 2009 ³	-

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

³ Provisional date

3 Participation

- 3.1 Participation in tendering is open to all legal persons participating either individually or in a grouping (consortium) or tenderers which are established in a the 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 IPA programme under which the contract is financed (http://ec.europa.eu/europeaid/work/procedures/implementation/eligibility/index_en.htm); next enter **GENERAL ANNEX A2** Eligibility programmes 2007-2013 and go to **Instrument for Pre-Accession Assistance (Council Regulation (EC) N° 1085/2006 - OJ L 210/82 of 31.7.2006)**. All works, supplies and services must originate in one or more of these countries. The participation is also open to international organisations. The participation of natural persons is directly governed by the specific instruments applicable to the programme under which the contract is financed.
- 3.2 These terms refer to all nationals of the said states and to all legal entities, companies or partnerships constituted under, and governed by, the civil, commercial or public law of such states and having their statutory office, central administration or principal place of business there. A legal entity, company or partnership having only its statutory office there must be engaged in an activity which has an effective and continuous link with the economy of the state concerned.
- 3.3 These rules apply to:
- a) tenderers
 - b) members of a consortium
 - c) any subcontractors.
- 3.4 Natural persons, companies or undertakings falling into a situation set out in section 2.3.3 of the Practical Guide to contract procedures for EC external actions are excluded from participation in and the award of contracts. Tenderers must provide declarations to the effect that they are not in any of these exclusion situations. The declarations must cover all the members of a joint venture/consortium. Tenderers who have been guilty of making false declarations may also incur financial penalties and exclusion in accordance with section 2.3.4 of the Practical Guide.

The exclusion situation referred to above also applies to any subcontractor. Whenever requested by the Contracting Authority, the tenderer/contractor shall submit a declaration

from the intended subcontractor that it is not in one of the exclusion situations. In case of doubt on this declaration of honour, the Contracting Authority shall request documentary evidence that the sub-contractor is not in a situation of exclusion.

- 3.5 To be eligible for participation 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 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 Origin

- 4.1 Unless otherwise provided in the contract, supplies must originate in a Member State of the European Community or a country covered by IPA programme under which the contract is financed. The origin of the goods must be determined according to the Community Customs Code or the international agreements to which the country concerned is a signatory.
- 4.2 When submitting its tender, the tenderer must state expressly that all the goods meet the requirements concerning origin and must state the countries of origin. It may be asked to provide additional information in this connection.

5 Type of contract

Unit-price.

6 Currency

Tenders must be presented in euro².

7 Lots

- 7.1 The tenderer may submit a tender for one lot, several or all of the lots.
- 7.2 Each lot will form a separate contract and the quantities indicated for different lots will be indivisible. The tenderer must offer the whole of the quantity or quantities indicated for each lot. Under no circumstances must tenders for part of the quantities required be taken into consideration. If the tenderer is awarded more than one lot, a single contract may be concluded covering all those lots.
- 7.3 A tenderer may include in its tender the overall discount it would grant in the event of some or all of the lots for which it has submitted a tender being awarded. The discount should be clearly indicated for each lot in such a way that it can be announced during the public tender opening session.
- 7.4 Contracts will be awarded lot by lot, but the Contracting Authority may select the most favourable overall solution after taking account of any discounts offered.

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

8 Period of validity

- 8.1 Tenderers shall 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.
- 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 irrespective of the date of notification.

9 Language of offers

- 9.1 The 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.

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

10 Submission of tenders

- 10.1 Tenders must be received 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:

The Delegation of the European Commission to BiH
Contract and Finance Section – Procurement Team
Skenderija 3a
71 000 Sarajevo
Bosnia and Herzegovina

Tenders must comply with the following conditions:

- 10.2 All tenders must be submitted in one original, marked “original”, and 3 copies signed in the same way as the original and marked “copy”.
- 10.3 All tenders must be received at the above mentioned address before the deadline date and time, **Monday, 4th May 2009, 12:00 CET**, by registered letter with acknowledgement of receipt or hand-delivered against receipt signed by a representative of the Delegation of the European Commission to Bosnia and Herzegovina or his representative.
- 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., [EuropeAid/127347/C/SUP/BA](#));
 - 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 “Ne otvarati prije zvaničnog otvaranja”.
- 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

All tenders submitted must comply with the requirements in the tender dossier and comprise:

Part 1: Technical offer:

- o 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*, the contractor's technical offer) completed when and if necessary by separate sheets for details.

Part 2: Financial offer:

- o A financial offer calculated on a basis of <DDP³> for the supplies tendered.

This financial offer should be presented as per template (annex IV*, budget breakdown), and if necessary completed by separate sheets for the details.

- An electronic version of the financial offer.

