**VOLUME 1**

**SECTION 1:** **INSTRUCTIONS TO TENDERERS**

**SECTION I INSTRUCTIONS TO TENDERERS**

PUBLICATION REF.: EuropeAid/136869/IH/WKS/ME

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 will lead to rejection of the tender. No account can be taken of any reservation in the tender as regards the tender dossier; this may result in immediate rejection of the tenderwithout 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, which is applicable to this call (available on the internet at this address: <http://ec.europa.eu/europeaid/work/procedures/index_en.htm>).

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# GENERAL PART

## GENERAL INSTRUCTIONS

### Tenderers must tender for the whole of the works required by the dossier. Tenders will not be accepted for incomplete lots.

### Timetable

|  |  |  |
| --- | --- | --- |
|  | **DATE** | **TIME\*** |
| **Site visit and Clarification meeting** | 27th August 2015 | 11:00 hrs |
| **Deadline for requesting any additional information from the Contracting Authority** | 24th September 2015 | 24:00 hrs |
| **Last date on which additional information are issued by the Contracting Authority** | 2nd October 2015 | 24:00 hrs |
| **Deadline for submitting tenders** | 15th October 2015 | 10:00 hrs |
| **Tender opening session** | 15th October 2015 | 11:00 hrs |
| **Notification of award to the successful tenderer** | November 2015\*\* | - |
| **Signature of the contract** | December 2015\*\* | - |

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

## FINANCING

The project is financed by the European Union and co-funded by the Government of Montenegroin accordance with the rules of the Instrument for Pre-Accession Assistance (IPA) programme (Regional Development Component), and by the European Investment Bank (EIB) Loan and National Contribution.

## PARTICIPATION

### 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 programme under which the contract is financed (see item 22 below). 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.

### 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 will 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.

### The eligibility requirement detailed in subclauses 3.1 and 3.2 applies to all members of a joint venture/consortium, all subcontractors and all suppliers to tenderers. Every tenderer, member of a joint venture/consortium, every subcontractor providing more than 10 % of the works and every supplier providing more than 10 % of the works 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.

### Natural persons, companies or undertakings falling into a situation 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 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.

### 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.

### The upper limit authorised for subcontracting is 30 % of the value of the tender[[1]](#footnote-1).

## 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.

## TENDER EXPENSES

### 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.

### 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.

## SITE INSPECTION

### The tenderer is obliged 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. For date, time and place, see point 13 of the contract notice.

### A clarification meeting and/or a site visit will be held by the Contracting Authority. For date, time and place, see point 13 of the contract notice.

### The minutes of the clarification meeting and the site visit will be published on the EuropeAidwebsite<https://webgate.ec.europa.eu/europeaid/online-services/index.cfm?do=publi.welcome>, on the Directorate of Public Works – Montenegro website [www.djr.gov.me/direkcija](http://www.djr.gov.me/direkcija) and on the Ministry of Sustainable Development and Tourism website [www.mrt.gov.me](http://www.mrt.gov.me). As proof of participation, tenderers will receive a certificate of their site visit.

# TENDER DOCUMENTS

## CONTENT OF TENDER DOCUMENTS

The set of tender documents comprises the documents specified in the invitation letter.

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.

## EXPLANATIONS CONCERNING TENDER DOCUMENTS

### Tenderers may submit questions in writing up to 21 days before the deadline for submission of tenders, specifying the publication reference and the contract title:

Directorate of Public Works

NovakaMiloševa 18,

81000 Podgorica, Montenegro

Fax: +382 20 230-228

E-mail: djr@gov.me

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

The Contracting Authority must reply to all tenderers’ questions at least 11 days before the deadline for receipt of tenders.

### The questions and answers will be published on the Europe Aid website at <https://webgate.ec.europa.eu/europeaid/online-services/index.cfm?do=publi.welcome>and on the Directorate of Public Works - Montenegro website [www.djr.gov.me/direkcija](http://www.djr.gov.me/direkcija) and on the Ministry of Sustainable Development and Tourism website [www.mrt.gov.me](http://www.mrt.gov.me).

