



## INSTRUCTIONS TO TENDERERS Coffee Supplies - UfMS/IOTP/0005/2016

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.

### BACKGROUND INFORMATION

The Secretariat of the Union for the Mediterranean (UfMS – Contracting Authority) was created by the 43 Euro-Mediterranean Heads of State and Government in Paris on 13 July 2008. Foreign Affairs Ministers in their meeting in Marseille on 4 November 2008 decided that the headquarters of the UfMS would be in Barcelona. The Statutes of the UfMS were created and the same day. A headquarters agreement was concluded between the UfMS and the Government of Spain on 4 May 2010, granting the Secretariat the privileges and immunities of an international organisation under the Spanish law.

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### *Vision*

The Union for the Mediterranean (UfM) is a multilateral partnership with a view to increasing the potential for regional integration and cohesion among Euro-Mediterranean partners. The Union for the Mediterranean is inspired by shared political ideas that will revitalize efforts to transform the Mediterranean into an area of peace, democracy, cooperation and prosperity. The creation of a joint secretariat is a key stone in this partnership. The UfMS will contribute to reinforcing co ownership of new Mediterranean relations and achieving visibility through economic projects.

### *Mission and Mandate*

The mandate and missions of the UfMS have been defined in the Paris and Marseille Declarations as well as in the Statutes adopted on March the 3<sup>rd</sup>, 2010. It is recalled that the mandate of the UfMS is of a technical nature, focusing on identifying, processing, promoting and coordinating projects, which are in line with the principles and rules of international law, which enhance and strengthen the cooperation and impact directly on the livelihoods of citizens.

As stated in the Paris and Marseille Declarations, the central mission of the UfMS is to increase, promote and ensure the coordination of regional, sub-regional and transnational UfM projects in order to improve the socio-economic development, regional integration, sustainable development and the exchange of knowledge among and within the countries of the UfM.

It is also recalled that in launching the UfM, the Heads of State and Government identified six priority areas. These are the following:

- De-pollution of the Mediterranean



- Maritime and land highways
- Civil protection
- Alternative energies: Mediterranean solar plan
- Higher education and research, Euro-Mediterranean University
- The Mediterranean Business Initiative

The UfMS will focus its activity in 2016 on the priority tasks and projects described below. In accordance with the Marseille Declaration, in submitting project proposals the Secretariat shall uphold the principle of sustainable development and will also ensure that every project must:

- Strive to contribute to the stability and peace in the whole Euro-Mediterranean region
- Maintain the legitimate interests of any member of the UfM
- Take into account the principle of variable geometry
- Respect the decision of member countries involved in an on-going project when it is subject to further development

## 1 Supplies to be provided

1.1 The subject of the framework contract is the supply of coffee and related items to the UfMS premises (see Annex II and III of the Tender Dossier for the relevant description of the items). The signature of the framework contract imposes no obligation on the UfMS to purchase the quantities as estimated in Annex II and III.

Deliveries shall ONLY take place following the issuance of “purchase orders” to be issued by the UfMS during the duration of the framework contract.

Deliveries shall take place within 10 calendar days after the receipt by the contractor of a “purchase order”.

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 quantities, models, samples, measurements and other instructions.

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

## 2 Timetable

	DATE	TIME*
Clarification meeting / site visit (if any)	Not applicable	N/A
Deadline for requesting clarifications from the UfMS	21 days before deadline for tenders	14:00
Last date on which clarifications are issued by the UfMS	11 days before deadline for tenders	-
Deadline for submission of tenders	07/12/2015	14:00
Tender opening session	09/12/2015	15:00
Notification of award to the successful tenderer	21/12/2015**	-
Signature of the contract	15/01/2016**	-

\*All times are in the time zone of the country of the UfMS (Barcelona time)

