

**VOLUME 1**

**SECTION 1:**

**INSTRUCTIONS TO TENDERERS**

## **VOLUME 1 SECTION 1 - INSTRUCTIONS TO TENDERERS**

**PUBLICATION REF.: NEAR/ANK/2020/EA-OP/0030**

**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 tender without further evaluation.**

**These instructions set out the rules for the submission, selection and implementation of contracts financed under this call for tenders, in conformity with the provisions of the practical guide, which is applicable to this call (available on the internet at this address: <http://ec.europa.eu/europeaid/prag/document.do> ).**

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# GENERAL PART

## GENERAL INSTRUCTIONS

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

1.2. Timetable

	DATE	TIME*
<b>Clarification meeting</b>	26.01.2021	10:30
<b>Site visit</b>	26.01.2021	11:00
<b>Deadline for requesting any additional information from the contracting authority</b>	02.03.2021	16:00 hrs
<b>Last date on which additional information are issued by the contracting authority</b>	12.03.2021	-
<b>Deadline for submitting tenders</b>	23.03.2021	14:00 hrs
<b>Tender opening session</b>	30.03.2021	14:30 hrs
<b>Notification of award to the successful tenderer**</b>	May 2021	-
<b>Signature of the contract**</b>	June 2021	-

\* All times are in the time zone of the country of the contracting authority

\*\* Provisional data

## 2. FINANCING

The project is co-financed by the European Union, in accordance with the rules of Multi-annual action programme for Turkey: Environment and Climate Action and the Regulation (EU) No 236/2014 programme.

The project is co-financed by the Republic of Turkey.

## 3. PARTICIPATION

3.1. Participation is open to all natural persons who are nationals of and legal persons (participating either individually or in a grouping – consortium – of tenderers) which are effectively established in a Member State of the European Union or in an eligible country or territory as defined under the Regulation (EU) N° 236/2014 establishing common rules and procedures for the implementation of the Union's instruments for external action (CIR) for the applicable instrument under which the contract is financed (see also the additional information about the contract notice). Participation is also open to international organisations. All supplies under this contract must originate in one or more of these countries. However, they may originate from any country when the amount of the supplies to be purchased is below EUR 100 000

For UK candidates or tenderers: Please be aware that following the entry into force of the EU-UK Withdrawal Agreement\* on 1 February 2020 and in particular Articles 127(6), 137 and 138, the references to natural or legal persons residing or established in a Member State of the European Union and to goods originating from an eligible country, as defined under Regulation (EU) No 236/2014\*\* and Annex IV of the ACP-EU Partnership Agreement\*\*\*, are to be understood as including natural or legal persons residing or established in, and to goods

originating from, the United Kingdom \*\*\*\*. Those persons and goods are therefore eligible under this call.

\* Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.

\*\* Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action.

\*\*\* Annex IV to the ACP-EU Partnership Agreement, as revised by Decision 1/2014 of the ACP-EU Council of Ministers (OJ L196/40, 3.7.2014)

\*\*\*\* including the Overseas Countries and Territories having special relations with the United Kingdom, as laid down in Part Four and Annex II of the TFEU

- 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.
- 3.3. The eligibility requirement detailed in subclauses 3.1 and 3.2 applies to all members of a joint venture/consortium and all subcontractors, as well as to all entities upon whose capacity the tenderer relies for the selection criteria. Every tenderer, member of a joint venture/consortium, every capacity-providing entity, every subcontractor and every supplier must certify that they meet these conditions. They must prove their eligibility by a document dated less than one year earlier than the deadline for submitting tenders, drawn up in accordance with their national law or practice or by copies of the original documents stating the constitution and/or legal status and the place of registration and/or statutory seat and, if it is different, the place of central administration. The contracting authority may accept other satisfactory evidence that these conditions are met.
- 3.4. Natural persons, companies or undertakings falling into a situation set out in Section 2.4. (EU restrictive measures), 2.6.10.1. (exclusion criteria) or 2.6.10.1.2. (rejection from a procedure) of the practical guide, are not entitled to participate in this tender procedure or be awarded a contract. Should they do so, their tender will be considered unsuitable or irregular respectively. Tenderers must provide declarations to the effect that they are not in any of the exclusion situations listed in Section 2.6.10.1. of the practical guide. The declarations must cover all the members of a joint venture/consortium and must also be submitted by any sub-contractor or capacity providing entity. Tenderers guilty of making false declarations may also incur financial penalties up to 10% of the total value of the contract and exclusion, in accordance with the Financial Regulation in force.
- 3.5. The exclusion situation referred to in sub-clause 3.4 applies to all members of a joint venture/consortium, all subcontractors and all suppliers to tenderers, as well as to all entities upon whose capacity the tenderer relies for the selection criteria.
- 3.6. Subcontracting is allowed but the contractor will retain full liability towards the contracting authority for performance of the contract as a whole.

