

A. INSTRUCTIONS TO TENDERERS

PUBLICATION REF.: PRAG/03/2014/EN

TENDER NUMBER: PRAG/03/2014/EN

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/work/procedures/index_en.htm).

1 Supplies to be provided

- 1.1 The subject of the contract is the supply, delivery, installation, putting into operation, testing, training (except for lot 2) and warranty services by the Contractor of the following goods:

Lot 1: video surveillance system – 1 set

Lot 2: container – 1 unit

Lot 3: handheld trace detector for explosives – 1 unit

3 lots to Zračna luka Rijeka d.o.o. (Rijeka Airport Ltd.) in Omišalj, Hrvatska (Croatia) where supplies are to be delivered, DDP¹, no later than 60 days from contract signature and all installation services shall then be completed no later than 120 days from contract signature.

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

¹ DDP (Delivered Duty Paid) — Incoterms 2010 International Chamber of Commerce
<http://www.iccwbo.org/products-and-services/trade-facilitation/incoterms-2010/the-incoterms-rules/> .

2 Timetable

	DATE	TIME*
Deadline for requesting clarifications from the Contracting Authority	28.10.2014.	23:59
Last date on which clarifications are issued by the Contracting Authority	6.11.2014.	16:00
Deadline for submission of tenders	17.11.2014.	12:00
Tender opening session	17.11.2014.	12:00
Notification of award to the successful tenderer	21.11.2014.	00:00
Signature of the contract	24.11.2014.	12:00

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

LOT 3 ONLY:

	DATE	TIME*
Deadline for requesting clarifications from the Contracting Authority	28.10.2014.	23:59
Last date on which clarifications are issued by the Contracting Authority	6.11.2014.	16:00
Deadline for submission of tenders	3.12.2014.	12:00
Tender opening session	3.12.2014.	12:00
Notification of award to the successful tenderer	10.12.2014.	00:00
Signature of the contract	17.12.2014.	12:00

3 Participation

- 3.1 Participation is open to all legal persons participating either individually or in a grouping (consortium) of tenderers which are established 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 IPA Adriatic CBC Programme 2007.–2013., programme under which the contract is financed. All goods supplied under this contract must originate in one or more of these countries. Participation is also open to international organisations. Participation of natural persons is directly governed by the specific instruments applicable to the programme under which the contract is financed.
- 3.2 These terms refer to all nationals of the above states and to all legal entities, companies or partnerships 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. In case of doubt, the Contracting Authority may ask the tenderer to provide evidence demonstrating actual compliance with the "establishment" criteria. For this purpose, legal person have to demonstrate that their legal person is formed under the law of an eligible State and that its real seat is within an eligible State. "Real seat" must be understood as the place where its managing board and its central administration are located or its principal place of business.

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 one of the situations set out in section 2.3.3 of the Practical Guide are excluded from participation in and the award of contracts. Tenderers must provide declarations that they are not in any of these exclusion situations. The declarations must cover all the members of a joint venture/consortium. Tenderers who make false declarations may also incur financial penalties and exclusion in accordance with section 2.3.4 of the Practical Guide.

The exclusion situations referred to above also apply to subcontractors. When requested by the Contracting Authority, tenderers/contractors must submit declarations from the intended subcontractors that they are not in any of the exclusion situations. In cases of doubt over declarations, the Contracting Authority will request documentary evidence that subcontractors are not in a situation that excludes them.

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

3.6 Where tenders include subcontracting, it is recommended that the contractual arrangements between tenderers and their 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, 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 246 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.

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

5 Type of contract

Type of contract is unit-price contract.

6 Currency

Tenders must be presented in HRK (Croatian kuna).²

7 Lots

Tender is divided into 3 lots:

Lot 1: video surveillance system – 1 set

Lot 2: container – 1 unit

Lot 3: handheld trace detector for explosives – 1 unit

- 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 be considered for part of the quantities required. If the tenderer is awarded more than one lot, a single contract may be concluded covering all those lots.