\*\*Provisional date



### 3 Participation

- 3.1 Participation in tendering is open on equal terms to natural and legal persons (participating either individually or in a grouping (consortium) of tenderers), which are established in one of the Member States of the Union for the Mediterranean or in a country or territory authorised by the EC Partnership Agreement under which the contract is financed<sup>1</sup>. Participation is also open to international organisations. The participation of an ineligible natural or legal person will result in the automatic exclusion of that person. In particular, if that ineligible person belongs to a consortium, the whole consortium will be excluded.
- 3.2 These terms refer to all nationals of the above states and to all legal entities, companies or partnerships established in the above states. For the purposes of proving compliance with this rule, tenderers being legal persons, must present the documents required under that country's law. In case of doubt, the UfMS may ask the tenderer to provide evidence demonstrating actual compliance with the "establishment" criteria. For this purpose, legal person have to demonstrate that their legal person is formed under the law of an eligible State and that its real seat is within an eligible State. "Real seat" must be understood as the place where its managing board and its central administration are located or its principal place of business.
- 3.3 These rules apply to:
- tenderers
  - members of a consortium
  - any subcontractors.
- 3.4 Natural persons, companies or undertakings falling into one of the situations set out in section 2.3.3 of the Practical Guide to contract procedures for EU external actions are excluded from participation in and the award of contracts. Tenderers must provide declarations that they are not in any of these exclusion situations. The declarations must cover all the members of a joint venture/consortium. Tenderers who make false declarations may also incur financial penalties and exclusion in accordance with section 2.3.4 of the Practical Guide.
- 3.5 To be eligible to take part in this tender procedure, tenderers must prove to the satisfaction of the UfMS that they comply with the necessary legal, technical and financial requirements and have the means to carry out the contract effectively.
- 3.6 Subcontracting is not allowed.
- 3.7 **Selection Criteria** (to be completed as per Article of Tender submission Form):
- Economic and financial capacity:** Average annual turnover of the tenderer must exceed the annualised maximum budget of the contract, at least 100,000.00 € for the last two closed years (2013 and 2014).
  - Professional capacity:** At least 3 staff resources.
  - Technical capacity:** the tenderer has delivered supplies under at least two contracts in the field of this tender which were implemented during the following period: 07/12/2012 – 07/12/2015.

### 4 Origin

No rule of origin is applied.

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<sup>1</sup> Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument.



## **5 Type of contract**

Framework contract with 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 UfMS may ask tenderers in writing to extend this period by 40 days. Such requests and the responses to them must be made in writing. Tenderers that agree to do so will not be permitted to modify their tenders and they are bound to extend the validity of their tender guarantees for the revised period of validity of the tender. If they refuse, without forfeiture of their tender guarantees, their participation in the tender procedure will be terminated.

4 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 UfMS 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.

For all the documents of this call for tender, if there are discrepancies between the different linguistic versions, the English one prevails.

## **10 Submission of tenders**

10.1 The UfMS must receive the tenders before the **7<sup>th</sup> of December 2015, at 14:00 hours (Barcelona time)**. They must include all the documents specified in point 11 of these Instructions and be sent to the following address:

The Secretariat of the Union for the Mediterranean  
Procurement Service –UfMS/IOTP/0005/2016  
Palacio de Pedralbes - C/ Pere Duran Farell, 11  
08034 Barcelona  
Spain



Tenders must comply with the following conditions:

- 10.2 All tenders must be submitted in one original, marked “original”, and two copies signed in the same way as the original and marked “copy”.
- 10.3 All tenders, including annexes and all supporting documents, must be submitted in a sealed envelope bearing only:

To	Full address	Submitted by Tenderer Name and contact details	<b>Coffee Supplies - UfMS/IOTP/0005/2016</b>
	“Not to be opened before the tender opening session”		

The technical and financial offers must be placed together in a sealed envelope. Failure to respect the requirements may result in the rejection of the tender.

## 11 Content of tenders

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

### Part 1: Technical offer

A detailed description of the supplies tendered in conformity with the technical specifications, **including brochures and any other documentation** required should be presented as per template (Annex II+III, the contractor’s technical offer) completed when, and if necessary, by separate sheets for details.