#### **4. ONLY ONE TENDER PER TENDERER**

A company may not tender for a given contract both individually and as a member of a joint venture/consortium. Participation by a tenderer in more than one tender for a contract will result in the disqualification of all those tenders for that contract in which the party is involved. The same company may only participate as subcontractor in different tenders if that is justified by the specific nature of the market and cleared by the contracting authority.

## **5. TENDER EXPENSES**

- 5.1. The tenderer will bear all costs associated with preparing and submitting the tender. The Contracting Authority will not be responsible or liable for such costs, whatever the conduct or outcome of the procedure.
- 5.2. The contracting authority will neither be responsible for, nor cover, any expenses or losses incurred by the tenderer through site visits and inspections or any other aspect of its tender.

## **6. SITE VISIT AND CLARIFICATION MEETING**

- 6.1. The tenderer is strongly advised to visit and inspect the site of the works and its surroundings for the purpose of assessing, at its own responsibility, expense and risk, the factors necessary for preparing its tender and signing the contract for the works (date, time and place, see the additional information about the contract notice.)
- 6.2. A clarification meeting and/or a site visit will be held by the contracting authority (date, time and place, see the additional information about the contract notice).
- 6.3. The minutes of the clarification meeting and the site visit will be published on the website of DG International Cooperation and Development and the website of the contracting authority. As proof of participation, the tenderers will receive a certificate of their site visit.

## **7. 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.

## **8. EXPLANATIONS CONCERNING TENDER DOCUMENTS**

- 8.1. 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:

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General Directorate of European Union and Foreign Relations,

Ministry of Environment and Urbanization,

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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.

- 8.2. The questions and answers will be published on TED eTendering accessible from the F&T portal at <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/home> and the Contracting Authority's web site at <http://www.ipa.gov.tr>.

## 9. MODIFICATIONS TO TENDER DOCUMENTS

- 9.1. The contracting authority may amend the tender documents by publishing modifications up to 11 days before the deadline for submitting tenders.
- 9.2. Each modification published will constitute a part of the tender documents and will be published on TED eTendering accessible from the F&T portal at <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/home> and the Contracting Authority's web site at <http://www.ipa.gov.tr>.
- 9.3. The contracting authority may, as necessary and in accordance with Clause 18, extend the deadline for submitting tenders to give tenderers sufficient time to take modifications into account when preparing their tenders.

## TENDER PREPARATION

### 10. LANGUAGE OF TENDERS

- 10.1. The tender and all correspondence and documents related to the tender exchanged by the tenderer and the contracting authority must be written in the language of the procedure, which is English. All correspondence relating to payments, including invoices and interim and final payment certificates, must also be sent to the contracting authority in English.
- 10.2. If supporting documents are not written in one of the official languages of the European Union, a translation into the language of the call for tender must be attached. Where the documents are in an official language of the European Union other than English, it is strongly recommended to provide a translation into the language of the call for tenders, in order to facilitate the evaluation of the documents.**

### 11. CONTENT AND PRESENTATION OF TENDER

- 11.1. Tenders must satisfy the following conditions:
- 11.1.1. Tenders must comprise the documents and information in Clause 12 below.
  - 11.1.2. The tender must be signed on behalf of the tenderer/joint venture/consortium by a person or persons duly authorised to do so, empowered by power of attorney submitted in accordance with Form 4.3 in Volume 1, Section 4 of the tender dossier.
  - 11.1.3. The relevant pages of the documents specified in Clause 12 must be signed as indicated.
  - 11.1.4. The tenderer must provide all documents required by the tender dossier. All such documents, without exception, must comply strictly with these conditions and provisions and contain no amendments made by the tenderer. Tenders which do not comply with the requirements of the tender dossier may be rejected.
- 11.2. The works are divided into 2 (two) lots. The tenderer may submit a tender for several or all of the lots.

- 11.2.1. 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.
- 11.2.2. 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.
- 11.2.3. Contracts will be awarded lot by lot, but the contracting authority must choose the most favourable overall solution taking account of the discounts offered.