8 Period of validity

- 8.1 Tenderers will be bound by their tenders for a period of 90 days from the deadline for the submission of tenders.
- 8.2 In exceptional cases and prior to the expiry of the original tender validity period, the Contracting Authority may ask tenderers in writing to extend this period by 40 days. Such requests and the responses to them must be made in writing. Tenderers that agree to do so will not be permitted to modify their tenders and they are bound to extend the validity of their tender guarantees for the revised period of validity of the tender. If they refuse, without forfeiture of their tender guarantees, their participation in the tender procedure will be terminated.
- 8.3 The successful tenderer will be bound by its tender for a further period of 60 days. The further period is added to the validity period of the tender irrespective of the date of notification.

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

9 Language of tenders

- 9.1 The tenders, all correspondence and documents related to the tender exchanged by the tenderer and the Contracting Authority must be written in the language of the procedure, which is English and/or Croatian.

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

10 Submission of tenders

- 10.1 The Contracting Authority must receive the tenders 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:

Zračna luka Rijeka d.o.o. (Rijeka Airport Ltd.), Hamec 1, 51513 Omišalj, Hrvatska

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

Zračna luka Rijeka d.o.o. (Rijeka Airport Ltd.), Hamec 1, 51 513 Omišalj, Hrvatska, during opening hours on working day: 10:00 – 14:00

Tenders must comply with the following conditions:

- 10.2 All tenders must be submitted in one original, marked 'original', and two copies signed in the same way as the original and marked 'copy'.
- 10.3 All tenders must be received at Zračna luka Rijeka d.o.o. (Rijeka Airport Ltd.), Hamec 1, 51513 Omišalj before the deadline **17/11/2014 at 12:00**, by registered letter with acknowledgement of receipt or hand-delivered against receipt signed by registration officer or its representative.

LOT 3 ONLY:

All tenders must be received at Zračna luka Rijeka d.o.o. (Rijeka Airport Ltd.), Hamec 1, 51513 Omišalj before the deadline **3/12/2014 at 12:00**, by registered letter with acknowledgement of receipt or hand-delivered against receipt signed by registration officer or its 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, (PRAG/02/2014/EN);
 - c) the number of the lot(s) tendered for;

- d) the words 'Not to be opened before the tender opening session - *Ne otvarati prije sastanka za otvaranje ponuda*';
- 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:

- a detailed description of the supplies tendered in conformity with the technical specifications, including any documentation required, including:
 - a training proposal (for lot 1 video surveillance system - basic education for system managing at the location of user, education comprises description, demonstration and usage of all functionalities; for lot 3 handheld trace detector for explosives - basic education for device handling at the location of user)

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

Part 2: Financial offer:

- A financial offer calculated on a DDP³ basis for the supplies tendered, including:
 - financial proposal for training (for lot 1 and lot 3)

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

- An electronic version of the financial offer

Part 3: Documentation:

To be supplied using the templates attached*:

- The tender guarantee, for the amount of 2% of every lot that the tender is submitted.
- 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)

³ DDP (Delivered Duty Paid) — Incoterms 2010 International Chamber of Commerce <http://www.iccwbo.org/products-and-services/trade-facilitation/incoterms-2010/the-incoterms-rules/>.

- The legal entity file and the supporting documents.

To be supplied in free-text format:

- A description of the warranty conditions, which must be in accordance with the conditions laid down in Article 32 of the General Conditions.
- A statement by the tenderer attesting the origin of the supplies tendered (or other proofs of origin).
- Duly authorised signature: an official document (statutes, power of attorney, notary statement, etc.) proving that the person who signs on behalf of the company/joint venture/consortium is duly authorised to do so.
- A certificate about the financial situation of the company – solvency information (e.g. in the Republic of Croatia BON-1 /BON-2 (SOL-2)) or other corresponding document issued by competent authority of the country where the tenderer is established. Certificate may not be older than 60 days from the date of publication.
- A certificate issued by competent tax authority concerning state of debt which shows that the tenderer has fulfilled the obligation of paying all taxes, pension and health insurance contributions, or other corresponding document issued by competent authority of the country where the tenderer is established. Evidence is enclosed as original and may not be older than 60 days from the date of publication.

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 Taxes and other charges

The applicable tax and customs arrangements are the following:

The European Commission and Republic of Croatia have agreed in the Framework Agreement between the European Commission and the Government of the Republic of Croatia, ("Official Gazette – International Agreements, no. 8/02, 11/02,) and the Framework Agreement between the Government of the Republic of Croatia and the commission of the European Communities on the Rules of the Cooperation about the Financial Assistance (IPA), ("Official Gazette – International Agreements, no. 10/07) to fully exonerate the following tax: Value Added Tax (VAT).

