



## KOSOVO SPECIALIST CHAMBERS & SPECIALIST PROSECUTOR'S OFFICE

### A. INSTRUCTIONS TO TENDERERS

#### PUBLICATION REF.: KSCR/PROC/2021-2023/0878

By submitting a tender, tenderers fully and unreservedly accept the special and general conditions governing the contract as the sole basis of this tendering procedure, whatever their own conditions of sale may be, which they hereby waive. Tenderers are expected to examine carefully and comply with all instructions, forms, contract provisions and specifications contained in this tender dossier. Failure to submit a tender containing all the required information and documentation within the deadline specified will lead to the rejection of the tender. No account can be taken of any remarks in the tender relating to the tender dossier; remarks may result in the immediate rejection of the tender without further evaluation.

These instructions set out the rules for the submission, selection and implementation of contracts financed under this call for tenders, in conformity with the practical guide (available on the internet at: <https://wikis.ec.europa.eu/display/ExactExternalWiki/ePRAG>).

#### 1. Supplies to be provided

- 1.1 The subject of the framework contract with reopening of competition is the supply of 3 Minibuses for transport of passengers to the Kosovo Specialist Chambers.

The place where supplies are to be delivered is The Hague, The Netherlands, and the Incoterm applicable shall be DDP<sup>1</sup>.

**The contract for which this tender is made shall be immediately terminated in any of the two following circumstances without the parties having any liability or obligation whatsoever to each other arising out of or in connection with the non-performance of the contract:**

- **Failure by the contractor to fulfil its obligations under the contract due to delays, disruptions and/or gaps in the production and/or supply chain processes – including but not limited to parts shortages of critical vehicle components – caused by forces beyond its reasonable control.**
  - **Failure by the contractor to deliver the vehicles covered by the contract on or before the 14 June 2023.**
- 1.2 The supplies must comply fully with the technical specifications set out in the tender dossier (technical annex) and conform in all respects with the drawings, quantities, models, samples, measurements and other instructions.
- 1.3 Not applicable.

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<sup>1</sup> DDP (Delivered Duty Paid)- Incoterms 2020 International Chamber of Commerce - <http://www.iccwbo.org/incoterms/>

1.4 Tenderers are not authorised to tender for a variant solution in addition to the present tender.

## 2. Timetable

	DATE	TIME
<b>Clarification meeting / site visit (if any)</b>	14 October 2022	11:00 Amsterdam Time
<b>Deadline for requesting clarifications from the contracting authority</b>	21 October 2022	-
<b>Last date on which clarifications are issued by the contracting authority</b>	04 November 2022	-
<b>Deadline for submission of tenders</b>	<b>14 November 2022</b>	<b>17:00 Amsterdam Time</b>
<b>Tender opening session</b>	<b>As indicated in section 19 below</b>	
<b>Notification of award to the successful tenderer</b>	24 November 2022*	-
<b>Signature of the contract</b>	09 December 2022*	-

\* Provisional date

## 3. Participation

Participation in this tender procedure is open to all natural and legal persons without limitation.

- 3.1. The eligibility requirements detailed in the Contract Notice apply 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 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.
- 3.2. Natural or legal persons are not entitled to participate in this tender procedure or be awarded a contract if they are in any of the situations mentioned in Sections 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. Should they do so, their tender will be considered unsuitable or irregular respectively. In the cases listed in Section 2.6.10.1. of the practical guide tenderers may also be excluded from EU financed procedures and be subject to financial penalties up to 10% of the total value of the contract in accordance with the Financial Regulation in force. This information may be published on the Commission website in accordance with the Financial

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Regulation in force. Tenderers must provide declarations on honour<sup>2</sup> that they are not in any of these exclusion situations. Such declarations must also be submitted by all the members of a joint venture/consortium, by any sub-contractor and by any capacity providing entities. Tenderers who make false declarations may also incur financial penalties and exclusion in accordance with the Financial Regulation in force. Their tender will be considered irregular.

The exclusion situations referred to above also apply 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. In cases of doubt over declarations, the contracting authority will request documentary evidence that subcontractors and/or capacity providing entities are not in a situation that excludes them.

