

Subject: Tender to contract qualified auditors to carry out a special purpose expenditure verification for the Project *MY RIGHT – NEXT LEVEL Inclusive Education in Armenia and Kosovo*.

Dear Madame/Sir,

Caritas Österreich (Caritas Austria) is planning to award service contracts to a qualified auditor for Expenditure Verification of the project **MY RIGHT – NEXT LEVEL** Inclusive Education in Armenia and Kosovo. The project is co-financed by the Austrian Development Agency (ADA) and own contributions of Caritas Austria.

Details regarding the project's background (results and activities, implementing partners, donor contracts) can be found in ***Annex 1 Expenditure Verification /Terms of Reference*** under points 1. and 2.

Cooperation among local partners and Caritas Austria:

Following the project's objectives, activities are carried out in each of the above mentioned countries. Activities are implemented by one implementing organization per country. Caritas Austria is responsible for the overall coordination. Cooperation agreements were concluded per each partner and Caritas Austria.

Donors' requirements regarding expenditure verification:

In accordance with donor requirements Caritas Austria has elaborated Terms of Reference for the expenditure verification (see Annex 1).

Expenditure verification process:

Expenditure verifications have to be carried out in line with *Annex 1 Terms of Reference*.

Due to the donor requirements expenditure verifications have to be carried out on a yearly basis. For details please see *Annex 1, Chapter 9. Work Plan*.

Submission of tender application/offer:

Applications can be submitted in English or German.

Please note that **only signed offers can be accepted**. A scanned copy of the signature will be accepted (via E-Mail).

Deadline for reception of offers:

Offers have to be presented per e-mail no later than 04/07/2023.

E-mail: vera.moll@caritas-austria.at
florie.demaj@caritaskosova.org

Annexes

Annex 1 Terms of Reference

Annex 2 Exclusion Criteria

Ferizaj, 21. June, 2024

EXPENDITURE VERIFICATION
of projects, co-financed by Austrian Development Agency under standard Grant Agreements
TERMS OF REFERENCE (ToR)

1. INTRODUCTION

Caritas Austria is an international NGO implementing activities in the fields of emergency relief and rehabilitation as well as development cooperation, in countries struck by conflicts or natural disasters. Caritas Austria has been supporting projects in the countries Armenia(AM) and Kosovo (KS) for the past 20 years, addressing social needs like care for children and youth, programmes for women and the integration of minorities, elderly care, support of persons with disabilities, agricultural projects, etc. With the current programme "My Right –Next Level. Inclusive Education in Armenia and Kosovo, Caritas puts the focus on the support of children with disabilities and their environment in terms of equal and qualitative education, thus contributing to SDG 4, Art. 23 and Art. 28 of the UN CRC (Convention on the Rights of the Child) and to Art. 24 of the UN CRPD (Disability Rights Convention). The project builds on already successfully completed projects of Caritas in Armenia and therefore partly represents continuations of previous activities, but also includes additions and improvements through new measures. This programme is co-financed by the Austrian Development Agency and implemented in Armenia and Kosovo. This cooperation agreement defines the implementation in Armenia, and hence the cooperation between Armenian Caritas and Caritas Austria (CÖ and Caritas of the Diocese of Innsbruck). A separate cooperation agreement defines the implementation in Kosovo, and hence the cooperation between Caritas Kosovo and Caritas Austria (CÖ and Caritas of the Diocese of Klagenfurt).

Subject for this expenditure verification is the implementing partner in Kosovo, Caritas Kosova.

The selected audit company will be contracted by Caritas Austria/Caritas Kosova and shall conduct 3 yearly expenditure verifications (1 expenditure verification per project year).