## MODIFICATIONS TO TENDER DOCUMENTS

### The Contracting Authority may amend the tender documents by publishing modifications up to 11 days before the deadline for submitting tenders.

### Each modification published will constitute a part of the tender documents and will be published on the Europe Aid website <https://webgate.ec.europa.eu/europeaid/online-services/index.cfm?do=publi.welcome>and on the Directorate of Public Works - Montenegro website [www.djr.gov.me/direkcija](http://www.djr.gov.me/direkcija) and on the Ministry of Sustainable Development and Tourism website [www.mrt.gov.me](http://www.mrt.gov.me).

### 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

## LANGUAGE OF TENDERS

### 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.

### 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.

## CONTENT AND PRESENTATION OF TENDER

### 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 4.3 in Volume 1, Section 4 of the tender dossier.

#### 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.

### The works are divided in 2 (two) lots:

**Lot 1- Design and Construction of the Wastewater Treatment Plant in the Municipality of Berane (WWTP Berane);**

**Lot 2 - Rehabilitation and Construction of the Sewerage Network in Berane**

### The tenderer may submit a tender for either Lot 1 or Lot 2 or both lots.

#### Each lot will form a separate contract and the quantities indicated for different lots will be indivisible. The tenderer must offer the entire quantity or quantities indicated for each lot. Under no circumstances will tenders for part of the quantities required be taken into consideration.

#### 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 to it. The discount should be clearly indicated in such a way that it can be announced at the public tender opening session.

#### Contracts will be awarded lot by lot, but the Contracting Authority must choose the most favourable overall solution taking account of the discounts offered.

## INFORMATION/DOCUMENTS TO BE SUPPLIED BY THE TENDERER

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

#### Tender form and appendix, using the forms provided in Volume 1, section 2;

#### Documentation as required in the questionnaire in Volume 1, Section 4, including all forms attached;

#### The forms provided in Volume 4:

Section 1Schedule of Prices

Section 2 Schedule of Guarantees (Lot 1 only)

Section 3Equipment Datasheets (Lot 1 only)

Following Contract Conditions for Lots within the project, Breakdown of the overall price is given in sections

1.2. Lot 1 – Breakdown of the lump-sum price for Design and Construction of WWTP in Berane

1.3. Lot 2 – Bill of Quantities for Rehabilitation and Construction of Sewerage Network in Berane

Financial Bid may include either Lot 1 or Lot 2 or may be comprised of both Lot 1 and Lot 2.

The Breakdown of the Lump-sum Price and the Detailed Breakdown of Prices do not derogate in any way to the clause stating that, in a lump-sum contract, the total contract price remains fixed irrespective of the quantity of work actually carried out.

##### The prices in Volume 4 are deemed to have been set on the basis of the conditions in force 30 days prior to the deadline for submitting tenders.

#### Cash flow statements.

#### Copies of the most recent documents showing the organisation chart, legal status and place of registration of the tenderer's headquarters, a power of attorney empowering the person signing the tender and all related documentation. These documents must follow the forms in Volume 1, Section 4 of the tender dossier:

* general information about the tenderer (Form 4.1)
* organisation chart (Form 4.2)
* power of attorney (Form 4.3).

#### 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 Form 4.4, Financial statement, in Volume 1, Section 4 of the tender documents.

#### 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.

#### Financial identification form (Form 4.5a, Volume 1) and Legal Entity File (Form 4.5b, Volume 1).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.

#### Information about the tenderer’s technical qualifications. This information must follow the forms in Volume 1, Section 4 of the tender documents and include:

* a presentation of the tenderer’s organisation, including the total number of staff employed (Form 4.6.1.1),
* a list of the staff proposed for execution of the contract, with the CVs of key staff (Forms 4.6.1.2 and 4.6.1.3),
* a list of plant for execution of the contract. The descriptions must demonstrate the tenderer’s ability to complete the works and should include amongst others, the following elements:

|  |  |  |
| --- | --- | --- |
| **Equipment** | **Lot 1 / minimum quantities** | **Lot 2 / minimum quantities** |
| Excavator, hydraulic, 0.5 m2 | 3 | 3 |
| Truck , dumper,10t | 2 | 6 |
| Truck, dumper, 20 t | 6 | - |
| Track loader, shovel 2.5 m3 | 2 | 3 |
| Bulldozer, D4 or equivalent | 2 | - |
| Grader | 2 | - |
| Vibrating Roller 14 t or equivalent | 4 | - |
| Vibratory plate | - | 3 |
| Mobile crane | 1 |  |
| Compressor with pneumatic tools | - | 3 |
| Concrete mixer truck with pump, 8m3 | 3 | 2 |
| Asphalt cutter | - | 2 |