Part 3: Documentation:

To be supplied following templates in annex*:

- The tender guarantee in amount of 1,600 Euro for Lot 1 and 800 Euro for Lot 2;
- The “Tender Form for a Supply Contract”, 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) (Where the tenderer has already signed another contract with the European Commission, it may provide instead of the financial identification form either its financial identification form number or a copy of the financial identification form provided on that occasion, unless a change occurred in the meantime.)
- The legal entity file and the supporting documents (Where the tenderer has already signed another contract with the European Commission, it may provide instead of the legal entity sheet and its supporting documents either its legal entity number or a copy of the legal entity sheet provided on that occasion, unless a change in its legal status occurred in the meantime.)

To be supplied on free formats:

- A description of the warranty conditions, which must be in accordance with the conditions laid down in Article 32 of the General Conditions,

³ DDP (delivered duty paid) - Incoterms 2000 International Chamber of Commerce - <http://www.iccwbo.org/incoterms/id3040/index.html> (not including customs duties, import duties, taxes or other equivalent fiscal changes)

- A description of the organisation of the commercial warranty tendered in accordance with the conditions laid down in Article 32 of the Special 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/consortium is duly authorised to do so.
- (Other)

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/work/procedures/index_en.htm.

12 Pricing

- 12.1 Tenderers will be deemed to have satisfied themselves, before submitting their tender(s), as to (its)(their) correctness and completeness, to have taken account of all that is required for the full and proper execution of the contract and to have included all costs in their rates and prices.
- 12.2 Depending on whether the supplies proposed are manufactured locally or are to be imported into the country of the Beneficiary, Tenderers must quote, by lot, unit (and overall) prices for their tenders on one of the following bases:
- a) for supplies manufactured locally, unit and overall prices must be quoted for delivery to the place of destination and in accordance with the above conditions, excluding all domestic taxation applicable to their manufacture and sale;
 - b) for supplies to be imported into the country of the Beneficiary, unit and overall prices must be quoted for delivery to the place of destination and in accordance with the above conditions, excluding all duties and taxes applicable to their importation and VAT, from which they are exempt.
- 12.3 Whatever the origin of the supplies, the contract is exempt from stamp and registration duties.
- 12.4 The prices for the contract are fixed and not subject to revision, unless otherwise stipulated in the Special Conditions.

13 Additional information before the deadline for submission of tenders

The tender dossier should be clear enough to preclude the need for tenderers to request additional information during the procedure. If the Contracting Authority, either 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 and the contract title**:

Delegation of the European Commission to Bosnia and Herzegovina
Attn: Contracts and Finance Section
Procurement Team
Skenderija 3a
71000 Sarajevo
Bosnia and Herzegovina

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

Any clarification of the tender dossier will be published on the EuropeAid website at <https://webgate.ec.europa.eu/europeaid/online-services/index.cfm?do=publi.welcome> and EC Delegation to BiH website <http://www.delbih.ec.europa.eu>, 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.

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 single 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 consent in writing 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 opening and examination of tenders is for the purpose of checking whether the tenders are complete, whether the requisite tender guarantees have been furnished, whether the required documents have been properly included and whether the tenders are generally in order.
- 19.2 The tenders will be opened in public session on **Monday, 4th May 2009, 15:00 CET at The Delegation of the European Commission to BiH, Procurement Team, Skenderija 3a, 71000 Sarajevo, Bosnia and Herzegovina** by the committee appointed for the purpose. The committee will draw up minutes of the meeting, which will be available on request.
- 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 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.
- 19.6 All tenders received after the deadline for submission specified in the procurement notice or these instructions will be kept by the Contracting Authority. The associated guarantees will be returned to the tenderers. 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 Procurement Notice point 16) are to be evaluated at the start of this stage.

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 as a whole:

- 1) Economic and financial capacity of tenderer (based on i.a. item 3 of the Tender Form for a Supply Contract). In case of tenderer being a public body, equivalent information should be provided.
 - a) The average annual turnover of the tenderer for the last 2 years each (2007,2008) must exceed twice his total financial proposal for all Lots offered under this tender.
- 2) Professional capacity of tenderer (based on i.a. items 4 and 5 of the Tender Form for a Supply Contract):
 - a) The tenderer has a minimum 3 staff employed on the permanent basis.
- 3) Technical capacity of tenderer (based on i.a. items 5 and 6 of the Tender Form for a Supply Contract):
 - a) The tenderer has successfully completed at least one contract with a budget of at least total financial proposal for all Lots offered within the last 36 months prior to the launch of this tender.

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 shall 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.

