

Annex A: Procurement execution rules

1. GENERAL PROVISIONS

1.1. The Procurement Execution Rules (hereinafter referred to as the "Rules") set out the procedures for the procurement of defense and security-related goods, services and works under the scope of the Cooperation Arrangement concerning the Demining Capability Coalition Cooperation for Ukraine.

1.2. Procurement will be carried out following the principles of equal treatment, non-discrimination, mutual recognition, proportionality and transparency, confidentiality and impartiality. In carrying out the procurement, the Executive Body seeks to rationally use the Financial Contributions allocated for this purpose, as well as to effectively and promptly meet the demining needs of Ukraine.

1.3. The Executive Body has the right to exclude from the participation in the procurement suppliers, who are not registered (if the supplier is a natural person, who do not have domicile or nationality) in the State of Participant or in a EU or NATO Member State, to prevent suppliers from using such sub-contractors or economic entities, whose capabilities are relied on, to impose other restrictions on the country of origin of the product or service. The Executive Body has the right to make a reservation regarding suppliers and sub-suppliers, including the country of origin of the product, who are entitled to participate in the procurement. Restrictions on participation in the procurement will be indicated in the procurement documents.

1.4. The Executive Body has the right to terminate the procurement procedures at any time before the conclusion of the procurement contract, if the object of the procurement has become unnecessary, the requirements for the object of the procurement have changed, or other unforeseen circumstances arise.

2. PREPARATION AND ORGANIZATION OF PROCUREMENT

2.1. The Executive Body organizes and executes public procurements based on Lead Nations tasking.

2.2. The Executive Body will set up a procurement commission for the organization and execution of the procurement (Procurement commission) or can appoint an organizer of the procurement (Organizer).

2.3. The Procurement commission will have the right to make all procurements. The Organizer of procurements will have the right to make procurements with a contract value of less than 100,000 euros (excluding value added tax).

2.4. The Procurement commission will be composed of at least 3 natural persons - the chairman of the Procurement commission and at least 2 members of the Procurement commission. A representative of the Executive Body will be appointed chairman of the Procurement commission. Before performing actions relating to the procurement (market

analysis, initiation of procurement, organization or execution of the procurement, etc.), the members of the Procurement commission, the initiators of the procurement and the experts must sign a pledge of confidentiality and a declaration of impartiality, where they are not obliged to declare their private interests in accordance with the procedure, laid down in the country of the Executive Body.

2.5. The Procurement commission will work in accordance with the rules of procedure of the Procurement commission, approved by the Executive Body.

2.6. To prepare for the procurement and to inform suppliers of procurement plans and requirements, the Executive Body may request and obtain advice from independent experts, authorities or market participants.

3. METHODS OF PROCUREMENT

3.1. Procurements are made in the following ways:

3.1.1. open tendering – by publishing the call for tenders in ProZorro Ukrainian public procurement platform and /or other publicly available purchasing platform;

3.1.2. negotiated procedure without prior publication, by inviting two or more suppliers where:

3.1.2.1. the value of the contract is less than EUR 443 000 (excluding value added tax), or

3.1.2.2. in the case of an open procedure, no tenders have been received, or all the tenders submitted are inadmissible or inadequate and the original terms of the procurement are not substantially altered; or

3.1.2.3. when it is necessary to acquire the object of procurement with extreme urgency; or

3.1.2.4. the application of national security requirements of the procurement; or

3.1.2.5. the market analysis shows that this is the most rational way to meet the specific needs of the beneficiary.

3.1.3. negotiated procedure without prior publication, by inviting one supplier, where:

3.1.3.1. the value of the contract is less than EUR 100 000 (excluding value added tax); or

3.1.3.2. when it is necessary to acquire the object of the procurement with extreme urgency, and in the course of an open tender or negotiation with more suppliers, the object of the procurement would not be able to be acquired on time; or

3.1.3.3. the Executive Body has written to at least two suppliers with a request for a tender, but none of the suppliers has submitted a tender or the prices indicated in the tenders, submitted by all the suppliers were too high and unacceptable to the Executive Body; or

3.1.3.4. the market analysis shows that this is the most rational way to meet the specific needs of the beneficiary; or

3.1.3.5. only a specific supplier can supply goods, provide services or perform works (there is no competition for technical reasons or for the protection of exclusive rights, including intellectual property rights).

3.1.4. oral unannounced surveys when inviting one or more suppliers where:

3.1.4.1. the value of the contract is less than EUR 30 000 (excluding value added tax); or

3.1.4.2. when it is necessary to acquire the object of the procurement with particular urgency, and in the course of an open tender or unannounced negotiations, the object of the procurement would not be able to be acquired on time.