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 (Form 4.6.2);

* a list of materials and any supplies intended for use in the works, stating their origin ( Lot 1: Volume 4, Section 3)
* a work plan with brief descriptions of the main tasks (Form 4.6.3), 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 (Form 4.6.3);
* data on subcontractors and the percentage of works to be subcontracted (Form 4.6.3);
* 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 (Form 4.6.4). The evidence must include successful experience as the prime contractor in construction of: please see below the point 12.2 *Technical and professional capacity of candidate*;
* information regarding the proposed main site office (Form 4.6.3);
* an outline of the quality assurance system(s) to be used (Form 4.6.7).
* if applicable, information on tenderers involved in a joint venture/consortium (Form 4.6.5);
* details of their litigation history over the last 5 years (Form 4.6.6);
* details of the accommodation and facilities to be provided for the Supervisor/Engineer (Form 4.6.8);
* Tenderer’s environmental management plan (EMP) (Form 4.6.9);
* Tender Design and Specification(only for Lot1) (Form 4.6.10);
* Outline of the Training Program (only for Lot1)(Form 4.6.11);
* Cash Flow Schedule (Form 4.6.12);
* Certificate of Site Visit attendance (Form 4.6.13);
* Any further information (Form 4.6.14).

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

#### Modifications (if any);

#### Tender guarantee, using the form provided in Volume 1, Section 3, issued in original

#### All tenders must include the site visit certificate.

### 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.

The selection criteria for each tenderer are as follows:

***Economic and financial capacity of candidate:***

* Minimum average annual turnover for construction works in the last 3 financially closed years cannot be lower than: **For Lot 1: EUR 14 million; For Lot 2: EUR 12 million.** If the Tenderer applies for both Lots, the requirement is cumulative (if the cumulative requirement is not met, the Tenderer will be awarded the contract for one Lot only, taking into consideration the most favourable overall solution for the Contracting Authority, as per 11.2.3 of the ITT).

The consortium as a whole must satisfy the minimum qualifications required. The consortium leader must meet at least 50 % of the requirement. Each member of the consortium must meet at least 10% of the requirement.

**Evidence:** The above requirements should be demonstrated by audited financial statements (balance sheet, profit & loss statement, cash flow statement) of the tenderer for the last 3 financial years, which were audited by a Chartered accountant/auditor.

* The tenderer shall demonstrate, by a bank statement that, he has available or has access to lines of credit or any other credit facilities sufficient to meet the construction cash flow (other than pre-financing) for the duration of the contract of not less than (**For Lot 1: EUR 1.5 million; For Lot 2 EUR 1.2 million**) in addition to the tenderer's commitments for other contracts.

The consortium as a whole must satisfy the minimum qualifications required.

**Evidence**: Tenderer may provide evidence of access to credit facilities by submitting a Letter of Intent from its commercial bank, stating that the bank is ready to approve a loan to the Tenderer in the value of not less than (**For Lot 1: EUR 1.5 million; For Lot 2 EUR 1.2 million**); in the case the Tenderer is awarded the contract. The statement must be provided by a reputed bank of good standing and it shall clearly demonstrate that the credit facility is available specifically for this project.

***Technical and professional capacity of candidate:***

The tenderer shall present evidence on:

***For LOT 1 – Design and construction of the Wastewater Treatment Plant in the Municipality of Berane (WWTP Berane):***

a) ) The tenderer (*in the case of consortium, the consortium as a whole must satisfy the minimum requirement*) must have completed as a prime contractor (lead company in a Consortium) at least **2** works contracts for the construction of WWTP cumulative value of EUR 7,000,000 (seven million) of which minimum one of 20.000 population equivalent (p.e.) with SBR (Sequencing Batch Reactors) technology over the last 5 years prior to the submission deadline.