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

- 12.1. All tenders must comprise the following information and duly completed documents:
  - 12.1.1. Tender form, together with its Annex 1 "Declaration on honour on exclusion criteria and selection criteria"<sup>1</sup> and its Annex 2 'Appendix to tender for a works contract', using the form provided in Volume 1, Section 2;
  - 12.1.2. Documentation as required in the questionnaire in Volume 1, Section 4, including all forms attached;
  - 12.1.3. The forms provided in Volume 4:
    - LOT 1:  
Volume 4 A  
1.Preamble to Schedule of Payments  
2.Schedule of Payments  
3.Commitments on Unit Rates for OPEX
    - LOT 2:  
Volume 4 B  
1.Preamble to Bill of Quantities  
2.Bill of Quantities

The Breakdown of the Lump-sum Price and the Detailed Breakdown of Prices do not derogate in any way to the clause according to which, in a lump-sum contract, the total contract price remains fixed irrespective of the quantities of work actually carried out.
  - 12.1.3.1. 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.
 

The attention of the Tenderers is drawn on the fact that the OPEX price provided in Volume 4 (Lot -1), Schedule 10 and 11 [Commitments on Annual Operating Costs and Commitments on Unit Rates for OPEX, respectively ], must be accompanied by detailed supporting calculations and that the OPEX price shall not be included in the tender price but it is provided for the purpose described under ITT 13.2.
  - 12.1.4. Cash flow statements as part of the financial statement form (Form 4.4).
  - 12.1.5. 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

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<sup>1</sup> See PRAG 2.6.10.1.3 A)



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).

12.1.6. 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.

12.1.7. 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..

12.1.8. 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.

12.1.9. 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:
  - Earthmoving equipment (for excavation, loading, hauling, filling, compaction, etc)
  - Cranes and lifting equipment
  - Concrete mixing and placing plant
  - Power supply generators
  - Trench shoring and dewatering equipment, etc

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;
- 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 projects referred under 12.2.1.3. of the same nature and complexity comparable to the works concerned by the tender during the last five years (i.e. 60 months prior to deadline for submission of tenders);
  - 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 five years (Form 4.6.6);
  - details of the accommodation and facilities to be provided for the Engineer (Form 4.6.8);
  - eligibility statement (Form 4.6.9)
  - technical solution for lot-1 (Form 4.6.10)
  - further information (Form 4.6.11).
- 12.1.10. Proof documents, declarations and undertakings according to Clauses 3.1-3.6 above. These documents should cover all members of a joint venture/consortium and all subcontractors as specified.
- 12.1.11. 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. However, they may originate from any country when the amount value of the supplies and materials to be purchased is below EUR 100,000. For these purposes, 'origin' means the place where the goods are mined, grown, produced or manufactured and/or from which services are provided. The origin of the goods must be determined according to the relevant international agreements (notably WTO agreements), which are reflected in EU legislation on rules of origin for customs purposes: the Customs Code (Council Regulation (EEC) No 2913/92) in particular its Articles 22 to 26 thereof, and the Code's implementing provisions (Commission Regulation (EEC) No 2454/93).
- Through their tender submission form, tenderers must provide an undertaking signed by their representative certifying compliance with this requirement. The tenderer is obliged to verify that the provided information is correct. Otherwise, the tenderer risks to be excluded because of negligently misrepresenting information. For more details, see Section 2.3.5. of the practical guide.
- 12.1.12. Modifications (if any);
- 12.1.13. Tender security, using the form provided in Volume 1, Section 3;
- 12.1.15. Pay slip of purchasing tender documents
- 12.1.16. Signed copy of the first page in Vol. 2 Section 2 (FIDIC General conditions).

-For Lot 1, FIDIC Conditions of Contract for Plant and Design-Build for Electrical and Mechanical Plant and for Building and Engineering Works Designed by the Contractor (Yellow Book First Edition 1999) published by the Federation Internationale Des Ingenieurs-Conseil (FIDIC) and

-For Lot 2, FIDIC Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer” (Red Book First Edition 1999) published by the Federation Internationale Des Ingenieurs-Conseil (FIDIC)

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

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

- 12.2.1. The selection criteria for each tenderer are as follows:

***12.2.1.1. General:***

The tenderer must be a registered firm or natural person legally capable of carrying out the specified works.

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

The tenderer must satisfy the minimum qualifications required below. In case the tenderer is a joint venture/consortium, the criteria will apply to the joint venture/consortium as a whole. In addition, leading member and the other member(s) of the joint venture/consortium must satisfy the minimum qualifications required in item 12.2.1.4 given below.

- a) Annual Turnover:** (the amount of business done in a year, incomes generated from ongoing works and incomes generated from works undertaken shall be considered as part of the turnover):

The average annual turnover of the tenderer in the last 3 (three) financial years must be minimum of:

**EUR 4,500,000** or equivalent for Lot 1 and

**EUR 4,000,000** or equivalent for Lot 2

This must be proven by the audited balance sheets and income statements of the tenderer for the last 3 financial years which were audited by a Certified Public (Sworn) or Chartered Accountant or approved by Tax Office and any other document necessary to prove annual turnover values of the tenderer (e.g. Cover pages of the interim payment certificates, audited reports of the Certified Public (Sworn) or Chartered Accountant showing the incomes of the tenderer from each contract in each year, documents showing the share of the tenderer in JV, etc.). The yearly income of a company coming from a project undertaken as JVs shall also be added to the turnover calculated, in proportion to the share of the particular company in JV.

