



INSTRUCTIONS TO TENDERERS

Support Implementation of UfM Financial Strategy WEBE - 29 - PRO454WEB-2023

When submitting their tenders, tenderers must follow all instructions, forms, terms of reference, 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 may lead to the rejection of the tender.

These instructions set out the rules for submitting and selecting tenders. They apply to this call for tenders, in conformity with the practical guide version 2021.1, (available on the internet at this address: <https://wikis.ec.europa.eu/display/ExactExternalWiki/ePRAG>).

1. Services to be provided

The services required by the contracting authority are described in the terms of reference. They are set out in Annex II to the draft contract, which forms Part B of this tender dossier.

2. Timetable

| | DATE | TIME* |
|--|--|----------------|
| Site visit (if any) | Not applicable | Not applicable |
| Information meeting (if any) | Not applicable | Not applicable |
| Deadline for requesting clarification from the contracting authority | Date 21 days before deadline for tenders | 13:00 |
| Last date for the contracting authority to issue clarification | Date 8 days before deadline for tenders | - |
| Deadline for submitting tenders | 14/09/2023 | 13:00 |
| Interviews (if any) | <at least 10 days' advance notice>** | - |
| Completion date for evaluating technical offers | September 2023** | - |
| Notification of award | September 2023** | - |
| Contract signature | September 2023** | - |
| Start date | September 2023** | - |

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

**Provisional date

3. Participation, experts, and subcontracting

a) Participation in this tender procedure 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 . 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.

b) 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), 2.6.10.1.1 (exclusion criteria) or 2.6.10.1.2. (rejection from a procedure) of the **practical guide**. Should they be in one of these situations, their tender will be considered either unsuitable or irregular.

c) In the cases listed in Section 2.6.10.1.1. of the **practical guide** tenderers may 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.

d) It is recommended that the contract between the tenderer/contractor and its experts, if any, or the third party making available the experts, shall contain a dispute resolution clause.

e) The tenderer and, where applicable, entities on whose capacities the tenderer has relied with regard to criteria relating to the economic and financial capacity, shall be jointly liable for the performance of the contract. If the tenderer intends to subcontract one or more parts of the contracted services, this must be clearly stated in the organisation and methodology and in the tender submission form.

Even if subcontracting is allowed, the tenderer must intend to provide the majority of the services itself except for the tasks entrusted to experts either as natural persons or single-member companies.

f) All subcontractors as well as all entities, upon whose capacity the tenderer relies for the selection criteria must be eligible for the contract. If the identity of the intended subcontractor is already known at the time of submitting the tender, the tenderer must furnish a statement guaranteeing the eligibility of the subcontractor. If any subcontractor/capacity-providing entity identified in this way does not meet the eligibility criteria, the tender shall be rejected. If the identity of the subcontractor is not known at the time of submitting the tender, any subcontract must be awarded according to Article 4 of the general conditions of the contract.

g) Subcontractors and capacity providing entities cannot be in any of the exclusion situations listed in Section 2.6.10.1 of the practical guide. The successful tenderer/contractor shall submit a declaration from the intended subcontractor/capacity- providing entity that it is not in one of the exclusion situations. In the event of doubt, the contracting authority shall request documentary evidence that the subcontractor/capacity- providing entity is not in a situation of exclusion.

h) For the avoidance of doubt, where the experts are not directly employed or contracted by the tenderer/contractor but through a third party, the latter is a sub-contractor.

Experts made available by any third party (sub-contractors) are considered for all purposes related to the present contract to be the personnel of the contractor.

4. Content of tenders

Offers, all correspondence and documents related to the tender exchanged by the tenderer and the contracting authority must be written in 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.

The tender must include a technical offer and a financial offer, which must be submitted in separate e-mails (see clause 8).

Failure to fulfil the requirements in clauses 4.1, 4.2 and 8 will constitute an irregularity and may result in rejection of the tender.

4.1. Technical offer

The Technical offer consists of the documents listed below.

The documents listed in point 1 to point 4 must be submitted within the deadline for submitting tenders.