The contract is considered completed if at least taking over or equivalent certificate is issued by a competent authority (Employers, Contracting Authorities, Clients or Engineers) clearly indicating the date of successful completion.

Tenderers must submit such a certificate signed by the competent authority for the project concerned.

b) The tenderer (*in the case of consortium, the consortium as a whole must satisfy the minimum requirement*) must have completed as a prime contractor (lead company in a Consortium) at least 2 contracts comprising the detailed design of WWTPs for minimum 20.000 population equivalent (p.e.) with SBR (Sequencing Batch Reactors) technology over the last 5 years prior to the submission deadline.

The contract is considered completed if at least taking over certificate or equivalent certificate is issued by a competent authority (Employers, Contracting Authorities, Clients or Engineers) clearly indicating the date of successful completion/acceptance of the detailed design.

Tenderers must submit such a certificate signed by the competent authority for the project concerned.

An individual contract submitted, that covers both fields of expertise (*requested under a) and b) - Technical and professional capacity of candidate*), will be counted as two separate referent projects that complies with both: a) and b) criteria

c) The tenderer must be a registered firm or natural person legally capable of carrying out the specified works (*in the case of a consortium, this requirement applies to all members of the consortium*).

d) At the moment of tender submission, the tenderer shall have a professional licence(s), certificate(s) (or right), in accordance with the laws of the country in which he is established (or equivalent) for the execution of the construction works. For the purpose of tender evaluation, legal requirements must be respected from every member of a consortium while for professional licence only one member is sufficient to have it. At the moment of Contract signing (or the latest on the Commencement Date), the Contractor will have to be accredited (authorised) and registered in accordance with the relevant legislation of Montenegro. This includes, but is not limited to:

*- Law on spatial development and construction of structure (Official Gazette of Montenegro, No. 51/08 with addenda);*

*- Law on health and safety at work (Official Gazette of Montenegro no. 79/04 and Official Gazette of Montenegro no. 26/10, 40/11);*

*- The applicable rulebook on licensing of foreign entities is “Rulebook on the conditions and manner of validation and cancelation of the licence for foreign bodies” (Official Gazette of Montenegro no. 79/04 and Official Gazette of Montenegro no. 68/08, 33/11), [Pravilnik o uslovima i načinu ovjeravanja i poništavanja ovjere licence stranog lica” ("Sl. list Crne Gore", br. 68/08 od 12.11.2008, 33/11 od 08.07.2011) ], with addenda (if any).*

More information can be found at the following links: <http://www.atcg.co.me/cg/> , or at: <http://www.ingkomora.me/>

e) Tenderer’s key personnel appropriate qualifications, skills and experience as follows:

**Project Manager** **– Contractor’s Representative**

***Qualifications and skills***

University degree in Engineering. Fluency in written and spoken English (i.e. corresponding to level 1 in form 4.6.1.3)

***General professional experience***

Minimum 10 years of experience in the water field

***Specific professional experience***

Must have worked in at least 2 completed contracts/projects as Project Manager for the construction/reconstruction/extension/modernisation of WWTP with minimum capacity of 20.000 p.e., based on design & build contract, governed by the FIDIC Conditions of Contract, or comparable contract conditions.

**Site Manager**

***Qualifications and skills***

University degree in Engineering. Fluency in written and spoken English (i.e. corresponding to level 1 in form 4.6.1.3)

***General professional experience***

Minimum 10 years of experience in the water field

***Specific professional experience***

Must have worked in at least 2 completed contracts/projects as Site Manager/Project Manager for construction/ reconstruction/ extension/ modernisation of a WWTP with minimum capacity of 20.000 p.e., based on design & build contract, governed by the FIDIC Conditions of Contract, or comparable contract standard.