**b) Financial Resources:**

The Tenderer shall demonstrate, by a bank statement from his bank, that he has available or has access to liquid assets, lines of credit, or other financial means sufficient to meet the construction cash flow for the Contract of not less than

**EUR 2,500,000** or equivalent for Lot 1 and

**EUR 2,750,000** or equivalent for Lot 2

The evidence shall clearly demonstrate that the financing is available for the concerned contract.

### c) Financial Position:

The tenderer should be in positive profit account for at least 2 of the last 3 financial years. The Audited Financial Statements (audited balance sheets and income tables or, if not required by the law of the tenderer's country, other financial statements acceptable to the Contracting Authority) as well as the report of Certified Public (Sworn) or Chartered Accountant for the last 3 financial years shall be submitted and must demonstrate the soundness of the applicant's financial position, showing long-term profitability.

The Contracting Authority reserves the right to carry out such any further inquiry on the Tenderer's financial standing as the Evaluation Committee may deem appropriate.

Financial data to be provided by the tenderer in relation to the selection criteria must be expressed in EUR. If applicable, where a candidate refers to amounts originally expressed in a different currency, the conversion to EUR shall be made in accordance with the InforEuro exchange rate of December 2020, which can be found at the following address: <http://ec.europa.eu/budget/graphs/inforeuro.html>.

#### *12.2.1.3. Technical and professional capacity of candidate:*

The tenderer must have completed construction works contracts in the nature as defined below as the prime contractor within the last 5 (five) years till to the tender submission deadline. (Taking over (provisional acceptance) or performance (final acceptance) certificates should clearly indicate the works completion dates attesting the fact that the Works have been completed in the last five years; i.e. completion date shall be within 60 months prior to deadline for submission of tenders). The date of taking over / provisional acceptance will be deemed as completion date:

##### a- Lot 1:

1. Regardless of the budget, the tenderer shall have completed construction of at least one wastewater treatment plant with a minimum capacity of **16,000 m<sup>3</sup>/day** average waste water flow rate. Rehabilitation and/or extension works shall not be accepted as similar works.
2. The Tenderer shall have completed as designer, the process design of at least one wastewater treatment plant including nitrogen removal with a minimum capacity of **16,000 m<sup>3</sup>/day** average wastewater flow rate. Designs for extension or rehabilitation of a wastewater treatment plant shall not be accepted.
3. The tenderer shall have completed at least one construction contract according to FIDIC conditions of contract.
4. Regardless of the budget, the tenderer shall have completed design and construction of an anaerobic wastewater sludge digester of any size. Rehabilitation and/or extension works shall not be accepted as similar works.

##### b- Lot 2:

1. The tenderer shall have completed construction of at least one water supply and/or wastewater/stormwater collection network with a value of minimum **EUR 7,500,000** or equivalent; or two water supply and/or wastewater/stormwater collection network each with a minimum value of **EUR 4,000,000** or equivalent.
2. The tenderer shall have completed construction of at least 10 km. wastewater collection network having minimum diameter of 800 mm. within a single contract.
3. The tenderer shall have completed at least one construction contract according to FIDIC conditions of contract.

Previous experience of the tenderer must be proved by original or notary certified copies of taking over (provisional acceptance) or performance (final acceptance) certificates, signed by the supervisors (the Engineer)/Contracting Authority of the projects concerned. The completion date

in the Taking Over / Provisional Acceptance Certificate will be taken into account for this criterion as completion date of the relevant works. Ongoing works of the tenderer will not be taken into consideration.

If all of the works specified above have been performed within the scope of a single contract, it must satisfy each criterion separately.

If a tenderer has implemented the project in a JV/Consortium, it should be clear from the documentary evidence (Taking over (provisional acceptance) or performance (final acceptance) certificates) the percentage the tenderer has completed. Should the submitted documents not provide clear information on the percentage of the works, it will be clarified by further documents.

The Contracting Authority reserves the right to ask for originals of the respective certificates of taking over (provisional acceptance) or performance (final acceptance) certificates signed by the supervisors (the Engineer)/project managers/Contracting Authority of the concerned projects. The Contracting Authority reserves the right to carry out further inquiry on the tenderer's document as the Evaluation Committee may deem appropriate.