- 3.3. To be eligible to take part in this tender procedure, tenderers must prove to the satisfaction of the contracting authority that they comply with the necessary legal, technical and financial requirements and have the means to carry out the contract effectively.
- 3.4. Subcontracting is allowed. The tenderer and, where applicable, entities on whose capacities it has relied with regard to criteria relating to the economic and financial capacity shall be jointly liable for the performance of the contract.

## 4. Origin

- 4.1 No rule (of limitation) of origin shall apply for any goods purchased.

## 5. Type of contract

Unit-price

## 6. Currency

Tenders must be presented in Euro

## 7. Lots

This tender procedure is not divided into lots.

## 8. Period of validity

- 8.1 Tenderers will be bound by their tenders for a period of 90 days from the deadline for the submission of tenders.
- 8.2 In exceptional cases and prior to the expiry of the original tender validity period, the contracting authority may ask tenderers in writing to extend this period by 40 days. Such requests and the responses to them must be made in writing. Tenderers that agree to do so will

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<sup>2</sup> See PRAG Section 2.6.10.1.3 A)

not be permitted to modify their tenders and they are bound to extend the validity of their tender guarantees for the revised period of validity of the tender. If they refuse, without forfeiture of their tender guarantees, their participation in the tender procedure will be terminated. 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, before the validity period expires, request an extension of the validity of the tenders up to the adoption of that recommendation.

- 8.3 The successful tenderer will be bound by its tender for a further period of 60 days. The further period is added to the validity period of the tender irrespective of the date of notification.

## 9. Language of tenders

- 9.1 The tenders, all correspondence and documents related to the tender exchanged by the tenderer and the contracting authority must be written in the language of the procedure, which is English.

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

## 10. Submission of tenders

### Initial stage – award of framework contracts

- 10.1 Tenders must be sent to the contracting authority before the deadline specified in 10.3. They must include all the documents specified in point 11 of these Instructions. Tenders must comply with the following conditions:

- 10.2 All tenders must be submitted in one original, marked ‘original’, and one copy signed in the same way as the original and marked ‘copy’.

- 10.3 Tenders must be sent to the contracting authority before the deadline: **14 November 2022 at 17:00 Amsterdam Time,**

- **Highly recommended, EITHER by courier service**, in which case the evidence shall be constituted by the date of the deposit slip, to:

Kosovo Specialist Chambers  
Procurement Unit  
Raamweg 47  
2596 HN The Hague  
The Netherlands

- **OR, also highly recommended, hand delivered** by the participant in person or by an agent **directly** to the premises of the contracting authority in return for a **signed and dated receipt**, in which case the evidence shall be constituted by this acknowledgement of receipt, to:

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Kosovo Specialist Chambers  
Procurement Unit  
Raamweg 47  
2596 HN The Hague  
The Netherlands

- **OR, technically possible, but not recommended, by regular post/mail**, either (i) unregistered without track & trace, in which case the evidence shall be constituted by the postmark, or (ii) registered with track & trace, or (iii) registered with track & trace AND requiring a signature for receipt, in which case the evidence shall be constituted by the date of the registration slip, to:

Kosovo Specialist Chambers  
Procurement Unit  
P.O. Box 47  
2501 CA The Hague  
The Netherlands

**IMPORTANT NOTE!** Please note that the premises of the Kosovo Specialist Chambers and Specialist Prosecutor's Office, Raamweg 47, The Hague, does not have an external mailbox or readily accessible reception area. Any delivery is diverted by the Security staff to a designated expedition area. It is strongly recommended to submit tenders by courier service or by hand-delivery. Registered and unregistered mail through the normal post system should always be sent to the P.O. Box 47 address. Sending registered and unregistered mail to the physical address Raamweg 47, but also to the P.O. Box 47 address, which is mail that will ultimately be handled by the official postal system of The Netherlands, has proven to not be 100% reliable and runs the risk of non-delivery/receipt. In spite of a tenderer being able to provide proof of the date and time of sending a tender, the responsibility of actually delivery of the tender to the Kosovo Specialist Chambers lies fully with the tenderer. The use of unregistered mail is fully at the risk of the tenderer.

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.

