

## A. INSTRUCTIONS TO TENDERERS

### PUBLICATION REF.: JPIIF 001 2024 012314/01/8

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 procurement of a Date Bars production line, which includes additional components such as oats, nuts, cereal, sesame, puffed rice, and more.

The production line should be designed to handle different stages of the production process and should be built to the highest quality standards. In order to ensure consistent and reliable performance, each component of the line is made from high-quality materials and is equipped with best possible technology. The equipment components also should be equipped with high-quality electrical and pneumatic systems, which should be selected to ensure long-term reliability and efficient operation. Additionally, the line should be equipped with a range of features that help to minimize waste and reduce downtime, resulting in improved efficiency and reduced costs. The line will be subject to a test: to verify that the error variation remains within the range of a maximum 2% during one hour of production. Also, the entire production line will be tested for few full production cycles to check everything is working. Sticker with the Logo of the Donor (see Pattern below) dim. 103x85 mm, if possible, must be placed on each machine.



**The supply of Date Bar Production Line including onsite delivery, installation, testing and training of the following supplies:**

#### **Date Bar Production Line:**

Production Line Description:

1. Homogenizer/Mixer Unit
2. Transport Conveyor Unit
3. Extruder for Forming Date Bars Unit
4. Packing Unit

General Specifications

- All machines must be CE (EU) marked products or have equivalent certifications
  - All machines shall comply with Eurasian regulatory requirements and standards or equivalent standards regarding food safety, environment and other industry-specific standards (e.g. ISO/TC326, ISO 13849-1, IEC 62061, IEC 60204-1:2016+A1:2021, etc.)
  - The machines should be capable of being stored and to operate continuously in ambient temperature of 20 -50° C and relative humidity of 15-90%
  - All machines shall be semi-automatic
  - PLC should be Siemens, Omron or equivalent quality and should not be old generation
  - Pneumatic parts (valves and cylinders) should be Festo, SMC or equivalent quality
- 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
<b>Deadline for requesting clarifications from the contracting authority</b>	21 days before deadline for tenders indicated in the Contract notice – 26/02/2024	11pm
<b>Last date on which clarifications are issued by the contracting authority</b>	8 days before deadline for submission of tenders indicated in the Contract notice – 10/03/2024	11pm
<b>Deadline for submission of tenders</b>	As indicated in the Contract notice – 18/03/2024	11pm
<b>Tender opening session</b>	March-April 2024*	X
<b>Notification of award to the successful tenderer</b>	At most 90 days after deadline for submission of tenders*	X
<b>Signature of the contract</b>	At most 150 days after deadline for submission of tenders*	X

\* Provisional date

### 3. Participation

- 3.1. The eligibility requirements detailed in the Contract Notice (C2) and they 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 Regulation in force. Tenderers must provide declarations on honour<sup>1</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.

### 4. Origin

- 4.1 Unless otherwise provided in the contract, all goods purchased under the contract must originate in a Member State of the European Union or in a country or territory of the regions covered and/or authorised by the specific instrument applicable to the programme specified in the Contract Notice (C2, article 9). For these purposes, 'origin' means the place where the goods are mined, grown, produced or manufactured and/or from which services are provided. The origin of the goods must be determined according to the relevant international agreements (notably WTO agreements), which are reflected in EU legislation on rules of origin for customs purposes: the Customs Code (Council Regulation (EEC) No 2913/92) in particular its Articles 22 to 246 thereof, and the Code's implementing provisions (Commission Regulation (EEC) No 2454/93).

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

- 4.2 When submitting tenders, tenderers must state expressly that all the goods meet the requirements concerning origin and must state the countries of origin. They may be asked to provide additional information in this connection.

## **5. Type of contract**

Supply contract based on DDP (Delivered Duty Paid) unit price, excluding VAT

## **6. Currency**

Tenders must be presented in USD.

## **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 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**

- 10.1 Paper submission:

**Tenders must be sent to the contracting authority before the deadline specified in Contract Notice.** They must include all the documents specified in point 11 of these Instructions and be sent to the following address:

Tenders shall be hand delivered, they should be delivered to the following address:

Filippo Capurro – Project Manager  
John Paul II Foundation office, Bethlehem, Hebron-Jerusalem Street, P.O Box 24  
Opening hours | 9.00 – 17.00 from Monday to Friday

10.2 The tenders should be submitted:

(a) either by post or by courier service, in which case the evidence shall be constituted by the postmark or the date of the deposit slip<sup>2</sup>

(b) or by hand-delivery to the premises of the contracting authority by the participant in person or by an agent, in which case the evidence shall be constituted by the acknowledgment of receipt.