Regarding the calculation of the contract amounts for the completed works of the tenderers, the Euro equivalent of the contract amounts at the date of contract signature will be considered and will not be carried to the date of the evaluation as "net present values". For purposes of converting another currency to Euro, the Conversion rates, published in the Official Journal of European Communities shall be used which can be found at: [http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/infoeuro/index\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/infoeuro/index_en.cfm)

*12.2.1.4. A Joint Venture/Consortium shall meet the following particular qualification criteria:*

- i) The leading member shall meet not less than 50 % of the annual turnover criterion and financial resources criterion specified above in items 12.2.1.2 (a), (b);
- ii) Each member shall meet not less than 10 % of the annual turnover criterion and financial resources criterion specified above in items 12.2.1.2 (a), (b);
- iii) Each individual member shall satisfy the legal status criterion stipulated in item 12.2.1.1. The Joint Venture/consortium as a whole must be in positive profit account for at least 2 of the last 3 financial years collectively;
- iv) The Joint Venture/consortium must satisfy collectively the similar works experience, annual turnover and financial resources criteria stated above.

*12.2.2. Capacity-providing entities:*

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. 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 by producing a commitment 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 relying on them and must comply with the selection criteria for which the economic operator relies on them. Furthermore, the tender should include a separate document providing data on this third entity for the relevant selection criterion. Proof of capacity must be provided at the request of the contracting authority.

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

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

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

- The tender must include all the information required in 12.1 above for each member of the joint venture/consortium and summary data for execution of works by the tenderer.

- The tender must be signed in a way that legally binds all members. One member must be appointed lead member and that appointment confirmed by submission of powers of attorney signed by legally empowered signatories representing all members. 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.

### 13. TENDER PRICES

13.1. The currency of the tender is the euro.<sup>2</sup>

13.2. The tenderer must provide

- a. the Schedule of Payments for Lot 1 and
- b. Bill of Quantities for Lot 2

in euro. The tender price must cover all works as described in the tender documents. All sums in the Bill of Quantities and the Schedule of Payments, the questionnaire and other documents must also be expressed in this currency, with the exception of originals of bank and annual financial statements.

The OPEX price for Lot 1 shall not be added to the tender price but left separately. The purpose of OPEX price is (a) to be used during the technical and financial evaluation as described under ITT, 22 and (b) to enforce the observance of the OPEX price of the works during the Defects Notification Period as committed by the Tenderer (see Volume 3, Section 3, Sub- clause 3.4 and 3.5). The tenderers' attention are drawn to the fact that the CAPEX price is sum of the contract price and contingency allowance which is calculated according to percentage specified in Schedule No.1 and forwarded to Article 4 of the contract form as the Accepted Contract Amount.

13.3. Tenderers must quote all components of the Bill of Quantities for Lot 2 and the Schedule of Payments for Lot 1 in Euro Currency. No payment will be made for items which have not been costed; such items will be deemed to be covered by other items on the Bill of Quantities for Lot 2 and the Schedule of Payments for Lot 1.

The prices do not include the taxes and fiscal duties, as exoneration is explicitly given for the contract. Non-exonerated taxes and fiscal duties apart from those stated separately in these financial offer templates, covered in:

the prices of the Schedule of Payments for Lot 1.

the prices of the Bill of Quantities for Lot 2.

13.4. If a discount is offered by the tenderer, it must be clearly specified in the Bill of Quantities and the Schedule of Payments in Volume 4 and indicated in the tender form in Volume 1, Section 2. The discount must be quoted for all works.

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<sup>2</sup> The currency of tender will be the currency of the contract and of payment.

- 13.5.** If the tenderer offers a discount, the discount must be included on each interim payment certificate and calculated on the same basis as in the tender.

## **14. PERIOD OF VALIDITY OF TENDERS**

- 14.1. Tenders must remain valid for a period of 90 days after the deadline for submitting tenders indicated in the contract notice, the invitation to tender or as amended in accordance with Clauses 9 and/or 18.
- 14.2. In exceptional circumstances, the contracting authority may, before the validity period expires, request that tenderers extend the validity of tenders for a specific period, which may not exceed 40 days. Such requests and the responses to them must be made in writing. A tenderer may refuse to comply with such a request without forfeiting its tender security. If the tenderer decides to accept the request, it may not amend its tender and it is bound to extend the validity of its tender security for the revised period of validity of the tender. In case the contracting authority is required to obtain the recommendation of the panel referred to in Section 2.6.10.1.1. of the practical guide, the contracting authority may request an extension of the validity of the tenders up to the adoption of that recommendation.
- 14.3. The successful tenderer must maintain its tender for a further 60 days. This period is in addition to the validity period, irrespective of the date of notification.