2. BACKGROUND OF THE PROJECT

- a) Back donor's contract number and official project title:
Austrian Development Agency (ADA)
8108-03/2023 MY RIGHT – NEXT LEVEL Inclusive Education in Armenia and Kosovo
- b) Caritas Austria's project number and official project title:
2350013 MY RIGHT – NEXT LEVEL Inclusive Education in Armenia and Kosovo
- c) Project duration/implementing period: 01.09.2023 – 28.02.2026 (30 months)
- d) Official project budgets (with indication of donor's contribution):
Total project budget: EUR 419.424,78
Austrian Development Agency (ADA): EUR 300.000,-
Own Contribution – Caritas Austria: EUR 119.424,78,-

Budget allocated to Caritas Kosova (**relevant for this audit**): EUR 173.140,-
- e) Short project description:
 - Implementing partner organisation:
 - Partner 1: Caritas Austria, Storchengasse 1/E1 05, 1150 Vienna, Austria
 - Partner 2: Caritas Kosova (**subject for this audit**), str.Shën Nënë Tereza, 70000 Ferizaj,Kosova
 - Partner 3: Armenian Caritas BNGO, H. Sargsyan 8, sidestreet 3, 3118, Gyumri, Armenia

The outcome of the project is to achieve "Enhanced inclusive education in 22 educational institutions and 1 ECEC for CwD and their parents in Kosovo (Prizren, South Kosovo) and Armenia (Shirak Region)¹". A more inclusive educational system is the basis for building a more inclusive society. Underlying structures on the level of society as well as the individual level are too deeply anchored for fast changes. To reach long-term change, further interventions are needed so that inclusive knowledge can be created, local education systems can adapt and political support can be institutionalized. The ADA funded project MY RIGHT did not only increase the physical & mental well-being of numerous children with disabilities and empowered parents, educational professionals and schools that work with them, but also opened new opportunities for exchange and innovation in Kosovo and Armenia, as well as political cooperation. The underlying project does not simply continue with offers that proved successful but wants to level up the project (therefore the name "MY RIGHT – NEXT LEVEL") by increasing the cooperation with the local Municipal Directorates for Education in order to foster institutional sustainability of the support, piloting the first "integration class" to boost innovation, offering technical assistive devices to allow better participation, producing short videos on inclusive methods in the local language, enhancing father's involvement and further emphasizing mentality changes.

Impact:

Contribute to an inclusive and equitable quality education for children with disabilities and their parents in Kosovo (Prizren, South Kosovo) and Armenia (Shirak Region)

Programme outcomes:

Enhanced inclusive education in 23 educational institutions and 1 ECEC for CwD and their parents in Kosovo (Prizren, South Kosovo) and Armenia (Shirak Region) (in accordance with SDG 4 (4.1, 4.2, 4.5, 4.a, 4.b), 5 (5.1, 10 (10.2), Art 28 and Art 23 of the UN-CRC, and Art 24 of the UN-CRPD, GAP III Thematic area - Promoting economic and social rights and empowering girls and women, specific thematic objective 6)

Expected results:

Output 1 / BOYS and GIRLS: # of CwD are encouraged to realize their rights and be active parts of their schools.

Output 2 / TEACHERS: # of Teachers are provided with support (OR: are able) to work with groups of children with diverse needs.

Output 3 / INDEX TEAM: are motivated and supported to make their SCHOOLS an inclusive place and promote inclusion.

Output 4 / MOTHERS and FATHERS: # of Parents with special focus on fathers have increased knowledge in taking care of their daughters and sons with disabilities according to their needs.

Output 5: COMMUNITY (international and local): Benefits from diverse exchanges, awareness-raising, and the piloting of new models.

Target group:

Direct beneficiaries: 220 children with disabilities and their families, particularly parents (special focus on fathers), 690 teachers and educational staff, 23 educational institutions (1 Early Childhood Education Center, 6 kindergartens, 16 schools). Indirect beneficiaries 6400 children without disabilities, their parents (6500) plus 2100 teachers and other educational staff.