The documentary evidence listed in point 5 below should not be submitted within the deadline for submitting tenders. Instead, they should be prepared by tenderers and kept available for the contracting authority. At any time during the procurement procedure the contracting authority may request the documentary evidence. When requested, the tenderer should provide the documentary evidence within a short deadline. In any case, the tenderer proposed by the evaluation committee for the award of the contract, will be requested to provide documentary evidence listed in point 5 listed below prior to the award of the contract.

(1) Tender submission form (see Part D of this tender dossier) including:

a) Signed statements of exclusivity and availability (using the template included with the tender submission form), one for each key expert, the purpose of which are as follows:

- The key experts proposed in this tender must not be part of any other tender submitted for this tender procedure. They must therefore commit themselves exclusively to the tenderer.
- Each key expert must also undertake to be available, able and willing to work for the whole period scheduled for his/her input to implement the tasks set out in the terms of reference and/or in the organisation and methodology.

Note that non-key experts must not be asked to sign statements of exclusivity and availability.

Any expert working on an EU/EDF-financed project, where the input from his/her position to that contract could be required on the same dates as his/her activities under this contract, must not be proposed as a key expert for this contract under any circumstances. Consequently, the dates included by a key expert in his/her statement of exclusivity and availability in your tender must not overlap with dates on which he/she is committed to work as a key expert on any other contract.

The expert may participate in parallel tender procedures but must inform the contracting authority of these in the statement of exclusivity and availability. Furthermore, the expert is expected to notify



the tenderer immediately if he/she is successful in another tender procedure and he/she is expected to accept the first engagement offered to him/her chronologically.

If a key expert is proposed as a key expert by more than one tenderer with the agreement of the key expert, the corresponding tenders will be rejected. The same applies if the key expert proposed has been involved in the preparation of the project. The expert concerned will be excluded from this tender procedure and may also be excluded from other EU/EDF-financed contracts.

Having selected a firm partly on the basis of an evaluation of the key experts presented in the tender, the contracting authority expects the contract to be executed by these specific experts. However, after the award letter, the selected tenderer may propose replacements for the key experts under certain conditions (for further information see point 14).

b) A signed **declaration** using the format attached to the tender submission form.

c) A completed **financial identification form** (see Annex VI to the draft contract) to indicate the bank account into which payments should be made if the tender is successful.

d) The **legal entity file** and supporting documents (see Annex VI). Subcontractors are only obliged to provide the legal entity file, without the evidence.

e) Duly authorised signature: an official document (statutes, power of attorney, notary statement, etc.) proving that the person who signs on behalf of the company is duly authorised to do so.

(2) Organisation and methodology (will become Annex III to the contract), to be drawn up by the tenderer using the format in Annex III to the draft contract.

Tenderers are required to indicate, in their 'Organisation and Methodology', the name and address of the proposed auditor or audit firm that will be in charge of producing the expenditure verification report(s).

(3) Experts (to become Annex IV to the contract). The key experts are those whose involvement is considered to be instrumental to achieve the contract objectives. Their positions and responsibilities are defined in Section 6.1.1 of the terms of reference in Annex II to the draft contract and they are subject to evaluation according to the evaluation grid in Part C of this tender dossier. The evaluation committee may also call them for interview.

Annex IV to the draft contract contains the templates that tenderers must use, including:

a) a list of the names of the experts;

b) the CVs of each of the experts. Each CV should be no longer than 5 pages and only one CV must be provided for each position identified in the terms of reference. In case of CVs longer than 5 pages, only the first 5 pages will be taken into account. Only the work experience mentioned in the CV will be considered by the evaluation committee. Non-experts CVs are not necessary.



The qualifications and experience of each expert must clearly match the profiles indicated in the terms of reference. If an expert does not meet the minimum requirements for each evaluation criterion (i.e., qualification and skills, general professional experience and specific professional experience), he/she must be rejected. In such case the entire tender shall be rejected.