**Process Design Engineer**

***Qualifications and skills***

University degree in Engineering. Fluency in written and spoken English (i.e. corresponding to level 1 in form 4.6.1.3)

***General professional experience***

Minimum 7 years of experience in the water field

***Specific professional experience***

Must have worked as main Process Design Engineer and must have developed at least 2 completed designs of WWTPs minimum capacity of 27.000 p.e. each, including secondary (biological) treatment with nutrient removal) (one contract must have included Sequencing Batch Reactors – SBR technology).

* Tenderer shall also provide names and qualification details of the following Experts who shall be engaged in the implementation of the contract: **Civil Hydraulic Expert, Mechanical Engineer, Electrical Engineer, Architectural Engineer, Civil Engineer-Structure, Geodetic Surveyor, Geotechnical Engineer, SCADA-Automatic Control Engineer and any other expert considered necessary by the tenderer.**

*Note: At the moment of tender submission, the Expert(s) shall have a professional licence(s), certificate(s) (or right), in accordance with the laws of the country in which he/she is located, or equivalent, for performance of his/her profession. At the moment of Contract signing (or the latest on the Commencement Date) the Expert will have to possess a professional licence(s), certificate(s) (or right), in accordance with the relevant legislation of Montenegro. This includes but is not limited to:*

*- Law on spatial development and construction of structures, Official Gazette of Montenegro, No. 51/08 with addenda);*

*- Law on health and safety at work (Official Gazette of Montenegro no. 79/04 and Official Gazette of Montenegro no. 26/10, 40/11);*

*- The applicable rulebook on licensing of foreign entities is “Rulebook on the conditions and manner of validation and cancelation of the licence for foreign bodies” (Official Gazette of Montenegro no. 79/04 and Official Gazette of Montenegro no. 68/08, 33/11), [Pravilnik o uslovima i načinu ovjeravanja i poništavanja ovjere licence stranog lica” ("Sl. list Crne Gore", br. 68/08 od 12.11.2008, 33/11 od 08.07.2011) ], with addenda (if any).*

More information can be found at the following links: <http://www.atcg.co.me/cg/> , or at: <http://www.ingkomora.me/>

**For the purpose of this tender (Lot1), design and construction of a municipal Waste Water Treatment Plant is considered as valid professional experience for the tenderer or for the key personnel if it is within a scope and complexity equivalent to the new construction required in Employer’s Requirements of this Tender Dossier.**

***For LOT 2 - Construction of the Sewerage Network in Berane:***

a) The tenderer (*in the case of consortium, the consortium as a whole must satisfy the minimum requirement*) must have completed as a prime contractor (lead company in a Consortium) works contracts of the same nature, over the last **5** years prior to the submission deadline with its own resources:

* At least 2 (two) water supply and/or wastewater / storm water (dam and irrigation projects will not be accepted) construction projects, each with a minimum value of 3,000,000 EUR or equivalent;
* At least 1 (one) works contracts containing at least 15 km long pipeline construction (similarity will be based on water supply, waste water, storm water), but 15 km pipeline should be in a single contract.

An individual contract submitted, that covers both fields of experience above, will be counted as two separate referent projects that comply with both criteria.

The contract is considered completed if at least taking over certificate is issued by a competent authority (Employers, Contracting Authorities, Clients or Engineers) clearly indicating the date of successful completion.

Tenderers must submit such a certificate signed by the competent authority for the project concerned.

b) The tenderer must be a registered firm or natural person legally capable of carrying out the specified works (*in the case of a consortium, this requirement applies to all members of the consortium*).

c) At the moment of tender submission, the tenderer shall have a professional licence(s), certificate(s) (or right), in accordance with the laws of the country in which he is established (or equivalent) for the execution of the construction works. For the purpose of tender evaluation, legal requirements must be respected from every member of a consortium while for professional licence only one member is sufficient to have it. At the moment of Contract signing (or the latest on the Commencement Date), the Contractor will have to be accredited (authorised) and registered in accordance with the relevant legislation of Montenegro. This includes, but is not limited to:

*- Law on spatial development and construction of structure (Official Gazette of Montenegro, No. 51/08 with addenda);*

*- Law on health and safety at work (Official Gazette of Montenegro no. 79/04 and Official Gazette of Montenegro no. 26/10, 40/11);*