Target regions/locations:

Armenia (Shirak Region)/Kosovo (Prizren, South Kosovo)

Activities related to OPs:

- Elementary education for CWD in preschool settings and in the family + family counselling
- Early education (therapy) for children with disabilities (age 0-6), Kosovo

- Supporting the transition from kindergarten or home to school (individualized transition plans)
- Provision of teacher assistants in educational settings plus establishing teaching assistants as permanent staff of MDA in Prizren by 2025 (Kosovo)
- Comprehensive Social work support for CWD and their families; involvement of youth in fighting for an inclusive society, peer to peer learning activities for students; active youth clubs (Armenia)
- Enhancing the competencies of teachers, educational staff and parents of CWD; production of animation videos on inclusive methods, using the Index for Inclusion to boost inclusive development in schools; public awareness raising on inclusive education and the rights of CWD
- Support for the establishment of 15 parent self-help groups (3 of them exclusively for fathers whose involvement is to be encouraged)
- Piloting the first integration class in Kosovo
- International (bilateral) mutual learning (AT, KOS, ARM, BLR, MKD, ALB)

3. OBJECTIVES OF THE EXPENDITURE VERIFICATION

The objectives of the expenditure verification are:

- a) to provide a professional opinion on the quality of processes and accounting practices within the audited organisation and specifically as applied within the project at hand following point 5 (procedures to be performed by the Auditor)
- b) to independently verify that the project mentioned above has been implemented in compliance with the requirements of the following documents of reference:
 - **Legislation:** National legislation, with particular attention to:
 - o Respective social and labour law (including staff and salary regulations).
 - o Regulations on VAT and other taxes
 - o National accounting policies
 - **Project:** Cooperation agreement relative to the project or to the partner organisation, Project Documents, Terms of Reference (TOR), Budgets, plans of project activities.
 - **Accounting:** Accounting documents subject to the expenditure verification, financial and operational reports concerning the project.
- c) to provide a professional opinion on the quality of the audited organisation's financial reporting and its suitability for the requirements of the donors.

4. MINIMUM REQUIREMENTS FOR AUDITORS AND AUDIT STANDARDS

- The Auditor is a member of a national accounting or auditing body or institution which in turn is a member of the International Federation of Accountants (IFAC).
- The Auditor is a member of a national accounting or auditing body or institution. Although this organisation is not a member of the IFAC, the Auditor commits himself/herself to undertake this Engagement in accordance with the IFAC standards and ethics.
- The Auditor is registered as a statutory auditor in the public register of a public oversight body in an EU member state in accordance with the principles of public oversight set out in Directive 2006/43/EC of the European Parliament and of the Council (this applies to auditors and audit firms based in an EU member state).
- The Auditor is registered as a statutory auditor in the public register of a public oversight body in a third country and this register is subject to principles of public oversight as set out in the legislation of the country concerned (this applies to auditors and audit firms based in a third country).
- The Auditor will employ staff with appropriate professional qualifications and suitable experience with IFAC standards and with experience in verifying financial information of projects comparable in size and complexity to the project subject to the expenditure verification.
- The Auditor must have sufficient knowledge of relevant laws, regulations and rules in the countries concerned i.e. where the project is implemented. This includes but is not limited to the company law, taxation, social security and labour regulations, accounting and reporting.

- The Auditor will provide the Grant Recipient with CVs of the staff/experts involved in the expenditure verification. The CVs will include appropriate details for the purpose of the evaluation of the offer on the relevant specific experience for this expenditure verification and the qualifying work carried out in the past.

Auditing Standards

The Auditor shall undertake this Engagement in accordance with:

- the International Standard on Related Services ('ISRS') 4400 (Revised) "Agreed-upon Procedures Engagements" as promulgated by the IFAC;

- the IFAC Code of Ethics for Professional Accountants (developed and issued by IFAC's International Ethics Standards Board for Accountants (IESBA), which establishes fundamental ethical principles for Auditors regarding integrity, objectivity, independence, professional competence and due care, confidentiality, professional behaviour and technical standards. Although ISRS 4400 (Revised) provides that independence is not a requirement for Agreed-upon procedures engagements, the ADA requires that the Auditor is independent from the Grant Recipient and complies with the independence requirements of the IFAC Code of Ethics for Professional Accountants.¹