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 as follows:

- A separated sealed envelope named “Envelope A – Administrative Compliance”
- A separated sealed envelope named “Envelope B – Technical Offer”
- A separated sealed envelope named “Envelope C – Financial Offer”

The three envelopes must be submitted in a single main sealed envelope/package bearing only:

- a) the above address;
- b) the reference codes of this tender procedure; JPIIF 001 2024 012314/01/8
- c) the words ‘Not to be opened before the tender opening session’ in the language of the tender dossier and the equivalent phrase in the local language.
- d) the name of the tenderer.

**Any infringement of these rules (e.g., unsealed envelopes or references to prices in the technical offer) is to be considered a breach of the rules, and will lead to rejection of the tender.**

## 11. Content of tenders

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:

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<sup>2</sup> It is recommended to use registered mail in case the postmark would not be readable

### **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 items to be supplied
  - a list of the spare parts and consumables recommended by the manufacturer, without prices;
  - a proposal of for services (delivery, site preparation, installation, test and commissioning, etc.);
  - a training proposal (machine management, maintenance, other);
  - a description of the warranty conditions over at least 2 (two) years, which must be in accordance with the conditions laid down in Special and General Conditions;
  - a proposal for after-sales service over 3 years or any other available/needed services.
  - Timeline proposal
  - a proposal for service interventions and for a maintenance/service contract after the warranty period, without prices.

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**

- A financial offer based on the supplies tendered, including if applicable:
  - Financial proposal for items to be supplied
  - financial proposal for suggested spare parts, maintenance kits and consumables, with itemised price list, that will not be included in the bid price and will not entail any obligation for the Contracting Authority.
  - financial proposal for services (delivery, site preparation, installation, test and commissioning, etc.);
  - financial proposal for training;
  - financial proposal warranty conditions over at least 2 (two) years, which must be in accordance with the conditions laid down in Special and General Conditions
  - financial proposal for maintenance and after-sales service and maintenance contract after the warranty period, that will not be included in the bid price and will not entail any obligation for the Contracting Authority.

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

### **Part 3: Administrative Compliance**

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 and signed in original.
- The compiled financial identification form.
- The compiled legal entity form.

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 statement by the tenderer attesting the origin of the supplies tendered (or other proofs of origin).
- 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.
- Official declaration from the local Ministry of Finance and Taxes for “Deduction at source” allowing the tenderer to request VAT exemption for invoices, valid at the moment of submission and renewable upon request by the contracting authority.
- Business Licence
- Producer Certification: The supplier should provide a certification from the producer of the machines, confirming their authorization for importing, installation, and maintenance intervention for the production line. The producer must further certify that the supplier possesses all the required spare parts for the line and can promptly provide any missing components within ten working days.

Remarks:

Tenderers are requested to follow this order of presentation.

## 12. Taxes and other charges

The applicable tax and customs arrangements are the following:

The Palestinian Ministry of Finance has agreed to allow full exemption from the VAT tax regarding the expenses of the project AID 012314/01/8, therefore the supply contract will be signed based on a VAT exempted price.

## 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.

In case of local open procedures:

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:

JPIIF 001 2024 012314/01/8  
 Date bar production line  
 Filippo Capurro - Project Manager | John Paul II Foundation  
[f.capurro@fondazionegiovannipaolo.org](mailto:f.capurro@fondazionegiovannipaolo.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 No clarification meeting / site visit 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 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 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**

Joint-venture or consortium is not allowed

## **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 Section IV.2.7 of 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.

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. 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 the additional information about 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

- 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 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 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 10% 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.

## 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

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.

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

The Contracting Authority guarantees the protection of personal data provided by the Tenderer pursuant to Italian laws in force.

By submitting the tender, the Tenderer shall consent to the treatment of personal data by the Contracting Authority, and authorizes the Contracting Authority to make any investigation with the competent local authorities on the truthfulness of the declarations made and on the requirements possession.

## **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.