Tenderers must provide, upon request, the following documents for any key experts proposed:

- a copy of the diplomas mentioned in their CVs,
- a copy of employer certificates or references, or signed copies of consultancy or labour contracts, proving the professional experience indicated in their CVs. The admissibility of any other supporting documents to prove the work experience indicated in the CV will be subject to the discretion of the contracting authority.

For the submission it is not required to submit copies of academic and professional qualifications. This information has to be made available on each CV. However please note that these might be requested during the evaluation process.

Only diplomas and documented experience (i.e., not self-statement from the experts) will be taken into account. Previous experience which caused breach of contract and termination shall not be used as reference.

(4) Non key experts may also be instrumental to achieve the contract objectives. However, they are not subject to evaluation by the evaluation committee. Their positions and responsibilities may be defined in Section 6.1.2 of the terms of reference in Annex II to the draft contract.

(5) To be kept by the tenderer and to be provided upon request (see introductory paragraph under 4.1): documentary evidence of the financial and economic capacity as well as the technical and professional capacity according to the selection criteria specified in the contract notice (see also Section 2.6.11 of the practical guide).

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. The originals must be available to send to the contracting authority upon request.

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

4.2. Financial offer

The financial offer must be presented as an amount in Euro and must be submitted using the template for the fee-based version of Annex V to part B of this tender dossier.

Tenderers are reminded that the maximum budget available for this contract, as stated in the contract notice, is **EUR 90,000.00** (VAT not included). Payments under this contract will be made in the currency of the tender.



Incidental expenditure

The estimated budget for incidental expenditure is to be pre-filled in the template budget breakdown in the tender dossier.

Incidental expenditure incurred by the Contractor and, if applicable, approved by the contracting authority shall be reimbursed in full.

Expenditure verification

The payment of this contract is subject to expenditure verification for reimbursable costs, and it must be carried out by an auditor appointed by the contractor. The auditor will execute the expenditure verification according to the provisions of the contract.

The financial offer must be included in a separate email.

5. Variant solutions

Tenderers are not authorised to tender for a variant in addition to this tender.

6. Period during which tenders are binding

Tenderers are bound by their tenders for 90 days after the deadline for submitting tenders or until they have been notified of non-award. In exceptional cases, before the period of validity expires, the contracting authority may ask tenderers to extend the period for a specific number of days, which may not exceed 40.

The selected tenderer must maintain its tender for a further 60 days. This 60-day period is added to the validity period irrespective of the date of notification. This period can be further extended when 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, up to the adoption of that recommendation.

7. Additional information before the deadline for submitting tenders

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: procurement@ufmsecretariat.org

The contracting authority has no obligation to provide clarification on questions received after this date.

Any tenderer seeking to arrange individual meetings with the contracting authority and/or the government of the partner country and/or the European Commission concerning this contract during the tender period may be excluded from the tender procedure.

Clarifications will be published on the website <https://ufmsecretariat.org/work-with-us/procurement/> at the latest 8 days before the deadline for submitting tenders.



No site visit is planned.

No information meeting is planned.

8. 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 14th of September 2023 at 13:00 hours (Barcelona time)**. They must include the requested documents in clause 4 above.

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 double email system, i.e., one bearing the words '**E-mail A — Technical offer - 29 - PRO454WEB-2023**' and the other '**E-mail B — Financial offer - 29 - PRO454WEB-2023**'. All parts of the tender other than the financial offer must be submitted in E-mail A (i.e., including the tender submission form and declarations).

In addition, a 3rd e-mail with the passwords of the folders sent in e-mails called "E-mail A — Technical offer" and "E-mail B — Financial offer" is required, i.e., bearing the words "**E-mail C – passwords - 29 - PRO454WEB-2023**").

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.

The technical offer must include an index of its contents.

9. Amending or withdrawing tenders

Tenderers may amend or withdraw their tenders by written notification prior to the deadline for submitting tenders. Tenders may not be amended after this deadline.

Any such notification of amendment or withdrawal must be prepared and submitted in accordance with clause 8. The e-mail must be named 'Amendment' or 'Withdrawal' as appropriate.