13 Additional information before the deadline for submission of tenders

The tender dossier should be so clear that tenderers do not need to request additional information during the procedure. If the Contracting Authority, on its own initiative or in response to a request from a prospective tenderer, provides additional information on the tender dossier, it must send such information in writing to all other prospective tenderers at the same time.

Tenderers may submit questions in writing to the following address up to 21 day (up to September 04th 2014) before the deadline for submission of tenders, specifying the **publication reference and the contract title**:

Contact name: Marko Simić
Address: Zračna luka Rijeka d.o.o. (Rijeka Airport Ltd.), Hamec 1, 51513 Omišalj,
Hrvatska/Croatia
Fax: +385 51 842032
E-mail: msimic@rijeka-airport.hr

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

Any clarification of the tender dossier will be published on the Zračna luka Rijeka d.o.o. (Rijeka Airport Ltd.) at http://www.rijeka-airport.hr/javna_nabava.asp at the latest 11 days before the deadline for submission of tenders.

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

14 Clarification meeting / site visit

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

15 Alteration or withdrawal of tenders

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

16 Costs of preparing tenders

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

17 Ownership of tenders

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

18 Joint venture or consortium

- 18.1 If a tenderer is a joint venture or consortium of two or more persons, the tender must be a single one with the object of securing a single contract, each person must sign the tender and will be jointly and severally liable for the tender and any contract. Those persons must designate one of their members to act as leader with authority to bind the joint venture or consortium. The composition of the joint venture or consortium must not be altered without the prior written consent of the Contracting Authority.
- 18.2 The tender may be signed by the representative of the joint venture or consortium only if it has been expressly so authorised in writing by the members of the joint venture or consortium, and the authorising contract, notarial act or deed must be submitted to the Contracting Authority in accordance with point 11 of these Instructions to Tenderers. All signatures to the authorising instrument must be certified in accordance with the national laws and regulations of each party comprising the joint venture or consortium together with the powers of attorney establishing, in writing, that the signatories to the tender are empowered to enter into commitments on behalf of the members of the joint venture or consortium. Each member of such joint venture or consortium must provide the proof required under Article 3.5 as if it, itself, were the tenderer.

19 Opening of tenders

- 19.1 The 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 **17/11/2014 at 12:00** at Zračna luka Rijeka d.o.o. (Rijeka Airport Ltd.), Hamec 1, 51513 Omišalj by the committee appointed for the purpose. The committee will draw up minutes of the meeting, which will be available on request.

LOT 3 ONLY:

The tenders will be opened in public session on **3/12/2014 at 12:00** at Zračna luka Rijeka d.o.o. (Rijeka Airport Ltd.), Hamec 1, 51513 Omišalj 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 tenderers to influence the evaluation committee in the process of examination, clarification, evaluation and comparison of tenders, to obtain information on

how the procedure is progressing or to influence the Contracting Authority in its decision concerning the award of the contract will result in the immediate rejection of their tenders.

- 19.6 All tenders received after the deadline for submission specified in the contract notice or these instructions will be kept by the Contracting Authority. The associated guarantees will be returned to the tenderers. No liability can be accepted for late delivery of tenders. Late tenders will be rejected and will not be evaluated.

20 Evaluation of tenders

20.1 Examination of the administrative conformity of tenders

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

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

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

20.2 Technical evaluation

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

The minimum qualifications required are:

- *The tenderer must be a registered company or natural person authorised for carrying out the supply defined in Article 1. Supplies to be provided; and*
- *The tenderer has successfully completed at least 2 supply contracts in the past 3 years similar to supply to be provided with the total budget that must exceed the maximum budget of the contract.*

Above mentioned selection criteria will be evaluated at the start of this stage.