5. PROCEDURES to be performed by the AUDITOR

The auditor verifies based on original documents that

1. the project is implemented in accordance with the principles of economy, efficiency and expediency
2. proper book-keeping and sound financial management have been maintained by the Grant Recipient, the related expenditure practices are correct, Generally Accepted Accounting Standards have been met and an adequate, effective Internal control system exists
3. the project funds have been used in conformity with the Grant Agreement, in particular:
 - a. the project funds were spent exclusively for project related expenses and solely for the purpose intended;
 - b. costs have been incurred during the implementation period;
 - c. costs meet the eligibility criteria stipulated in the Grant Agreement and its annexes
4. the financial report presented by the Grant Recipient presents the actual expenditure incurred and the revenue received for the project for the respective reporting period accurately and in conformity with the Grant Agreement and annexes thereto
5. the project expenditures are allocated to the last approved (allocated) project budget
6. individual expenditures made from grant funds are clear evident from the project bookkeeping and are assigned to the correct budgeted items as specified in the approved Grant Application.
7. it is plausible that the expenditure for a selected item was necessary for the implementation of the project and that it had to be incurred for the contracted activities of the project by examining the nature of the expenditure with supporting documents
8. where expenditure was apportioned, the applied allocation key was based on sufficient, appropriate and verifiable underlying information
9. over expenditure, if any, lies within the thresholds stipulated in the Grant Agreement
10. the projects costs claimed are net cost and free of any VAT; if expenses contain Value Added Tax (VAT), the Auditor shall certify that the Grant Recipient is not exempt from VAT and cannot reclaim it either

¹ It follows from the independence requirement that a company or an individual acting as a business consultant or a tax advisor of the Grant Recipient, is not permitted to undertake the Expenditure Verification Engagement under the Grant Agreement.

11. costs declared in the Financial Report are justified by the relevant supporting documents in form of genuine and original invoices, receipts and vouchers bearing all necessary information; these original supporting documents are clearly associated with the project and the project's time frame
12. all expenditures claimed under the financial report have been settled and paid for, no outstanding invoices or accrued costs have been included in the financial report
13. all necessary supporting documents for employees' costs are available and these costs are reported correctly. Specifically, the auditor verifies
 - a. the existence of employment contracts in accordance with the relevant national legislation
 - b. that the reported employees' costs are calculated correctly in accordance with the approved Project Budget and respective provisions of the General Terms and Conditions
 - c. that only actually paid employees' costs have been claimed under the Financial Report and this has been evidenced by the respective supporting documents
14. indirect costs², if foreseen in the budget, have been calculated properly
15. accrued interest has been declared³
16. conversion of currency has been calculated correctly, in particularly the conversion into EUR has been calculated in accordance with the General Terms and Conditions and is evidenced by currency exchange receipts and/or respective bank account statements
17. usage of budget funds under "unforeseen" or "contingency reserve" has been approved by ADA
18. revenues foreseen in the financial plan were not realized
19. other revenues originally not foreseen in the financial plan were registered
20. applicable procurement regulations of the General Terms and Conditions have been complied with
21. applicable provisions of social and labour laws in all countries where the project is being implemented have been complied with
22. applicable provisions of the company and tax laws and regulations have been complied with
23. regulations on travel expenses have been followed
24. all assets and equipment have been incorporated in the asset list
25. assets and equipment have been used for the project purposes
26. depreciation on investment goods that continue to be available to the Grant Recipient after the end of the term of the Agreement has been properly calculated, if applicable
27. equipment or services produced or provided by the Recipient itself have been charged at cost only (without any mark-up), if applicable
28. project vehicles, if any, have been used according to the standards set out in the General Terms and Conditions of the Grant Agreement
29. sub-grants foreseen in the project document have been provided to third parties and have been properly accounted for based on actual costs
30. applicable visibility regulations have been adhered to
31. requests and recommendations from the previous expenditure verifications regarding any project relevant matters have been considered and implemented

² Indirect costs (also named "Projektbegleitentgelt, (PBE)" are calculated proportionally to eligible direct costs and do not require further supporting documents. Audit costs are part of the indirect costs. For details refer to "Guidelines indirect costs".

