



INSTRUCTIONS TO TENDERERS

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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 contract is the “Contracting Microsoft 365 Business basic, plan 2 and standard, Exchange Online plan 2, Adobe Acrobat Pro DC, and Creative Cloud licenses.” (see Annex II and III of the Tender Dossier for the relevant description of the items).
- 1.2 The supplies must comply fully with the technical specifications set out in the tender dossier (technical annex) and conform in all respects with the drawings, quantities, models, samples, measurements and other instructions.
- 1.3 Tenderers are not authorised to tender for a variant solution in addition to the present tender.

2 Timetable

	DATE	TIME*
Clarification meeting / site visit (if any)	Not applicable	Not applicable
Deadline for requesting clarifications from the contracting authority	Date 21 days before deadline for tenders	13:00
Last date on which clarifications are issued by the contracting authority	Date 8 days before deadline for tenders	-
Deadline for submission of tenders	17/07/2024	13:00
Tender opening session	25/07/2024	12:00
Notification of award to the successful tenderer	29/07/2024**	-
Signature of the contract	01/08/2024**	-

*All times are in the time zone of the country of the contracting authority (Barcelona time)

**Provisional date

3 Participation

- 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 contracting authority website in accordance with the Financial Regulation in force. Tenderers must provide declarations on honour¹ 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. The contractor will retain full liability towards the contracting authority for performance of the contract as a whole. Where tenders include subcontracting, it is recommended that the contractual arrangements between tenderers and their subcontractors include mediation, according to national and international practices, as a method of dispute resolution. The total value of the sub-contracted part of the supplies must not exceed 40% of the contract value. All subcontracting must be approved by the contracting authority, either by accepting the Contractor's offer, or, if proposed by the Contractor after contract signature, by prior written approval, being requested and granted.

4 Origin

- 4.1 No rule of origin is applied.



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 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 any). If they refuse, without forfeiture of their tender guarantees (if any), 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.

Supporting documents and printed literature furnished by the tenderer may be in another official language, provided they are accompanied by a translation into the language of the procedure. For the purposes of interpreting the tender, the language of the procedure has precedence.

10 Submission of tenders

Tenders must be submitted exclusively via electronic submission to the following address: procurement@ufmsecretariat.org. Tenders submitted in any other way (e.g., e-mail or by letter) will be disregarded.

The time limit for receipt of tenders is on **the 17th of July 2024 at 13:00 hours (Barcelona time)**. They

¹ See PRAG Section 2.6.10.1.3 A)



must include all the documents specified in point 11 of these Instructions.

A tender received after the time-limit for receipt of tenders will be rejected.

Tenderers must ensure that their submitted tenders contain all the information and documents required by the contracting authority at the time of submission as set out in the procurement documents

Tenders must be submitted using the email system bearing the words '**offer - <reference>**'. Files shall be included in protected folders or at least in compressed folder(s) or through protected IT hyperlinks to file hosting service. Where passwords, encryptions or any other IT means used to protect the confidentiality of the submitted offers, decryption key or equivalent shall be sent by the tenderer.

Any infringement of these rules (e.g., references to price in the technical offer) constitutes an irregularity which will lead to rejection of the tender.

11 Content of tenders

The tender must include a technical offer, a financial offer and documentation which must be submitted via electronic submission. Tenderers are invited to consult in document Checklist the list of documents to be submitted with the tender which will provide guidance.

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, including any documentation required, including if applicable:

- a list of the spare parts and consumables recommended by the manufacturer
- a proposal for after-sales service
- a training proposal (indicate training needs)
- technical proposals related to ancillary services.

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:

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

Part 3: Documentation:

To be supplied using the templates attached*:

- The "Tender form for a supply contract", together with Annex 1 'Declaration on honour on



exclusion criteria and selection criteria', both duly completed, which includes the tenderer's declaration, point 6, (from each member if a consortium and capacity-providing entities or subcontractors (if any). The original shall be kept by the tenderer and might be requested by the Contracting Authority.

- The details of the bank account into which payments should be made (financial identification form document Annex V of the tender dossier) (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 (document Annex V of the tender dossier) 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). Subcontractors are only obliged to provide the legal entity file, without the evidence.

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.