3.2. In an open procedure or an oral unannounced survey, the Procurement commission may negotiate more favorable terms and conditions and a price with suppliers.

4. PROCUREMENT DOCUMENTS

4.1. The procurement documents are prepared and approved by the Procurement commission or the Organizer. Documents of the procurement procedure are not prepared during an oral unpublished survey.

4.2. The procurement documents will be drawn up in English and/or in other languages.

4.3. The procurement documents must be accurate, clear and unambiguous so that tenderers can submit tenders and the Executive Body buys what is needed.

4.4. The procurement documents will contain the following information:

4.4.1. requirements for the submission and acceptance of tenders;

4.4.2. qualification requirements for suppliers, a list of documents confirming the qualifications of suppliers and the procedure for assessing the qualification of suppliers (where applicable);

4.4.3. the name, quantity(s) of the goods, services or works, the nature of the services to be provided with the goods, the time limits for the supply of the goods, the provision of services or the execution of the works;

4.4.4. technical specification, including NATO standards (where applicable according to the Cooperation Arrangement concerning the Demining Capability Coalition Cooperation for Ukraine);

4.4.5. the criteria for the evaluation of tenders and the evaluation procedure;

4.4.6. the conduct of the negotiations and the conditions that can be negotiated (where applicable);

4.4.7. the conditions for the selection and replacement of subcontractors, imposed by the Executive Body on the successful tenderer (where applicable);

4.4.8. information on whether variants are permitted, as well as the requirements specified in these tenders;

4.4.9. information, whether suppliers are permitted to sell only part of the supplies, works or services, a description of this part(s);

4.4.10. information, on how the price indicated in the tenders is to be calculated and expressed;

4.4.11. requirements for securing the validity of tenders and ensuring the performance of the contract (if applicable);

4.4.12. the means, by which suppliers may request clarifications of the procurement documents, as well as the means, by which the Executive Body may, on its own initiative, clarify the procurement documents;

- 4.4.13. the date by which the offer is to be valid or the period during which the offer must be valid;
- 4.4.14. information that the prices, indicated in the tenders, will be evaluated in euro, the principles for the conversion of prices, which are indicated in another currency;
- 4.4.15. the procedure for the settlement of disputes;
- 4.4.16. the names, e-mail addresses and telephone numbers of representatives of the Executive Body, who are authorized to communicate directly with suppliers and to receive from them information relating to the procurement;
- 4.4.17. other relevant information on the terms and conditions of the procurement, including the requirements for compliance with national security (where applicable) and the requirements specified in the Cooperation Arrangement Concerning the Demining Capability Coalition Cooperation for Ukraine.

5. COMMUNICATION WITH SUPPLIERS

- 5.1. Communication and exchange of information between the Executive Body and suppliers, publication of procurement documents, and submission of the tenders will take place in writing (by e-mail, via procurement platform, etc.), except in cases, where the oral unannounced procurement procedures, specified in paragraph 3.1.4. of the Rules, are carried out. All suppliers will be provided with the same information about the procurement in progress.
- 5.2. On the initiative of the Executive Body or at the request of the suppliers, additional information, clarifications or explanations on the procurement documents will be provided within the time limits, laid down in the procurement documents.
- 5.3. Explanations of the procurement documents, clarifications or additional information and answers regarding the procurement documents, provided on the initiative of the Executive Body and (or) at the request of the suppliers, will be sent to all suppliers, to whom the Executive Body has submitted the procurement documents or can be published in the same way as the contract notice, without specifying the supplier who enquired.
- 5.4. Where the explanations, clarifications or additional information provided in the procurement documents substantially alter the requirements laid down in the procurement documents for the subject-matter of the contract, for the supplier or the preparation of the tender, the Executive Body will extend the time limit for the submission of tenders, within which the suppliers may take account of the adjustments, when preparing their tenders.

6. ACCEPTANCE AND EVALUATION OF TENDERS

- 6.1. Tenders will be accepted and evaluated in accordance with the procedures and requirements laid down in the procurement documents. Tenders, received later than those provided for in the procurement documents, will not be evaluated.

6.2. The Executive Body gets acquainted with the tenders after the closing date for the submission of tenders. Representatives of suppliers will not be invited to participate in the procedure of the acquaintance with tenders and the evaluation of tenders.