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

- 20.3 In the interests of transparency and equal treatment and to facilitate the examination and evaluation of tenders, the evaluation committee may ask each tenderer individually for clarification of its tender including breakdowns of prices, within a reasonable time limit to be fixed by the evaluation committee. The request for clarification and the response must be in writing, but no change in the price or substance of the tender may be sought, offered or permitted except as required to confirm the correction of arithmetical errors discovered during the evaluation of tenders pursuant to Article 20.4. Any such request for clarification

must not distort competition. Decisions to the effect that a tender is not technically compliant must be duly justified in the evaluation minutes.

20.4 Financial evaluation

a) After the technical evaluation, the evaluation committee will rule on the financial capability of each tender, classifying it as financially compliant or non-compliant.

The minimum qualifications required are:

- *the average annual turnover of the tenderer must exceed the maximum budget of the contract; and*
 - *the tenderer has not had a blocked account during the past 6 months.*
- b) Tenders found to be technically and financially compliant will be checked for any arithmetical errors in computation and summation. Errors will be corrected by the evaluation committee as follows:
- where there is a discrepancy between amounts in figures and in words, the amount in words will be the amount taken into account;
 - except for lump-sum contracts, where there is a discrepancy between a unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will be the price taken into account.
- c) 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 is not in any of the exclusion situations listed in section 2.3.3 of the Practical Guide. This evidence or these documents or statements must carry a date not earlier than one year before the date of submission of the tender. In addition, a statement must be provided that the situations described in these documents have not changed since then.
- 21.2 The successful tenderer must also provide evidence of financial and economic standing and technical and professional capacity according to the selection criteria for this call for tenders specified in the Articles 20.2 and 20.4. The documentary proofs required are listed in section 2.4.11 of the Practical Guide.

- 21.3 If the successful tenderer fails to provide the documentary proof or statement or the evidence of financial and economic standing and technical and professional capacity within 15 calendar days following the notification of award or if the successful tenderer is found to have provided false information, the award will be considered null and void. In such a case, the Contracting Authority may award the tender to the next lowest tenderer or cancel the tender procedure.
- 21.4 The Contracting Authority reserves the right to vary quantities specified in the tender by +/- 100% at the time of contracting and during the validity of the contract. The total value of the supplies may not, as a result of the variation rise or fall by more than 25% of the original financial offer in the tender. The unit prices quoted in the tender shall be used.
- 21.5 Within 30 days of receipt of the contract signed by the Contracting Authority, the selected tenderer must sign and date the contract and return it, with the performance guarantee (if applicable), to the Contracting Authority. On signing the contract, the successful tenderer will become the Contractor and the contract will enter into force.
- 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, except for the proportion assigned to after-sales service.

22 Tender guarantee

The tender guarantee referred to in Article 11 above is set at 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 will be returned together with the information letter that the tenderer has been unsuccessful. The tender guarantee of the successful tenderer will be released on 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 their 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 submitting a tender, tenderers must declare that they are not affected by a conflict of interest and have 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 Contractors must at all times act impartially and as faithful advisers in accordance with the code of conduct of their profession. They will refrain from making public statements about the project or services without the Contracting Authority's prior approval. They may not commit the Contracting Authority in any way without its prior written consent.
- 23.5 For the duration of the contracts Contractors and their staff must 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 that have been awarded contracts must abide by 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 Contractors may accept no payment connected with the contracts other than that provided for therein. Contractors and their staff must not exercise any activity nor receive any advantage inconsistent with their obligations to the Contracting Authority.
- 23.7 Contractors and their staff are obliged to maintain professional secrecy for the entire duration of contracts and after their completion. All reports and documents drawn up or received by Contractors will be confidential.
- 23.8 The contract governs the Contracting Parties' use of all reports and documents drawn up, received or presented by them during the implementation of the contract.
- 23.9 Contractors must refrain from any relationship likely to compromise their independence or that of their 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 any 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 EU are liable, depending on the seriousness of the facts observed, to have their contracts terminated or to be permanently excluded from receiving EU funds.

23.14 The Contracting Authority reserves the right to suspend or cancel the procedure, if 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

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

Cancellation may occur, for example, if:

- the tender procedure has been unsuccessful, namely where no 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 changed fundamentally;
- 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;
- the award is not in compliance with sound financial management, i.e. does not respect the principles of economy, efficiency and effectiveness (e.g. the price proposed by the tenderer to whom the contract is to be awarded is objectively disproportionate with regard to the price of the market).

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

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.