To be supplied in free-text format:

- If a commercial warranty is required: 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/ePRAG>

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 contracting authority upon request.

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

12 Taxes and other charges

The applicable tax and customs arrangements are the following: General provisions regarding tax and customs arrangements are attached to the tender dossier.

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.

Any request for additional information must be made 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 to procurement@ufmsecretariat.org.

The contracting authority has no obligation to provide clarifications after this date.

Any clarification of the tender dossier will be published on the contracting authority's website <https://ufmsecretariat.org/work-with-us/procurement/> at the latest 8 calendar days before the deadline for submission of tenders. The website will be updated regularly and it is the tenderer's responsibility to check for updates and modifications during the submission period.

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

No site visit is planned.

No information meeting is planned.

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 email 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 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 date and venue of the tender opening session is indicated in the Contract Notice. 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. **For security reasons, the name, surname and ID of the person attending the opening must be notified by e-mail (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 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, if any. No liability can be accepted for late delivery of tenders. Late



tenders will be rejected and will not be evaluated.

20 Evaluation of tenders

20.1 Examination of the administrative conformity of tenders.

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

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

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

20.2 Technical evaluation

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

The minimum qualifications required (see selection criteria in 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

a) Tenders found to be technically compliant will be checked for any arithmetical errors in computation and summation. Errors will be corrected by the evaluation committee as follows:

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

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. Where specified in the technical specifications, the evaluation of tenders may take into account not only the acquisition costs but, to the extent relevant, costs borne over the life cycle of the supplies (such as for instance maintenance costs and operating costs), in line with the technical specifications. In such case, the contracting authority will examine in detail all the information supplied by the tenderers and will formulate its judgment on the basis of the lowest total cost, including additional costs.

20.5 Variant solutions

Variant solutions will not be taken into consideration.

20.6 Award criteria

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

20.7 Documentary evidence for exclusion and selection criteria

At any time during the procurement procedure and before the award of the contract, the contracting authority may request documentary evidence on compliance with the exclusion criteria and selection criteria (financial, economic, technical and professional capacity) set out in these instructions. Please note that a request for evidence in no way implies that the tenderer has been successful. **All tenderers are invited to prepare in advance the documents related to the evidence, since they may be requested to provide such evidence within a short deadline.** In any event, the tenderer proposed by the evaluation committee for the award of the contract, will be requested to provide such evidence at short notice.

When requested, regarding the exclusion criteria, the tenderers should be able to 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 be dated, no more than one year before the date of submission of the tender.

The above-mentioned documents must be submitted for every member of a joint venture/consortium, all subcontractors and every capacity providing entity.

The contracting authority may waive the obligation of any tenderer to submit the documentary evidence referred to above if such evidence has already been submitted for the purposes of another procurement procedure, provided that the issue date of the documents does not exceed one year and that they are still valid. In this case, the tenderer must declare on his/her honour that the documentary evidence has already been provided in a previous procurement procedure and confirm that his/her situation has not changed.

Where the documentary evidence submitted is in an official language of the European Union other than the one of the procedure, it is strongly recommended to provide a translation into the language of the procedure, in order to facilitate the evaluation of the documents.

Failure to provide valid documentary evidence at the request and within the deadline set by the Contracting Authority shall lead to the rejection of the tender for the award of the contract, unless the tenderer can justify the failure on the grounds of material impossibility.

If the successful tenderer fails to provide this documentary proof or statement 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.

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 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 15 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 15 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. In such a case, the contracting authority 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 contracting authority website: <https://ufmsecretariat.org/work-with-us/procurement/>
- 22.4 No performance guarantee is required.

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 (see section III.5 Conflict of interest of the 'UfM Code of Conduct'). 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

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 UfM Secretariat 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 'UfM Anti-fraud Policy & Anti-Corruption Policy' sets forth the policy of the UfM in preventing and combating fraud and corruption in UfMS activities. The UfMS 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.

The electronic version of documents 'UfM Code of Conduct' and the 'Anti-fraud Policy & Anti-Corruption Policy' can be found on the website: <https://ufmsecretariat.org/work-with-us/procurement/>

25 Cancellation of the tender procedure

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

Cancellation may occur, for example, if:

- the tender procedure has been unsuccessful, namely where no 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. The contracting authority 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.