10.4 All tenders, including annexes and all supporting documents, must be submitted in a sealed envelope bearing only:

- a) the above address;
- b) the reference code of this tender procedure, (i.e. KSCR/PROC/2021-2023/0878);
- c) the words 'Not to be opened before the tender opening session' in the language of the tender dossier.
- d) the name of the tenderer.

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The technical offer and the indicative financial offer must be placed together in a sealed envelope. The envelope should then be placed in another single sealed envelope/package, unless their volume requires a separate submission for each lot.

### **Second stage – reopening of the competition**

10.5 All tenders must be submitted by email /post as indicated in the invitation letter, in one original, marked 'original'.

10.6 Tenders must be sent to the contracting authority before the deadline specified in the invitation to submit a financial offer,

**For email:** [victor.fona@scp-ks.org](mailto:victor.fona@scp-ks.org)

**For paper:**

See point 10.3

## **11. Content of tenders**

### **Initial stage – award of framework contracts**

The tender must include a technical offer and documentation which must be submitted as per the point 10.3 above. The list of documents summarises as follows:

- Supporting documents of the technical offer referred under 11.1
- The documentation under 11.3
- The “Declaration on Honour on exclusion and selection criteria” mentioned under 11.3 should be submitted through the specific section “Declaration on Honour”.

Failure to fulfil the below requirements will constitute an irregularity and may result in rejection of the tender. All tenders submitted must comply with the requirements in the tender dossier and comprise:

#### **Part 1: Technical offer:**

- a detailed description of the supplies tendered in conformity with the technical specifications.

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

**Part 2: Financial offer: - Not applicable**

#### **Part 3: Documentation:**

To be supplied using the templates attached\*:

- The "Tender form for a supply contract", together with the "**Declaration on honour on exclusion criteria and selection criteria**", both duly completed, which includes the tenderer’s declaration, point 7, (from each member if a consortium, and capacity-providing entities or subcontractors (if any)). Signed originals of the Declaration on honour shall be submitted.

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- The details of the bank account into which payments should be made (financial identification form) (tenderers that have already signed another contract with the European Commission, may provide their financial identification form number instead of the financial identification form, or a copy of the financial identification form provided on that occasion, if no change has occurred in the meantime.)
- The legal entity file and the supporting documents (tenderers that have already signed another contract with the European Commission, may provide their legal entity number instead of the legal entity sheet and supporting documents, or a copy of the legal entity sheet provided on that occasion, if no change in legal status has occurred in the meantime).

To be supplied in free-text format:

- A description of the warranty conditions, which must be in accordance with the conditions laid down in Article 32 of the general conditions.
- A description of the organisation of the commercial warranty tendered in accordance with the conditions laid down in Article 32 of the special conditions.
- Duly authorised signature: an official document (statutes, power of attorney, notary statement, etc.) proving that the person who signs on behalf of the company, joint venture or consortium is duly authorised to do so.

Remarks:

Tenderers are requested to follow this order of presentation.

Annex\* refers to templates attached to the tender dossier. These templates are also available on: [https://wikis.ec.europa.eu/display/ExactExternalWiki/Annexes#Annexes-AnnexesC\(Ch.4\):Supplies](https://wikis.ec.europa.eu/display/ExactExternalWiki/Annexes#Annexes-AnnexesC(Ch.4):Supplies)

## Second stage – reopening of the competition

### Part 1: Financial offer:

- A definitive financial offer calculated on a DDP<sup>3</sup> basis for the supplies tendered along with all information available to the supplier about the existence of stock/possibility for delivery<sup>4</sup>.

The financial offer should be presented as per template (Annex IV\*, Budget breakdown Model financial offer -reopening of competition), adding separate sheets for details if necessary.

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<sup>3</sup> DDP (Delivered Duty Paid) — Incoterms 2020 International Chamber of Commerce <http://www.iccwbo.org/incoterms/>

<sup>4</sup> “As long as stock is available” refers to the actual stock of the supplier or goods ordered and accepted by the factory for which there is a 100% guarantee of production and delivery before or on 14 June 2023.