*- The applicable rulebook on licensing of foreign entities is “Rulebook on the conditions and manner of validation and cancelation of the licence for foreign bodies” (Official Gazette of Montenegro no. 79/04 and Official Gazette of Montenegro no. 68/08, 33/11), [Pravilnik o uslovima i načinu ovjeravanja i poništavanja ovjere licence stranog lica” ("Sl. list Crne Gore", br. 68/08 od 12.11.2008, 33/11 od 08.07.2011) ], with addenda (if any).*

More information can be found at the following links: <http://www.atcg.co.me/cg/> , or at: <http://www.ingkomora.me/>

d) Tenderer’s key personnel appropriate qualifications, skills and experience as follows:

**Project Manager - Contractor's Representative:**

He/She will manage the contract and act as the contractor's representative according Clause 4.3 of General Conditions of Contract be present on site full time during construction and upon call during DNP. He/She shall:

* possess a university degree in civil engineering, or other relevant technical discipline;
* have at least 10 years of professional experience in civil engineering, or other relevant technical discipline;
* possess proven experience of having at least two (2) successfully completed projects under FIDIC Contract Conditions on the position of Contractor’s Representative or Project Manager
* have at least 3 years of professional experience in sewerage collection projects, related to the construction, supervision and/or management of at least one project value above 3,000,000.00 €
* possess a high level of English (i.e. corresponding to level 1 in form 4.6.1.3);

If the Tenderer applies for both Lots, in addition to aforesaid, the Contractor’s Representative must have worked in at least 2 completed contracts/projects for the construction/reconstruction/extension/modernisation of WWTP with minimum capacity of 20.000 p.e., based on design & build contract, governed by the FIDIC Conditions of Contract, or comparable contract conditions.

**Site Engineer for the sewerage network:**

He/She shall be in charge of the execution of the sewerage network and be present on site full time. He/She shall:

* possess a university degree in civil engineering;
* have at least 10 years of professional experience in civil engineering;
* have at least 5 years of professional experience in site management of sewerage networks;
* possess a good level of English (i.e. corresponding to levels 1, 2 or 3 in form 4.6.1.3).

*Note: At the moment of tender submission, the Expert(s) shall have a professional licence(s), certificate(s) (or right), in accordance with the laws of the country in which he/she is located, or equivalent, for performance of his/her profession. At the moment of Contract signing (or the latest on the Commencement Date) the Expert will have to possess a professional licence(s), certificate(s) (or right), in accordance with the relevant legislation of Montenegro. This includes but is not limited to:*

*- Law on spatial development and construction of structures, Official Gazette of Montenegro, No. 51/08 with addenda);*

*- Law on health and safety at work (Official Gazette of Montenegro no. 79/04 and Official Gazette of Montenegro no. 26/10, 40/11);*

*- The applicable rulebook on licensing of foreign entities is “Rulebook on the conditions and manner of validation and cancelation of the licence for foreign bodies” (Official Gazette of Montenegro no. 79/04 and Official Gazette of Montenegro no. 68/08, 33/11), [Pravilnik o uslovima i načinu ovjeravanja i poništavanja ovjere licence stranog lica” ("Sl. list Crne Gore", br. 68/08 od 12.11.2008, 33/11 od 08.07.2011) ], with addenda (if any).*

More information can be found at the following links: <http://www.atcg.co.me/cg/> , or at: <http://www.ingkomora.me/>

Unless otherwise stated above, for the purpose of this tender LOT2 - Construction of the Sewage System in the Municipality of Berane, the experience is considered as valid professional experience for the tenderer or for the key personnel if it is within a scope, nature and complexity at least equivalent to those required in the technical specifications (Employer’s Requirements) of this Tender Dossier (for LOT2).

An economic operator may, where appropriate and for a particular contract, rely on the capacity 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 relies mostly on the capacity of other entities or when it relies on key criteria. If the tenderer relies on other entities, it must prove to the Contracting Authority that it will have at its disposal the resources necessary to perform the contract, for example by producing an undertaking on the part of those entities to place 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 tender should include a separate document providing data on this third entity for the relevant selection criterion. Proof of capacity must be furnished at the request of the Contracting Authority

### 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. See Form 4.6.5 in Volume 1 and the tender form.
* 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.