³ Note that accrued interest must be reimbursed to ADA

Additionally

- the auditor provides information on the treatment of taxes (especially VAT) in the financial reports⁴.
- examines whether the persons enjoying power of disposal over the bank account are the same or among those officially authorised to represent the Legal Holder of the project
- In case of education and training courses, to examine the relevant invoices, bills, receipts (Fees, food, accommodation, transport, etc.) and also the lists of participants

6. AUDITOR'S REPORT

6.1. The auditor shall invalidate the original receipts and produce **a draft and a final Expenditure Verification Report** based on the official project budget and exactly reflecting its budget line structure. The expenditure verification report should describe the purpose, the agreed-upon procedures and the findings in enough details.

The expenditure verification reports must be written in English and contain at least:⁵

- Title
- Addressee
- Contracting Organisation (Caritas Austria) and donor
- Project number and name
- Implementing organisations' names and contact details
- Brief description of the project and partner(s)
- Period covered by the report and currency
- Exchange rates used in the financial report (to Euro or to the official project currency, as indicated in the project budget), with detailed explanation of their calculation
- Total amount of budgeted and actual expenditures, with differentiation between direct and indirect costs, as indicated in the official project budget
- Complete list of reported expenditures classified according to the relevant budget lines;
- Total amount of budgeted and actual incomes
- Complete list of project funds transferred, including donors' names, dates and exchange rates
- Indication on treatment of taxes and especially VAT
- Total amount of actual expenditures verified
- Expenditure Coverage Ratio
- Objectives, Scope and Description of the procedures performed
- Findings from the expenditure verification
- Recommendations, if applicable
- Follow up of previous recommendations, if applicable
- Other relevant matters
- Reference to contact persons/sources of information from implementing partner organisation during execution of the expenditure verification
- Auditor's name, position, address, phone, fax and e-mail
- Date of the report, auditor's signature

6.2. The Report shall also comprise the following annexes:

- Financial Report overall calculation with comparison of actual expenditures vs. approved budget certified by the company's formal signature (stamp and signature) and by the formal signature (stamp and signature) of the auditor.
- Statement of the project cash flows
- A detailed voucher list classified according to the relevant budget lines
- Bank account statements
- List of payable invoices, if any

⁵ For details on reporting please refer to ISRS 4400 (Revised), issued by IFAC

- In case exceptions are detected, a list of respective vouchers including a description of exception
- Asset list of all goods/equipment financed with project funds with a value of over Euro 400,-
- List of procurement contracts awarded during the reporting period
- List of grant contracts awarded during the reporting periods, if applicable

6.3. A signed original version of the expenditure verification reports must be submitted in hardcopy to:
2 copies to Caritas Austria (sent by DHL directly from the auditing company to Caritas Austria)
2 copies to Implementing partner

7. MANAGEMENT SUPPORT / Grant Recipient's duties

7.1. Caritas Austria and its implementing partner organisation will provide the external auditor with all necessary information to perform his/her work. Relevant documents must be specified in the Terms of Reference which are annexed to the contract or Engagement Letter.

The following underlying documents are required as a minimum:

- Grant Agreement between Caritas Austria and back donors (if applicable) with all annexes, including contracts or agreements between the Grant Recipient and his/her partners
- Amendments to the Grant Agreement, if any
- ToR for the external expenditure verification
- Official project budget
- Financial Report, including complete list of reported expenditures
- Original vouchers/receipts
- Access to the used bookkeeping system
- Access to information related to bank and cash statements
- Any other documents required by the auditor for the performance of his/her tasks

The Financial Report (consisting of a summary and a detailed breakdown) must include a comparison of actual vs budgeted expenditure and a detailed voucher list classified according to the relevant budget lines. The Financial Statement must in all aspects adhere to the last approved budget and show at least the same level of detail.

The Financial Report must cover all project expenses and all project funds whether received from the ADA, the Grant Recipient, other project partners or other donors.

Revenues including accrued interest, if any, and calculations of conversions to the contract currency (generally Euro) are to be attested as well.