## **15. TENDER SECURITY**

- 15.1. The tenderer must provide, as a part of its tender, a tender security 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 security must be for an amount of

**EUR 200,000** for Lot 1 and

**EUR 150,000** for Lot 2.

The original security must be included in the original tender.

- 15.2. It may be provided in the form of a bank guarantee, a banker's draft, a certified cheque, a guarantee provided by an insurance and/or guarantee company or an irrevocable letter of credit made out to the contracting authority.
- 15.3. The tender security must remain valid for 45 days beyond the period of validity of the tender, including any extensions, and be issued to the Contracting Authority for the requisite amount.
- 15.4. The tender securities of unsuccessful tenderers will be returned together with the information letter that the tenderer has been unsuccessful.
- 15.5. The tender security of the successful tenderer must be released when the tenderer has signed the contract and provided the requisite performance security.

## 16. VARIANT SOLUTIONS

Variant solutions will not be taken into consideration.

## SUBMISSION OF TENDERS

### 17. SEALING, MARKING AND SUBMITTING TENDERS

- 17.1 The complete tender must be submitted in one original, clearly marked 'original' and 5 (five) copies, clearly marked 'copy'. In the event of any discrepancy between them, the original will prevail. Tenderers are requested to provide an electronic copy of the Volume 4.
- 17.2 The technical and financial offers must be placed together in a sealed envelope. The envelopes should then be placed in another sealed envelope/package, unless their volume requires a separate submission for each lot.
- 17.3 All tenders must be sent to the contracting authority before the deadline set in the contract notice.

Participants may choose to submit their tender:

(a) either by post or by courier service, in which case the evidence shall be constituted by the postmark or the date of the deposit slip<sup>3</sup>. In such case, the tender must be sent to the following address:

**Mr. İsmail Raci Bayer (Director)**

**General Directorate of European Union and Foreign Relations**

**Ministry of Environment and Urbanization**

Mustafa Kemal Mahallesi Eskişehir Devlet Yolu 9. Km No:278 Çankaya-Ankara / Turkey

(b) or by hand-delivery to the premises of the contracting authority by the participant in person or by an agent, in which case the evidence shall be constituted by acknowledgment of receipt. If tenders are hand delivered they should be delivered to the following address:

**Mr. İsmail Raci Bayer (Director)**

**General Directorate of European Union and Foreign Relations Investments**

**Ministry of Environment and Urbanization**

Mustafa Kemal Mahallesi Eskişehir Devlet Yolu 9. Km No:278 Çankaya-Ankara / Turkey

(09:30-17:30 hrs, Monday to Friday)

The contracting authority may, for reasons of administrative efficiency, reject any application or tender submitted on time to the postal service but received, for any reason beyond the contracting authority's control, after the effective date of approval of the short-list report or of the evaluation report, if accepting applications or tenders that were submitted on time but arrived late would considerably delay the evaluation procedure or jeopardise decisions already taken and notified.

- 17.4 Tenders, including annexes and all supporting documents, must be submitted in a sealed envelope bearing only:
- (a) the above address;
- (b) the reference code of this tender procedure, (i.e., NEAR/ANK/2020/EA-OP/0030);

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<sup>3</sup> It is recommended to use registered mail in case the postmark would not be readable.



- (c) where applicable, the number of the lot(s) tendered for;
- (d) the words 'Not to be opened before the tender opening session' in the language of the tender dossier and "İhale açılış oturumundan önce açılmaz" in Turkish.
- (e) the name of the tenderer.

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

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

## **19. LATE TENDERS**

- 19.1 All tenders submitted 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. See also last paragraph of point 17.3 above.
- 19.2 No liability can be accepted for late delivery of tenders. Late tenders will be rejected and will not be evaluated.

## **20. ALTERING AND WITHDRAWING TENDERS**

- 20.1 Tenderers may alter or withdraw their tenders by written notification prior to the above deadline. No tender may be altered after the deadline for submission. Withdrawals must be unconditional and will end all participation in the tender procedure.
- 20.2 Any notification of alteration or withdrawal must be prepared and submitted in accordance with Clause 17, and the envelope must be marked 'alteration' or 'withdrawal', as appropriate.
- 20.3 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 security.

## **OPENING AND EVALUATING TENDERS**

### **21. OPENING TENDERS**

- 21.1 The purpose of opening and examining tenders is to check whether the tenders are complete, whether the requisite tender securities have been furnished, whether the required documents are included and whether the tenders are generally in order.
- 21.2 Tenders will be opened in public session on the date and venue specified in the contract notice by the appointed committee. The committee will draw up minutes of the meeting, which must be available to tenderers on request.