10. Costs for preparing tenders

No costs incurred by the tenderer in preparing and submitting the tender are reimbursable. All such costs must be borne by the tenderer, including the cost of interviewing proposed experts.

11. Ownership of tenders

The contracting authority retains ownership of all tenders received under this tendering procedure.

12. Evaluation of tenders

The opening of the received tenders is not public.

Once the contracting authority has opened the tenders, they shall become its property and will be treated confidentially.

12.1. Evaluation of technical offers

The quality of each technical offer will be evaluated in accordance with the award criteria and the weighting detailed in the evaluation grid in Part C of this tender dossier. No other award criteria will be used. The award criteria will be examined in accordance with the requirements indicated in the terms of reference.

NB. ANY FINANCIAL DETAIL IN THE EMAIL A OF TECHNICAL OFFER MAY LEAD TO EXCLUSION OF THE CONCERNED TENDERER.

The evaluation of the technical offers will follow the procedures set out in Section 3.4.10.3 of the practical guide (available on the internet at: <https://ec.europa.eu/europeaid/prag/document.do?nodeNumber=3.4.10.3>).

12.1.1 Interviews

The evaluation committee may interview the experts proposed in the technically compliant tenders, after having written provisional conclusions but before concluding the technical evaluation.

The interview shall be conducted by telephone or by alternative communication tools and the date and time of these interviews will be confirmed or notified to the tenderer at least ten days in advance. If a tenderer is unable to participate in an interview by force majeure, a mutually convenient alternative date and time is arranged with the tenderer. If the tenderer is unable to participate in this second scheduled time, its tender will be eliminated from the evaluation process.



Once the evaluation committee has established each technical offer's average score (the mathematical average of the final scores awarded by each voting member), any tender falling short of the 75-point threshold is automatically rejected. If no tender achieves 75 points or more, the tender procedure will be cancelled. Out of the tenders reaching the 75-point threshold, the best technical offer is awarded 100 points. The others receive points calculated using the following formula:

$$\text{Technical score} = (\text{final score of the technical offer in question} / \text{final score of the best technical offer}) \times 100.$$

As a consequence of this formula, the best offer is always awarded 100 points.

12.2. Evaluation of financial offers

Upon completion of the technical evaluation, the financial offers of tenders that were not eliminated during the technical evaluation will be opened (i.e., those with an average score of 75 points or more). Tenders exceeding the maximum budget available for the contract will not be accepted and will therefore not be further evaluated.

The provision for incidental expenditure and the provision for expenditure: verification stated in the terms of reference and to be included in the budget breakdown will not be taken into account in the comparison of the financial offers.

Any arithmetical errors are corrected without penalty to the tenderer such that, if there is a discrepancy between a fee rate and the total amount derived from multiplying the fee rate by the corresponding number of working days, the fee rate/unit price as quoted must prevail, unless the opinion of the evaluation committee is that there is an obvious error in the fee rate, in which event the total amount as quoted must prevail and the fee rate must be corrected.

The tender with the lowest total fees receives 100 points. The others are awarded points by means of the following formula:

$$\text{Financial score} = (\text{lowest total fees} / \text{total fees of the tender being considered}) \times 100.$$

For the purposes of the evaluation, a price for a service, which is 25% lower than the average price of all the submitted tenders, will be considered abnormally low. A tender with abnormally low prices shall be subject to a request for clarifications from the tenderer in order to determine the way through which the tenderer has arrived to this price and whether this fulfils the contracting authority's requirements.

12.3. Choice of selected tenderer

The best price-quality ratio is established by weighting technical quality against price on an 80/20 basis.



12.4. Confidentiality

The entire evaluation procedure is confidential, subject to the contracting authority's legislation on access to documents. The evaluation committee's decisions are collective and its deliberations are held in closed session. The members of the evaluation committee are bound to secrecy. The evaluation reports and written records are for official use only and may be communicated neither to the tenderers nor to any party other than the contracting authority, the European Commission, the European Anti-Fraud Office, the European Public Prosecutor's Office and the European Court of Auditors.