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** should be presented as per template (Annex IV, budget breakdown): calculated on a basis of DDP<sup>2</sup> for the supplies tendered, and if necessary completed by separate sheets for the details.

**Tenderers are reminded that the maximum budget available for this contract is EUR 30,000.00 (VAT not included).**

### Part 3: Documentation

To be supplied using the templates attached\*:

- The “Tender Form for a Supply Contract” duly completed (see Part D of this tender dossier), including:
  - a) Signed **declarations** from each legal entity identified in the tender submission form, using the format attached (part D of this tender dossier).

<sup>2</sup> DDP (Delivered Duty Paid) - Incoterms 2010 International Chamber of Commerce - <http://www.iccwbo.org/incoterms/>



- b) A completed **Financial Identification form** (B. Annex V of the tender dossier) to nominate the bank account into which payments would be made in the event that the tender is successful.
- c) The **legal entity form** and the supporting documents (B. Annex V of the tender dossier; There is one form for individuals, one for private entities and one for public entities).

The Legal Entity File must be supported by the following documents relating to each tenderer in order to show its name, address and official registration number:

**For private entities:**

- A legible copy of the instrument of incorporation or constitution, and a copy of the statutes, if they are contained in a separate instrument, or a copy of the notices of such constitution or incorporation published in the national or other official journal, if the legislation which applies to the tenderer requires such publication;
- If the instruments mentioned in the above paragraph have been amended, a legible copy of the most recent amendment to the instruments mentioned in the previous indent, including those involving any transfer of the registered office of the legal entity, or a copy of the notice published in the relevant national or other official journal of such amendment, if the legislation which applies to the tenderer requires such publication.
- If the instruments mentioned in the first paragraph have not been amended since incorporation and the tenderer's registered office has not been transferred since then, a written confirmation, signed by an authorised representative of the tenderer, that there has been no such amendment or transfer;
- A legible copy of the notice of appointment of the persons authorised to represent the tenderer in dealings with third parties and in legal proceedings, or a copy of the publication of such appointment if the legislation which applies to the legal entity concerned requires such publication.
- If the above documents do not show the registration number, a proof of registration, as prescribed in their country of establishment, on one of the professional or trade registers or any other official document showing the registration number.
- If the above documents do not show the VAT number, a copy of the VAT registration document, where applicable.

**For Individuals:**

- A legible copy of their identity card or passport.
- Where applicable, a proof of registration, as prescribed in their country of establishment, on one of the professional or trade registers or any other official document showing the registration number.
- If the above documents do not show the VAT number, a copy of the VAT registration document, where applicable.

**For Public Entities:**

- A copy of the resolution decree, law, decree or decision establishing the entity in question or failing that, any other official document attesting to the establishment of the entity.

**All tenderers must provide their Legal Entities File as well as the evidence mentioned above. Subcontractors are only obliged to provide the legal entity file, without the above mentioned evidence. In case of joint bid, only the co-ordinator must return the financial identification form.**

- d) **Duly authorised signature:** An official document (statutes, power of attorney, notary statement,



etc.) proving that the person who signs on behalf of the company/joint venture/consortium is duly authorised to do so.

If the documentary evidence submitted is not written into the language of the procedure, a translation into the language of the procedure must be attached. The documentary proof or statements may be in original or copy. If copies are submitted the originals must be dispatched to the UfMS upon request.

Tenderers are reminded that the provision of false information in this tender procedure may lead to their exclusion from EU-funded contracts.

Remarks:

Tenderers are requested to follow this order of presentation.

Annex\* refers to templates attached to the tender dossier.

A pen drive or CD-ROM containing the electronic version of the technical offer must be included with the printed version. In case of any discrepancies between the electronic version and the original, printed version, the latter will prevail.