## 12. Taxes and other charges

The applicable tax and customs arrangements are the following:

The Kingdom of The Netherlands and the Republic of Kosovo have agreed in Article 17.2 of their Agreement of 15-02-2016 concerning the Hosting of the Kosovo Relocated Specialist Judicial Institution in The Netherlands (of which The Kosovo Specialist Chambers is part) to fully exonerate the following taxes:

- a) import and export taxes and duties;
- b) value added tax paid on goods and services supplied on a recurring basis or involving considerable expenditure;
- c) tax on passenger motor vehicles and motorcycles

*Special note for contracts with natural or legal persons based in The Netherlands: If the Contractor, through the Contracting Authority, will receive an EU VAT Exemption Certificate for this Contract (duly certified by the Tax Authorities of The Netherlands in accordance with Directive 2006/112/EC Article 151 and Directive 2008/118/EC Article 13), then the Contractor shall issue all invoices against this Contract exclusive of VAT. If no such Exemption Certificate is issued, then all invoices against this Contract should be inclusive of VAT.*

*Special note for contracts with natural or legal persons based outside of The Netherlands, but within the European Union: The Contracting Authority will request an EU VAT Exemption Certificate for this Contract (to be duly certified by the Tax Authorities of The Netherlands in accordance with Directive 2006/112/EC Article 151 and Directive 2008/118/EC Article 13), which shall be issued to the Contractor. The Contractor shall issue all invoices against this Contract exclusive of VAT.*

## 13. Additional information before the deadline for submission of tenders

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

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

[victor.fona@scp-ks.org](mailto:victor.fona@scp-ks.org)

Any clarification of the tender dossier will be communicated simultaneously in writing to all tenderers at the latest 8 days before the deadline for submitting tenders.

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



## 14. Clarification meeting / site visit

- 14.1. A clarification meeting / site visit will be held on **14 October 2022 at 11:00 Amsterdam Time on ZOOM** to answer any questions on the tender dossier which have been forwarded in writing or are raised at the meeting. Minutes will be taken during the meeting and these will be communicated — together with any clarifications in response to written requests which are not addressed during the meeting — at the latest 8 calendar days before the deadline for submission of tenders. No further clarification will be provided after this date. All the costs of attending this meeting will be borne by the tenderers. **For the meeting ID and password please send an email to [victor.fona@scp-ks.org](mailto:victor.fona@scp-ks.org) the latest on 14 October 2022 at 10:00 Amsterdam Time.**

Other than this site visit for all prospective tenderers, no visits by individual prospective tenderers can be organised during the tender period.

## 15. Alteration or withdrawal of tenders

- 15.1 Tenderers may alter or withdraw their tenders by written notification prior to the deadline for submission of tenders. No tender may be altered after this deadline. Withdrawals must be unconditional and will end all participation in the tender procedure.

Any such notification of alteration or withdrawal must be prepared and submitted in accordance with Section 10. The outer envelope must be marked 'Alteration' or 'Withdrawal' as appropriate.

- 15.2 No tender may be withdrawn in the interval between the deadline for submission of tenders.1 and the expiry of the tender validity period. Withdrawal of a tender during this interval may result in forfeiture of the tender guarantee.

## 16. Costs of preparing tenders

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

## 17. Ownership of tenders

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

## 18. Joint venture or consortium

- 18.1 If a tenderer is a joint venture or consortium of two or more persons, the tender must be a single one with the object of securing a single contract, each person must sign the tender and will be jointly and severally liable for the tender and any contract. Those persons must designate one of their members to act as leader with authority to bind the joint venture or consortium. The composition of the joint venture or consortium must not be altered without the prior written consent of the contracting authority.
- 18.2 The tender may be signed by the representative of the joint venture or consortium only if it has been expressly so authorised in writing by the members of the joint venture or consortium, and

the authorising contract, notarial act or deed must be submitted to the contracting authority in accordance with point 11 of these instructions to tenderers. All signatures to the authorising instrument must be certified in accordance with the national laws and regulations of each party comprising the joint venture or consortium together with the powers of attorney establishing, in writing, that the signatories to the tender are empowered to enter into commitments on behalf of the members of the joint venture or consortium. Each member of such joint venture or consortium must provide the proof required under Article 3.5 as if it, itself, were the tenderer.

## 19. Opening of tenders

- 19.1 The purpose of the opening session is to check whether the tenders have been submitted in accordance with the submission requirements of the call for tenders.
- 19.2 The tenders will be opened at Raamweg 47, 2596 HN The Hague at **11:00 hours** (local time in The Netherlands) on **21 November 2022**.