13. Ethics clauses and code of conduct

a) 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.

b) 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.

c) 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 UfM Secretariat activities. The UfM Secretariat 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.

d) 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.

e) 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/>.

14. Signature of contract(s)

14.1. Notification of award

Tenderers will be notified of the outcome of this procurement procedure by e-mail. The notification will be sent to the e-mail address provided in the tender submission form for the tenderer under the section Contact Info. The same e-mail address will be used by the contracting authority for all other communications with the tenderer. It is the tenderer's responsibility to provide a valid e-mail address and to check it regularly.

The successful tenderer shall then confirm availability or unavailability of their Key-experts within 5 days from the date of the notification of award.

In case of unavailability the tenderer will be allowed to propose replacement key-expert(s). The successful tenderer shall give due justification for the change of a key-expert but the acceptance will not be limited to specific cases. Several replacement key-experts may be proposed but only one time-period of 15 days from the date of the notification of award will be offered. The replacement key-expert(s) cannot be an expert proposed by another tenderer in the same call for tender.

The replacement key-expert's total score must be at least as high as the scores of the key-expert proposed in the tender. It must be emphasised that the minimum requirements for each evaluation criteria must be met by the replacement expert.



If replacement key-experts are not proposed within 15 days or if the replacement experts are not sufficiently qualified, or if the proposal of the replacement key-expert amends the award conditions applicable to this call for tenders, the contracting authority may decide to award the contract to the second best technically compliant tenderer (also giving them a chance to replace a key-expert should he/she not be available).

Should the contracting authority learn that a tenderer has confirmed the availability of a key-expert and signed the contract although the tenderer has deliberately concealed the fact that the key-expert is unavailable from the date specified in the tender dossier for the start of the assignment, the contracting authority may decide to terminate the contract on the basis of article 36.2 (m) of the general conditions.

It is reminded that the tenderer/contractor may also be subject to administrative and financial penalties foreseen in article 10.2 of the general conditions for service contracts. Furthermore it may lead to a tenderer's /contractor's exclusion from other contracts funded by the European Union.

14.2. Signature of the contract(s).

Within 15 days of receipt of the contract already signed by the contracting authority, the selected tenderer shall sign and date the contract and return it to the contracting authority.

Failure of the selected tenderer to comply with this requirement may constitute grounds for annulling the decision to award the contract. In this event, the contracting authority may award the tender to another tenderer or cancel the tender procedure.

The other tenderers will, at the same time as the notification of award is submitted, be informed that their tenders were not retained, by electronic means or standard letter, including an indication of the relative weaknesses of their tender by way of a comparative table of the scores for the winning tender and the unsuccessful tender. The second-best tenderer is informed of the notification of award to the successful tenderer with the reservation of the possibility to receive a notification of award in case of inability to sign the contract with the first ranked tenderer. The second tenderer may refuse the award of the contract if, when receiving a notification of award, the 90 days of validity of their tender has expired.

The contracting authority will furthermore, at the same time, also inform the remaining unsuccessful tenderers of the outcome of the procurement procedure and, as a consequence of these letters the validity of their offers shall not be retained.

The corresponding contract award notice will be published on the UfM website: <https://ufmsecretariat.org/work-with-us/procurement/>

15. Cancellation of the tender procedure

In the event of cancellation of the tender procedure, the contracting authority will notify tenderers of the cancellation. If the tender procedure is cancelled before the e-mail of any tender has been



opened, the unopened e-mails will be deleted.

Cancellation may occur, for example, where:

- the tender procedure has been unsuccessful, i.e., no suitable, qualitatively, or financially acceptable tender has been received or there is no valid response at all
- there are fundamental changes to the economic or technical data of the project
- exceptional circumstances or force majeure render normal performance of the contract impossible
- all technically acceptable tenders exceed the financial resources available
- there have been breach of obligations, irregularities, or frauds in the procedure, in particular if they 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 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.

16. Appeals

Tenderers believing that they have been harmed by an error or irregularity during the award process may file a complaint. 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.