## 12 Pricing

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12.1 Tenderers will be deemed to have satisfied themselves, before submitting their tender(s), as to (its)(their) correctness and completeness, to have taken account of all that is required for the full and proper execution of the contract and to have included all costs in their rates and prices.

12.2 From the beginning of the second year of performance of the Framework Contract, prices may be revised upwards or downwards each year, where such revision is requested by the Contractor by registered letter in December. Order forms from the second year of performance of the Framework Contract shall be placed on the basis of the revised prices, if applicable.

This revision shall be determined by the trend in the harmonized indices of consumer price index (HICP) European Index of Consumer Prices (EICP) published for the first time by the Eurostat monthly 'Data in Focus' publication at <http://www.ec.europa.eu/eurostat/>.

Revision shall be calculated in accordance with the following formula:

$$Ar = Ao \times Ir/Io$$

Where,

Ar = Revised unit price;

Ao = Total unit price in the original tender;

Io = Index for the month when the Contract was signed;

Ir = Index for the month, six months prior to the expiry date of the first year of the Contract.

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

13.1 The tender dossier should be so clear that tenderers do not need to request additional information during the procedure. If the UfMS, 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.

13.2 Tenderers may submit questions in writing to the following e-mail address up to 21 days





before the deadline for submission of tenders, specifying the reference and the contract title: [procurement@ufmsecretariat.org](mailto:procurement@ufmsecretariat.org).

The UfMS has no obligation to provide clarifications after this date.

Any clarification of the tender dossier will be published on the UfMS' website exclusively <http://ufmsecretariat.org/procurement/> at the latest 11 calendar days before the deadline for submission of tenders.

Any prospective tenderers seeking to arrange individual meetings with either the UfMS and/or the government of the beneficiary country and/or the European Commission concerning this contract during the tender period may be excluded from the tender procedure.

#### **14 Clarification meeting /site visit**

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

#### **15 Alteration or withdrawal of tenders**

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

#### **16 Costs of preparing tenders**

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

#### **17 Ownership of tenders**

The UfMS 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 UfMS.
- 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 UfMS in accordance with point 11 of these Instructions to Tenderers. All signatures to the authorising instrument must be certified in accordance with the national laws and regulations





of each party comprising the joint venture or consortium together with the powers of attorney establishing, in writing, that the signatories to the tender are empowered to enter into commitments on behalf of the members of the joint venture or consortium. Each member of such joint venture or consortium must provide the proof required under Article 3.5 as if it, itself, were the tenderer.

## 19 Opening of tenders

- 19.1 The opening and examination of tenders is for the purpose of checking whether the tenders are complete, whether the requisite tender guarantees have been furnished, whether the required documents have been properly included and whether the tenders are generally in order.
- 19.2 The tenders will be opened in public session on **the 9<sup>th</sup> of December 2015 at 15:00 hours (Barcelona Time)** by the committee appointed for the purpose. The committee will draw up minutes of the meeting, which will be available on request. Each tender may be represented at the opening of tenders by one person. **For security reasons, the name, surname and ID of the person attending the opening must be notified by e-mail ([procurement@ufmsecretariat.org](mailto:procurement@ufmsecretariat.org)) at least five working days prior to the opening session.**
- 19.3 At the tender opening, the tenderers' names, the tender prices, any discount offered, written notifications of alteration and withdrawal, the presence of the requisite tender guarantee (if required) and such other information as the UfMS may consider appropriate may be announced.
- 19.4 After the public opening of the tenders, no information relating to the examination, clarification, evaluation and comparison of tenders, or recommendations concerning the award of the contract can be disclosed until after the contract has been awarded.
- 19.5 Any attempt by tenderers to influence the evaluation committee in the process of examination, clarification, evaluation and comparison of tenders, to obtain information on how the procedure is progressing or to influence the UfMS 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 UfMS. The associated guarantees will be returned to the tenderers. No liability can be accepted for late delivery of tenders. Late tenders will be rejected and will not be evaluated.