In the case that at the date of the opening session some tenders have not been delivered to the contracting authority but their representatives can show evidence that they have been sent on time, the contracting authority will allow them to participate in the first opening session and inform all representatives of the tenderers that a second opening session will be organised.
- 21.3 At the tender opening session, the tenderers' names, the tender prices, any discounts offered, written notifications of alteration and withdrawal, the presence of the tender security (if required)

and such other information the contracting authority may consider appropriate may be announced.

- 21.4 After the public opening of the tenders, no information relating to the examination, clarification, evaluation or comparison of tenders or recommendations concerning the award of contract can be disclosed until after the contract has been awarded.

Any attempt by a tenderer to influence the evaluation committee in the process of examination, clarification, evaluation and comparison of tenders, to obtain information on how the procedure is progressing or to influence the contracting authority in its decision concerning the award of the contract will result in the immediate rejection of its tender.

## **22. EVALUATING TENDERS**

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

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

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

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

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

The evaluation committee will check that each tender:

- has been properly signed;
- includes a correct tender security (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.

### **22.2 Technical evaluation**

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

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

For Lot 1, the evaluation of tenders may take into account not only the construction costs but, the operating costs and resources required (ease of operation and maintenance), in line with the technical specifications. In this regard, the Contracting Authority will examine in detail all the information supplied by the tenderer in his technical offer and the basis on which the tenderer has determined that the quantities in Volume 4 and will formulate its judgement on the basis of the lowest total cost, including additional costs. Tenders failing to comply with the qualifications

specified in the Evaluation Grids given in Volume 1 Section 5 and/or failing to support/prove correctness of their proposed operating costs shall be rejected.

For Lot 2 the evaluation of tenders may take into account only the construction costs in line with the technical specifications.

### 22.3 Financial evaluation

Once the technical evaluation has been completed, the evaluation committee checks that the financial offers contain no arithmetical errors. If the tender procedure contains several lots, financial offers are compared for each lot. The financial evaluation will have to identify the best financial offer for each lot, taking due account of any discounts offered, following formula below for Lot-1:

$$CP = CAPEX + 10 \times (OPEX)$$

Where;

CP = Comparable Price, CAPEX = Capital Cost and

OPEX = Operating Costs for One Year

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

## 23. CORRECTING ERRORS

23.1 Possible errors in the financial offer will be corrected by the evaluation committee as follows:

- where there is a discrepancy between amounts in figures and in words, the amount in words will prevail;
- except for lump-sum contracts, where there is a discrepancy between a unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will prevail.

23.2 The amount stated in the tender will be adjusted by the evaluation committee in the event of error, and the tenderer will be bound by that adjusted amount. If the tenderer does not accept the adjustment, its tender will be rejected and its tender security forfeited.

## CONTRACT AWARD

### 24. AWARD CRITERIA

For Lot-1: The most economically advantageous tender is the technically compliant tender with the lowest comparable price.

For Lot-2: The most economically advantageous tender is the technically compliant tender with the lowest price.

### 25. NOTIFICATION OF AWARD, CONTRACT CLARIFICATIONS

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

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 2.6.10.1. 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.

The contracting authority will inform all tenderers simultaneously and individually of the award decision. The tender security of the unsuccessful tenderers will be released once the contract is signed.

By submitting a tender, each tenderer accepts to receive notification of the outcome of the procedure by electronic means. Such notification shall be deemed to have been received on the date upon which the contracting authority sends it to the electronic address referred to in the offer

## **26. CONTRACT SIGNING AND PERFORMANCE SECURITY**

- 26.1 Within 30 days of receipt of the contract already signed by the contracting authority, the selected tenderer must sign and date the contract and return it, with the performance security (if applicable) to the contracting authority. On signing the contract, the successful tenderer will become the contractor and the contract will enter into force.
- 26.2 If it fails to sign and return the contract and any financial guarantee required within 30 days after receipt of notification, the contracting authority may consider the acceptance of the tender to be cancelled, without prejudice to the contracting authority's right to invoke the guarantee, claim compensation or pursue any other remedy in respect of such failure, and the successful tenderer will have no claim whatsoever on the contracting authority.
- 26.3 The performance security referred to in the General and Particular Conditions is set at 10 % of the amount of the contract and must be presented in the form specified in the annex to the tender dossier, except where it takes the form of a certified cheque or a cash deposit. It will be released in accordance with the Particular Conditions.