6.3. Where the supplier has provided inaccurate, incomplete or erroneous documents or data concerning compliance with the requirements of the procurement documents or has not submitted them, the Executive Body may ask the supplier to clarify, supplement, clarify or provide the said documents within a time limit to be specified by it. The Executive Body may request suppliers to clarify, supplement or clarify their tenders, but may not request, propose or authorize a change in the substance of the tender (in an open tendering or an oral unannounced survey without negotiations) and of the final tender.

6.4. Initial tenders submitted by suppliers will be evaluated in accordance with the requirements set out in the procurement documents, with which these tenders must comply. Tenders (in an open tendering or an oral unannounced survey without negotiations) and final tenders, which do not comply with the requirements set out in the procurement documents, will be rejected. The Executive Body will inform each supplier in writing of the results of the evaluation in accordance with paragraph 5.1 within 3 working days. The requirement to inform in writing does not apply in the case of an oral unannounced survey.

6.5. Suppliers, whose tenders meet the requirements for the initial offer, are invited to participate in the negotiations (where applicable).

7. CONDUCT OF NEGOTIATIONS

7.1. Negotiations with each supplier are conducted separately.

7.2. No information received from the supplier will be disclosed without the supplier's consent, except as required by the laws and audit institutions. The suppliers will not be informed of the agreements reached with other suppliers.

7.3. All suppliers are subject to the same requirements, equal opportunities and the same information is provided.

7.4. The minutes of the negotiations will be signed by the chairman of the Procurement commission and by the authorized representative of the participant negotiated, and in the case of electronic negotiations, the correspondence or record will be retained.

7.5. When the Executive Body intends to conclude negotiations, it will set a time limit for the submission of final tenders by suppliers and will inform all suppliers invited to the negotiations thereof.

7.6. The Executive Body may not negotiate with the supplier, who submitted the original tender and may consider the supplier's initial tender as final, if the supplier fails to appear for negotiation and/or does not submit a final tender, or the Executive Body does not request a final tender, where this is not appropriate.

7.7. During the evaluation of the final tenders of the suppliers the Executive Body will verify that the object of the contract proposed, and the submission of the tender comply with the requirements set out in the procurement documents, and will assess whether the price in the supplier's tender is rational and not excessive and unacceptable for the contracting authority.

7.8. Final tenders from suppliers, which do not meet the requirements set out in the procurement documents, will be rejected.

7.9. The Executive Body will inform each supplier in writing of the rejection of its offer no later than within 5 working days from the date of adoption of the decision to reject the offer.

8. RANKING OF TENDERS

8.1. Suppliers' tenders or final tenders, which meet the requirements set out in the procurement documents, will be included in the ranking of tenders. Tenders will not be ranked if only one supplier submits a tender (or only one supplier remains in the event of rejection of other tenders during the procurement procedures).

8.2. The Executive Body will notify the suppliers included in the ranking of tenders in writing, no later than within 5 working days, of the ranking of tenders and of the successful tender.

9. CONCLUSION OF THE PROCUREMENT CONTRACT

9.1. The Executive Body will propose the award of the contract to the tenderer, whose tender has been declared successful. The procurement contract will be concluded immediately.

9.2. If the supplier refuses to sign the contract or fails to provide the documents set out in the procurement documents, the Executive Body will propose the award of the contract to the supplier, whose tender is the first following the ranking of tenders to be determined after the supplier, who refused to conclude the contract.

9.3. The conclusion of the procurement contract may not lead to a change in the essential terms and conditions of procurement laid down in the procurement documents and to the supplier's offer.

9.4. A procurement contract with a value of not more than EUR 15 000 (excluding value added tax) may be concluded orally.

10. FINAL PROVISIONS

10.1. Disputes arising from the procurement procedures are to be resolved by negotiation or by examination of the submitted claim.

10.2. The supplier can submit a claim regarding the decision of the Executive Body within 5 working days after receiving the decision.

10.3. The Executive Body will examine only those supplier claims that were received before the date of conclusion of the purchase contract and before the claim submission deadline. The executive authority will examine the claim, make a reasoned decision and notify the supplier, who submitted the claim about it no later than within 5 working days from the date of receipt of the claim.

10.4. If it is not possible to resolve the dispute amicably, dispute settlement takes place in Vilnius Commercial Arbitration.

10.5. The Procurement Documents are managed, accounted for and stored by the Executive Body for at least 5 years from the end of the procurement.

10.6. The Executing Body will not disclose information received during the procurement procedure and execution of the contracts, except as required by the laws, audit institutions, or competent authorities, or for the purposes of supervision of the procurement or with the consent of the supplier.