## TENDER PRICES

### The currency of the tender is EURO[[2]](#footnote-2)

### The tenderer must provide the Price Schedules (Breakdown of the Lump-sum for Lot 1, and BoQ for Lot 2) in EURO. The tender price must cover all works as described in the tender documents. All sums in the Price Schedules, the questionnaire and other documents must also be expressed in this currency, with the exception of originals of bank and annual financial statements.

### Tenderers must quote all components of thePrice Schedules. 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 Price Schedules.Prices do not include taxes and fiscal duties, as exoneration is explicitly given in the contract. Non-exonerated taxes and fiscal duties, apart from those stated separately in the financial tender templates, are covered in the Lump–sum Price of the contract and in the various prices of the Breakdown of the Lump-sum Price and the Dailywork Schedule.

### If a discount is offered by the tenderer, it must be clearly specified in Price Schedules in Volume 4 and indicated in the tender form in Volume 1, Section 1.2. The discount must be quoted for all works.

### 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.

## PERIOD OF VALIDITY OF TENDERS

### 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.

### 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 acceptthe 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.

### 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.

## TENDER GUARANTEE

### The tenderer must provide, as a part of its tender, a tender guarantee in the form set out in Volume 1, Section 3 of the tender dossier, or in another form acceptable to the Contracting Authority that meets the essential requirements set out therein. The tender guarantee must be for an amount of:**EUR 120,000 for LOT 1and EUR 90,000 for LOT 2**. The original guarantee must be included in the original tender.

### 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.

### 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.

### The tender guarantees of unsuccessful tenderers will be returned together with the information letter that the tenderer has been unsuccessful.

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

## VARIANT SOLUTIONS

Variant solutions will not be taken into consideration.

# SUBMISSION OF TENDERS

## SEALING, MARKING AND SUBMITTING TENDERS

### The complete tender must be submitted in **1 (one) original**, clearly marked ‘original’ and **5 (five) copies,** clearly marked ‘copy’. In the event of any discrepancy between them, the original will prevail. Tenderers shall also submit electronic copy of the Tender on the CD. In the event of inconsistency between the electronic version and hard copy, the hard copy version will prevail.

### 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.

### 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 the Contracting Authority or its representative.

The tender must be sent to the following address:

Directorate of Public Works

NovakaMiloševa 18,

81 000 Podgorica, Montenegro

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

Directorate of Public Works

NovakaMiloševa 18,

81 000 Podgorica, Montenegro

Opening hours: 08:00h to 16:00 h

### Tenders, including annexes and all supporting documents, must be submitted in a sealed envelope bearing only:

1. the above address;
2. the reference code of this tender procedure, Europe Aid/136869/IH/WKS/ME
3. where applicable, the number of the lot(s) tendered for;
4. the words ‘Not to be opened before the tender opening session’ in the language of the tender dossier and "**Ne otvarati prije zvaničnog otvaranja ponuda**".
5. the name of the tenderer.

## EXTENSION OF THE DEADLINE FOR SUBMITTING TENDERS

The Contracting Authority may, on its own discretion, extend the deadline for submitting tenders by issuing anamendment 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.

## LATE TENDERS

### 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.

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

## ALTERING AND WITHDRAWING TENDERS

### 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.

### 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

## OPENING TENDERS

### 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.

### Tenders will be opened in public session on the date and venue specified in point 20 of the Contract notice by the committee appointed for that purpose. The committee will draw up minutes of the meeting, which must be available to tenderers on request.

### 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 (if required) and such other information the Contracting Authority may consider appropriate may be announced.

### 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.

## EVALUATING TENDERS

The Contracting Authority reserves the right to ask a tenderer to clarify any part of itstender 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.

### 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 (if required);
* 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.