## **27. CANCELLATION OF THE TENDER PROCEDURE**

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

Cancellation may occur, for example, where:

- the tender procedure has been unsuccessful, namely where no qualitatively or financially worthwhile tender has been received or there has been no valid response at all;
- the economic or technical parameters of the project have been fundamentally altered;

- exceptional circumstances or force majeure render normal execution of the project impossible;
- all technically compliant tenders exceed the financial resources available;
- there have been irregularities in the procedure, in particular where these have prevented fair competition;
- the award is not in compliance with sound financial management, i.e. does not respect the principles of economy, efficiency and effectiveness (e.g. the price proposed by the tenderer to whom the contract is to be awarded is objectively disproportionate with regard to the price of the market).

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

## **28. ETHICS CLAUSES AND CODE OF CONDUCT**

### **28.1 Absence of conflict of interest**

The tenderer must not be affected by any conflict of interest and must have no equivalent relation in that respect with other tenderers or parties involved in the project. Any attempt by a tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the evaluation committee or the contracting authority during the process of examining, clarifying, evaluating and comparing tenders will lead to the rejection of its tender and may result in administrative penalties according to the Financial Regulation in force.

### **28.2 Respect for human rights as well as environmental legislation and core labour standards**

The tenderer and its staff must comply with human rights and applicable data protection rules. In particular and in accordance with the applicable basic act, tenderers and applicants who have been awarded contracts must comply with the environmental legislation including multilateral environmental agreements, and with the core labour standards as applicable and as defined in the relevant International Labour Organisation conventions (such as the conventions on freedom of association and collective bargaining; elimination of forced and compulsory labour; abolition of child labour).

#### **Zero tolerance for sexual exploitation, abuse and harassment:**

The European Commission applies a policy of 'zero tolerance' in relation to all wrongful conduct which has an impact on the professional credibility of the tenderer.

Physical abuse or punishment, or threats of physical abuse, sexual abuse or exploitation, harassment and verbal abuse, as well as other forms of intimidation shall be prohibited.

### **28.3 Anti-corruption and anti-bribery**

The tenderer shall comply with all applicable laws and regulations and codes relating to anti-bribery and anti-corruption. The European Commission reserves the right to suspend or cancel project financing if corrupt practices of any kind are discovered at any stage of the award process or during the execution of a contract and if the contracting authority fails to take all appropriate measures to remedy the situation. For the purposes of this provision, 'corrupt practices' are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or execution of a contract already concluded with the contracting authority.

## 28.4 Unusual commercial expenses

Tenders will be rejected or contracts terminated if it emerges that the award or execution of a contract has given rise to unusual commercial expenses. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a payee who is not clearly identified or commissions paid to a company which has every appearance of being a front company.

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

## 28.5 Breach of obligations, irregularities or fraud

The contracting authority reserves the right to suspend or cancel the procedure, where the award procedure proves to have been subject to breach of obligations, irregularities or fraud. If breach of obligations, irregularities or fraud are discovered after the award of the contract, the contracting authority may refrain from concluding the contract.

## 29. **APPEALS**

Tenderers believing that they have been harmed by an error or irregularity during the award process may file a complaint. See Section 2.12. of the practical guide.

## 30. **DATA PROTECTION**

Processing of personal data related to this tender procedure by the contracting authority takes place in accordance with the national legislation of the state of the contracting authority and with the provisions of the respective financing agreement.

The tender procedure and the contract relate to an external action funded by the EU, represented by the European Commission. If processing your reply to the invitation to tender involves transfer of personal data (such as names, contact details and CVs) to the European Commission, they will be processed solely for the purposes of the monitoring of the procurement procedure and of the implementation of the contract by the Commission, for the latter to comply with its obligations under the applicable legislative framework and under the financing agreement concluded between the EU and the Partner Country without prejudice to possible transmission to the bodies in charge of monitoring or inspection tasks in application of EU law. For the part of the data transferred by the contracting authority to the European Commission, the controller for the processing of personal data carried out within the Commission is the head of contracts and finance unit R4 of DG Neighbourhood and Enlargement Negotiations.

Details concerning processing of your personal data by the Commission are available on the privacy statement at:

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

In cases where you are processing personal data in the context of participation to a tender (e.g. CVs of both key and technical experts) and/or implementation of a contract (e.g. replacement of experts) you shall accordingly inform the data subjects of the possible transmission of their data to EU institutions and bodies and communicate the above mentioned privacy statement to them.

## 31. **EARLY DETECTION AND EXCLUSION SYSTEM**

The tenderers and, if they are legal entities, persons who have powers of representation, decision-making or control over them, are informed that, should they be in one of the situations of early detection or exclusion, their personal details (name, given name if natural person, address, legal

form and name and given name of the persons with powers of representation, decision-making or control, if legal person) may be registered in the early detection and exclusion system (EDES) and communicated to the persons and entities concerned in relation to the award or the execution of a procurement contract.

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