Tenderers' representatives that intend to participate at the opening ceremony are kindly requested to confirm their attendance to the Contracting Authority at least 24 hours in advance by sending an e-mail to the following address: [victor.fona@scp-ks.org](mailto:victor.fona@scp-ks.org).

The committee will draw up minutes of the meeting, which will be available 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 it has 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.

- 19.3 At the tender opening, the tenderers' names, written notifications of alteration and withdrawal, the presence of the requisite tender guarantee (if required) and such other information as the contracting authority may consider appropriate may be announced.
- 19.4 After the public opening of the tenders, no information relating to the examination, clarification, evaluation of tenders, or recommendations concerning the award of the contract can be disclosed until after the contract has been awarded.
- 19.5 Any attempt by tenderers to influence the evaluation committee in the process of examination, clarification, evaluation and comparison of tenders, to obtain information on how the procedure is progressing or to influence the contracting authority in its decision concerning the award of the contract will result in the immediate rejection of their tenders.
- 19.6 All tenders received after the deadline for submission specified in the contract notice or these instructions will be kept by the contracting authority. The associated guarantees will be returned to the tenderers. No liability can be accepted for late delivery of tenders. Late tenders will be rejected and will not be evaluated.

## 20. Evaluation of tenders

### Initial stage -award of the framework contracts

- 20.1 Examination of the administrative conformity of tenders

The aim at this stage is to check that tenders comply with the essential requirements of the tender dossier. A tender is deemed to comply if it satisfies all the conditions, procedures and

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specifications in the tender dossier without substantially departing from or attaching restrictions to them.

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

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

### 20.2 Technical evaluation

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

The minimum qualifications required (see selection criteria in the contract notice) are to be evaluated at the start of this stage.

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

20.3 In the interests of transparency and equal treatment and to facilitate the examination and evaluation of tenders, the evaluation committee may ask each tenderer individually for clarification of its tender including breakdowns of prices, within a reasonable time limit to be fixed by the evaluation committee. The request for clarification and the response must be in writing, but no change in the price or substance of the tender may be sought, offered or permitted except as required to confirm the correction of arithmetical errors discovered during the evaluation of tenders pursuant to Article 20.4. Any such request for clarification must not distort competition. Decisions to the effect that a tender is not technically compliant must be duly justified in the evaluation minutes.

### 20.4 Financial evaluation - Not applicable

### 20.5 Variant solutions

Variant solutions will not be taken into consideration.

### 20.6 Award criteria

As stated in point 6 and 17 of the Contract Notice, the Contracting Authority intends to conclude multiple framework contracts with reopening of competition, which shall be entered into separately but on identical terms with each of the successful tenderers.

As an outcome of the tender procedure, the Contracting Authority shall issue an award decision naming the successful tenderers which will be invited to sign the framework contracts. After the signature of the framework contracts, suppliers will be invited to submit a definitive financial offer when purchasing decisions are made. The procedure of placing an Order form shall commence after the second stage -reopening of the competition is complete, with the lowest bid Supplier (lowest price as long as stock is available) and shall end with the highest bid Supplier.

Nevertheless, if multiple framework contracts with reopening of competition cannot be awarded, the Contracting Authority may decide to either award one single framework contract or not to award any framework contract at all and relaunch the tender procedure under the same or different conditions at the first convenient opportunity.

### **Award criteria for awarding the framework contract**

The framework contract will be awarded based on the compliance of the technical offer with the requirements specified in the technical specifications.

#### 20.7 Documentary evidence for exclusion and selection criteria

No documentary evidence of the selection criteria shall be submitted but no pre-financing will be granted.

### **Second stage – reopening of the competition**

#### 20.8 Financial evaluation

- a) Financial offers submitted in reply to the invitations will be checked for any arithmetical errors in computation and summation. Errors will be corrected by the evaluation committee as follows:
  - where there is a discrepancy between amounts in figures and in words, the amount in words will be the amount taken into account;
  - except for lump-sum contracts, where there is a discrepancy between a unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will be the price taken into account.
- b) Amounts corrected in this way will be binding on the tenderer. If the tenderer does not accept them, its tender will be rejected.
- c) Unless specified otherwise, the purpose of the financial evaluation process is to identify the tenderer offering the lowest price “as long as stock is available”<sup>5</sup>.