## 20 Evaluation of tenders

- 20.1 Examination of the administrative conformity and Technical evaluation Administrative
- The aim at this stage is to check that tenders comply with the essential requirements of the tender dossier. A tender is deemed to comply if it satisfies all the conditions, procedures and specifications in the tender dossier without substantially departing from or attaching restrictions to them.
- The minimum qualifications required (see selection criteria in Procurement Notice point 16) are to be evaluated at the start of this stage.
- 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.

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

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

## 20.4 Financial evaluation

a) Tenders found to be technically compliant will be checked for any arithmetical errors in computation and summation for the Reference Price. 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) Tenders exceeding the maximum budget available for the contract will be eliminated.

## 20.5 Variant solutions

Variant solutions will not be taken into consideration.

## 20.6 Award criteria

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

## 21 Signature of the contract and performance guarantee

21.1 The successful tenderer will be informed in writing that its tender has been accepted (notification of award). Before the UfMS signs the contract with the successful tenderer, the successful tenderer must provide the **documentary proof** or statements required under the law of the country in which the company (or each of the companies in case of a consortium) is established, to show that it is not in any of the exclusion situations listed in section 2.3.3 of the Practical Guide to contract procedures for EU external actions. This evidence or these documents or statements must carry a date, not earlier than 1 year before the date of submission of the tender. In addition, a statement must be provided that the situations described in these documents have not changed since then.



- 21.2 The successful tenderer must also provide evidence of the financial and economic standing and the technical and professional capacity according to the selection criteria for this call for tenders specified in the contract notice, point 16. The documentary proofs required are listed in section 2.4.11 of the Practical Guide to contract procedures for EU external actions.
- 21.3 If the successful tenderer fails to provide the documentary proof or statement or the evidence of financial and economic standing and technical and professional capacity within 15 calendar days following the notification of award or if the successful tenderer is found to have provided false information, the award will be considered null and void. In such a case, the UfMS may award the tender to the next lowest tenderer or cancel the tender procedure.
- 21.4 Within 15 days of receipt of the contract already signed by the UfMS, the selected tenderer must sign and date the contract and return it, with the performance guarantee (if applicable), to the UfMS. On signing the contract, the successful tenderer will become the Contractor and the contract will enter into force.
- 21.5 If it fails to sign and return the contract and any financial guarantee required within 15 days after receipt of notification, the UfMS may consider the acceptance of the tender to be cancelled without prejudice to the UfMS'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 UfMS. In such a case, the UfMS may award the tender to next lowest tenderer or cancel the tender procedure. The other tenderers will be informed that their tenders were not accepted, by means of a standard letter, which includes an indication of the relative weaknesses of their tender by way of a comparative table of the scores for the winning tender and the ones for the unsuccessful tender. The corresponding contract award notice will be published on the UfMS website: <http://www.ufmsecretariat.org/en/contact/>

## **22 Tender guarantee**

No tender guarantee is required.

## **23 Ethics clauses**

- 23.1 Any attempt by a candidate or tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the committee or the UfMS during the process of examining, clarifying, evaluating and comparing tenders will lead to the rejection of their candidacy or tender and may result in administrative penalties.
- 23.2 Without the UfMS's prior written authorisation, a Contractor and its staff or any other company with which the Contractor is associated or linked may not, even on an ancillary or subcontracting basis, supply other services, carry out works or supply equipment for the project. This prohibition also applies to any other projects that could, owing to the nature of the contract, give rise to a conflict of interest on the part of the Contractor.
- 23.3 When submitting a tender, tenderers must declare that they are not affected by a conflict of interest and have no equivalent relation in that respect with other tenderers or parties involved in the project. Should such a situation arise during execution of the contract, the Contractor must immediately inform the UfMS.
- 23.4 Contractors must at all times act impartially and as faithful advisers in accordance with the code of conduct of their profession. They will refrain from making public statements about the project or services without the UfMS's prior approval. They may not commit the UfMS in any way without its prior written consent.