### Technical evaluation

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

The purpose of the evaluation process is to identify the tenderer which for the lowest cost is most likely to enable the Contracting Authority to achieve its objectives of having a facility that is completed on time, meets the published criteria and is within the budget available. The evaluation of tenders may take into account not only the construction costs but, if necessary, the operating costs and resources required (ease of operation and maintenance), in line with the technical specifications. The Contracting Authority will examine in detail all the information supplied by the tenderers and will formulate its judgment on the basis of the lowest total cost, including additional costs.

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.

### 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.

Note (for LOT 1 only):

The evaluation of Tenders will take into account not only the construction costs (CAPEX), but also Operation Costs (OPEX).

The Evaluation Committee will especially check the power and chemical consumption tables to satisfy itself that the Tenderer’s estimates are reasonable (e.g. all power consumers, according to Tenderer’s technical proposal, are included, correct power ratings used, etc.).

If the Evaluation Committee considers that the Tenderer has submitted unreasonably low power and/or chemical consumptions, and/or unjustified low sludge/residue generation amounts not substantiated by corresponding calculations, or if mistakes or contradictions are detected, the Evaluation Committee will request the Tenderer for a detailed technical justification, based on international recognized standards and best practices as applicable, together with supporting calculations linked to the Tenderer’s process and hydraulic calculations and manufacturer’s specifications of the equipment which is proposed.

If the Tenderer confirms the value(s) submitted with his Proposal but fails to submit a reasonable technical justification for his low power or chemical consumptions, the Proposal will be rejected.

If the Tenderer acknowledges that there is an error or omission, he shall notify the Evaluation Committee accordingly and shall provide an explanation in the form of a clarification as permitted under the procedural rules of Tendering as set out in these Instructions. However the Tenderer must not submit a revised consumption Table or new technical data or otherwise seek to change or enhance his Proposal in contravention of Clause 23

## CORRECTING ERRORS

### 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.

### 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

## AWARD CRITERIA

For LOT 1:

The contract will be awarded to the administratively and technically compliant tender, whose whole life cost is the lowest (the whole life cost is equal to the investment cost + 14 guaranteed yearly operational costs).

Taking due account of any discounts offered, the following formula will apply:

CP = CAPEX + 14 x (OPEX)

Where CP = Comparable Price,

CAPEX = Capital Cost (i.e. Tender Price = The Price for Construction Works + Contingencies + Daywork) and

OPEX = Operating Costs for One Year

For LOT 2:

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

## 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.

Documentary evidence required from the successful tenderer:

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,for consortia, each of the companies) is established, to show that it does not fall into any of the exclusion situations listed in section 2.3.3 of the Practical Guide. This evidence, documents or statements must carry a date, which cannot be more than one year before the date of submission of the tender. In addition, a statement must be furnished stating that the situations described in these documents have not changed since then. The above-mentioned documents must be submitted for the tenderer, every member of a joint venture/consortium, all subcontractors providing more than 10 % of the works and every supplier providing more than 10 % of the works. For any other subcontractor or supplier, the successful tenderer must submit a declaration from the intended subcontractor or supplier that it is not in one of the exclusion situations. In the event of doubt on this declaration of honour, the Contracting Authority must request documentary evidence that they are not in a situation of exclusion.

Evidence of financial, economic, technical and professional capacity according to the selection criteria specified in subsection 12.2 above will be requested unless satisfactory documents are already included in the tender.

If the successful tenderer fails to provide this documentary proof or statement within 15 calendar days following notification of award or if the successful tenderer is found to have provided false information, the award will be considered null and void. In this case, the Contracting Authority may award the tender to the next lowest tenderer or cancel the tender procedure.

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.

## CONTRACT SIGNING AND PERFORMANCE GUARANTEE

### 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.

### 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.

### 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 in accordance with the Special Conditions.

## 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 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.**

## ETHICS CLAUSES

### 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.

### 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.

### 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.

### 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.

### 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.

### 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.

### 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.

### The contract governs the Parties’ use of all reports and documents drawn up, received or presented by them during execution of the contract.

### 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.

### 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.

### 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.

### 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.

### 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.

### 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.

## 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.

\* \* \*

1. 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. [↑](#footnote-ref-1)
2. The currency of tender will be the currency of the contract and of payment. [↑](#footnote-ref-2)