### **Award criteria after reopening of the competition and evaluation of the financial offer**

The sole award criterion will be the price. The order will be awarded to the lowest bid “as long as stock is available”<sup>6</sup>.

## **21. Notification of award**

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

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<sup>5</sup> “As long as stock is available” refers to the actual stock of the supplier or goods ordered and accepted by the factory for which there is a 100% guarantee of production and delivery before or on 14 June 2023.

<sup>6</sup> “As long as stock is available” refers to the actual stock of the supplier or goods ordered and accepted by the factory for which there is a 100% guarantee of production and delivery before or on 14 June 2023.

the date upon which the contracting authority sends it to the electronic address referred to in the offer.

The contracting authority will inform all tenderers simultaneously and individually of the award decision. The tender guarantees of the unsuccessful tenderers will be released once the contract is signed. The successful tenderer will be informed in writing that its tender has been accepted (notification of award).

## **22. Signature of the contract and performance guarantee**

- 22.1 The contracting authority reserves the right to vary quantities specified in the tender by +/- 100% at the time of contracting and during the validity of the contract. The total value of the supplies may not, as a result of the variation rise or fall by more than 25% of the original financial offer in the tender. The unit prices quoted in the tender shall be used.
- 22.2 Within 30 days of receipt of the contract signed by the contracting authority, the selected tenderer must sign and date the contract and return it, with the performance guarantee (if applicable), to the contracting authority. On signing the contract, the successful tenderer will become the contractor and the contract will enter into force.
- 22.3 If it fails to sign and return the contract and any financial guarantee required within 30 days after receipt of notification, the contracting authority may consider the acceptance of the tender to be cancelled without prejudice to the contracting authority's right to seize the guarantee, claim compensation or pursue any other remedy in respect of such failure, and the successful tenderer will have no claim whatsoever on the contracting authority.
- 22.4 The performance guarantee referred to in the general conditions is set at 5% of the amount of the contract. The performance guarantee must be presented in the form specified in the annex to the tender dossier. It will be released within 60 days of the issue of the final acceptance certificate by the contracting authority, except for the proportion assigned to after-sales service. For contracts of EUR 150 000 or below, on the basis of objective criteria such as the type and value of the contract, the contracting authority may decide not to require such a guarantee. – Not applicable.

## **23. Tender guarantee**

No tender guarantee is required.

## **24. Ethics clauses and code of conduct**

### **24.1 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.

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

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The tenderer and its personnel 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.

### 24.3 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.

### 24.4 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.

### 24.5 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.

## **25. Cancellation of the tender procedure**

If a tender procedure is cancelled, tenderers will be notified by the contracting authority.

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If the tender procedure is cancelled before the tender opening session the sealed envelopes will be returned, unopened, to the tenderers.

Cancellation may occur, for example, if:

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

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

## 26. 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.

## 27. Data Protection

Processing of personal data related to this tender procedure, launched by the Kosovo Specialist Chambers, takes place in accordance with European Union (EU) standards and rules on personal data protection applied by the Kosovo Specialist Chambers (KSC) and, in particular, with Articles 1.3 and 1.4 of the General Conditions of the Grant Contract concluded between the EU and the KSC, the latter being the contracting authority for this procedure.

The tender procedure and the resulting contract relate to the implementation of an external action funded by the EU represented by the European Commission.

Your reply to the invitation to tender involves the transfer of personal data to the contracting authority. They will be processed only for the purposes of the management and administration of the procurement procedure, and of the execution of the resulting contract, in implementation of the Grant Contract concluded by the KSC and the Commission, without prejudice to possible transmission to the European Commission and to the bodies in charge of monitoring or inspection tasks in application of EU law.

Details concerning the processing of your personal data by the contracting authority are available on the privacy statement at <https://www.scp-ks.org/en/privacy-notice>

## LIMITE

The controller for the processing of personal data carried out within the contracting authority is the Kosovo Specialist Chambers.

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 the KSC and communicate the above-mentioned privacy statement to them.

### **28. 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, and communicated to the persons and entities listed in the above-mentioned decision, in relation to the award or the execution of a procurement contract.