- 23.5 For the duration of the contracts Contractors and their staff must respect human rights and undertake not to offend the political, cultural and religious mores of the beneficiary state. In particular and in accordance with the legal basic act concerned, tenderers that have been awarded contracts must abide by core labour standards as defined in the relevant International Labour Organisation conventions (such as the Conventions on freedom of association and collective bargaining; Abolition of forced and compulsory labour; Elimination of forced and compulsory labour; Abolition of child labour).
- 23.6 Contractors may accept no payment connected with the contracts other than that provided for therein. Contractors and their staff must not exercise any activity nor receive any advantage inconsistent with their obligations to the UfMS.
- 23.7 Contractors and their staff are obliged to maintain professional secrecy for the entire duration of contracts and after their completion. All reports and documents drawn up or received by Contractors will be confidential.
- 23.8 The contract governs the Contracting Parties' use of all reports and documents drawn up, received or presented by them during the implementation of the contract.
- 23.9 Contractors must refrain from any relationship likely to compromise their independence or that of their staff. If the Contractor ceases to be independent, the UfMS may, regardless of injury, terminate the contract without further notice and without the Contractor having any claim to compensation.
- 12 23.10 The Commission reserves the right to suspend or cancel project financing if corrupt practices of any kind are discovered at any stage of the award process and if the UfMS fails to take all appropriate measures to remedy the situation. For the purposes of this provision, 'corrupt practices' are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or implementation of a contract already concluded with the UfMS.
- 23.11 All tenders will be rejected or contracts terminated if it emerges that the award or implementation of a contract has given rise to unusual commercial expenses. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commissions paid to a company which has any appearance of being a front company.
- 23.12 Contractors found to have paid unusual commercial expenses on projects funded by the EU are liable, depending on the seriousness of the facts observed, to have their contracts terminated or to be permanently excluded from receiving EU funds.
- 23.13 The UfMS reserves the right to suspend or cancel the procedure, if the award procedure proves to have been subject to substantial errors, irregularities or fraud. Where such substantial errors, irregularities or fraud are discovered after the award of the Contract, the UfMS may refrain from concluding the Contract.

## 24 Cancellation of the tender procedure

In no event shall the UfMS 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 UfMS has been advised of the possibility of damages.



Cancellation may occur where:

- the tender procedure has been unsuccessful, i.e., no qualitatively or financially worthwhile tender has been received or there is no valid response at all;
- the economic or technical data of the project have been fundamentally altered;
- exceptional circumstances or force majeure render normal performance of the contract 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 shall the UfMS 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 UfMS has been advised of the possibility of damages. The publication of a procurement notice does not commit the UfMS to implement the contract announced.**

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## 25 Appeals

Tenderers believing that they have been harmed by an error or irregularity during the award process may petition the UfMS directly. The UfMS must reply within 30 days of receipt of the complaint. This is without prejudice to the arbitration proceedings and, in particular, without altering the time-limits for bringing actions set out below, which could be undertaken by such tenderers. Therefore, tenderers believing that they have been harmed by an error or irregularity during the award process shall be referred for arbitration to the Tribunal Arbitral de Barcelona (TAB) [Barcelona Arbitration Court], of the Associació Catalana per a l'Arbitratge [Catalan Arbitration Association] - by whatever name it may be known in the future –, which is entrusted with the appointment of the arbitrator or arbitrators and the administration of the arbitration in accordance with its Regulations in force at the start of the arbitration.

The measures provided for in this section shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

**NOTE** For additional information, please refer to the 2014 Practical Guide to contract procedures for EC external actions which provisions apply to the current procedure.

[http://ec.europa.eu/europeaid/work/procedures/implementation/practical\\_guide/index\\_en.htm](http://ec.europa.eu/europeaid/work/procedures/implementation/practical_guide/index_en.htm)