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 Signature of the contract and performance guarantee

- 21.1 The successful tenderer will be informed in writing that its tender has been accepted (notification of award). Before the Contracting Authority signs the contract with the successful tenderer, the successful tenderer must 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 established, to show that it does not fall into the exclusion situations listed in section 2.3.3 of the Practical Guide to contract procedures for EC external actions. This evidence or these documents or statements must carry a date, which cannot be more than 1 year before the date of submission of the tender. In addition, a statement shall be furnished stating that the situations described in these documents have not changed since then.
- 21.2 The successful tenderer shall also provide evidence of the financial and economic standing and the technical and professional capacity according to the selection criteria for this call for tender specified in the procurement notice, point 16. The documentary proofs required are listed in sections 2.4.12.1.3 and 2.4.12.1.4 of the Practical Guide to contract procedures for EC external actions.
- 21.3 If the successful tenderer fails to provide the documentary proof or statement or the evidence of the financial and economic standing and the 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.
- 21.4 The Contracting Authority reserves the right to vary the quantities specified for the lots within a range of 100%. The total value of the supplies may not rise or fall as a result of the variation in the quantities by more than 25 % of the tender price at the time of contracting and during the validity of the contract. The unit prices used in the tender shall be applicable to the quantities procured under the variation.
- 21.5 Within 30 days of receipt of the contract already signed by the Contracting Authority, the selected tenderer must sign and date the contract and return it, with the performance guarantee (if applicable), to the Contracting Authority. On signing the contract, the successful tenderer will become the Contractor and the contract will enter into force.
- 21.6 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.
- 21.7 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. It will be released within 45 days of the issue of the final acceptance certificate by the Contracting Authority.

22 Tender guarantee

The tender guarantee referred to in Article 11 above is set at [1,600 Euro for Lot 1 and 800 Euro for Lot 2](#) and must be presented in the form specified in the annex to the tender dossier. It must remain valid for 45 days beyond the period of validity of the tender. Tender guarantees provided by tenderers who have not been selected shall be returned together with the information letter that the tenderer has been unsuccessful. The tender guarantee of the successful tenderer shall be released on the signing of the contract, once the performance guarantee has been submitted.

23 Ethics clauses

- 23.1 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.
- 23.2 Without the Contracting Authority's prior written authorisation, a Contractor and its staff or any other company with which the Contractor is associated or linked may not, even on an ancillary or subcontracting basis, supply other services, carry out works or supply equipment for the project. This prohibition also applies to any other projects that could, owing to the nature of the contract, give rise to a conflict of interest on the part of the Contractor.
- 23.3. When putting forward a candidacy or tender, the candidate or tenderer shall declare that it is affected by no conflict of interest and 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.
- 23.4 The Contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of its profession. It shall 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.
- 23.5 For the duration of the contract the Contractor and its staff shall respect human rights and undertake not to offend the political, cultural and religious mores of the beneficiary state. In particular and in accordance with the legal basic act concerned, tenderers who have been awarded contracts shall respect core labour standards as defined in the relevant International Labour Organisation conventions (such as the Conventions on freedom of association and collective bargaining; Abolition of forced and compulsory labour; Elimination of forced and compulsory labour; Abolition of child labour).
- 23.6 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.
- 23.7 The Contractor and its staff shall be 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 shall be confidential.
- 23.8 The contract shall govern the Contracting Parties' use of all reports and documents drawn up, received or presented by them during the implementation of the contract.
- 23.9 The Contractor shall refrain from any relationship likely to compromise its independence or that of its staff. If the Contractor ceases to be independent, the Contracting Authority may, regardless of injury, terminate the contract without further notice and without the Contractor having any claim to compensation.

- 23.10 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.
- 23.11 All tenders will be rejected or contracts terminated if it emerges that the award or implementation of a contract has given rise to unusual commercial expenses. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commissions paid to a company which has every appearance of being a front company.
- 23.12 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.
- 23.13 Contractors found to have paid unusual commercial expenses on projects funded by the Community are liable, depending on the seriousness of the facts observed, to have their contracts terminated or to be permanently excluded from receiving Community funds.
- 23.14 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.

24 Cancellation of the tender procedure

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

Cancellation may occur where:

- the tender procedure has been unsuccessful, namely where no qualitatively or financially worthwhile tender has been received or there has been no response at all;
- the economic or technical parameters of the project have been fundamentally altered;
- exceptional circumstances or force majeure render normal implementation 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.

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 procurement notice does not commit the Contracting Authority to implement the programme or project announced.

25 Appeals

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

26 Data Protection

All personal data (such as names, addresses, CVs, etc.) will be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 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. Your replies to the questions in the call for tender are necessary in order to assess your tender and they will be processed solely for that purpose by the department responsible for the programme concerned. On request, you may be sent personal data and correct or complete them. For any question relating to these data, please contact the Commission department to which the tender must be returned. Tenderers may lodge a complaint against the processing of their personal data with the European Data Protection Supervisor at any time (Official Journal L 8, 12.1.2001).]