Contributions in kind are generally not part of the Project Budget and are thus not reflected in the Financial Report.

If, in exceptional cases, the project budget includes expenses which cannot be verified by the Auditor, these expenses must be declared in the Terms of Reference (ToR) and in the Financial Report.

The ADA reserves the right to reject the Expenditure Verification Report if it does not comply with the required standards. The ADA may at any time require the submission of the original vouchers. The original vouchers must be available for in situ inspection by the ADA at any time for a period of ten years starting from the end of the year during which the last instalment has been disbursed by the ADA. The ADA shall be allowed to inspect in detail the financial management of the Project at any time.

8. EXPENDITURE COVERAGE RATIO (ECR)⁶

⁶ This ratio represents the total amount of expenditure to be verified expressed as a percentage of the total expenditure which has been subject of this

The Expenditure Coverage Ratio (ECR) is defined in the Terms of Reference (ToR). The Auditor ensures that the overall ECR is at least 65%. If he finds an exception rate of less than 10% of the total amount of expenditure verified (i.e. 6,5 %) the Auditor finalises the verification procedures and continues with reporting. If the exception rate found is higher than 10% the Auditor extends verification procedures until the ECR is at least 85%. The Auditor then finalises verification procedures and continues with reporting regardless of the total exception rate found. The Auditor ensures that the ECR for each expenditure heading and subheading in the Financial Report is at least 10%. The Grant Recipient must reserve the right to share the Expenditure Verification Report and its annexes with all donors.

9. WORK PLAN

Activity	until	to
Letter/Expression of interest/offer	30.06.2024	Caritas Austria/ Caritas Kosova
Signed contract between auditor and Caritas Austria/Implementing partner organisation	12.07.2024	Caritas Austria/ Caritas Kosova
Expenditure verification: 1. Year audit (01.09.2023-31.08.2024) 2. Year audit (01.09.2024-31.08.2025) 3. Year audit (01.09.2025-28.02.2026)	07.10-22.10.2024 06.10-21.10.2025 13.04-30.04.2026	
Sending draft expenditure verification report to Caritas Austria/Implementing partner: 1. Year audit (01.09.2023-31.08.2024) 2. Year audit (01.09.2024-31.08.2025) 3. Year audit (01.09.2025-28.02.2026)	05.11.2024 04.11.2025 05.05.2026	Caritas Austria/ Caritas Kosova
Feedback from Caritas Austria/Implementing partner organisation: 1. Year audit (01.09.2023-31.08.2024) 2. Year audit (01.09.2024-31.08.2025) 3. Year audit (01.09.2025-28.02.2026)	12.11.2024 11.11.2025 12.05.2026	Auditor
Finalization of and sending final expenditure verification report to Caritas Austria/Implementing partner organisation: 1. Year audit (01.09.2023-31.08.2024) 2. Year audit (01.09.2024-31.08.2025) 3. Year audit (01.09.2025-28.02.2026)	20.11.2024 19.11.2025 20.05.2026	Caritas Austria/ Caritas Kosova

10. LETTER OF INTEREST, SELECTION PROCESS AND CONTRACTING

10.1. Interested auditors are requested to send a "Letter of Interest" no later than **04.07.2024** to Caritas Kosova and in cc to Caritas Austria:

Florie Demaj: florie.demaj@caritaskosova.org; and in cc to Vera Victoria Moll: vera.moll@caritas-austria.at

It should include:

- Description of planned implementation of expenditure verification
- Schedule of activities
- Auditor's fees
- Auditor's CV and/or company profile
- Confirmation that the auditor will carry out the expenditure verification in accordance with the Terms of Reference

10.2. Selection of best offer

In accordance with Caritas Austria's procurement rules a selection committee with qualified members will select the best offer regarding price and quality. Price and quality will be weighted with 70% (price) and 30 % (quality). The successful bidder will be informed within 10 working days after the deadline for submission of offers.

10.3. Contract/ Letter of Engagement

Before carrying out the expenditure verification, a written **contract or engagement letter** (based on the ToR for the external expenditure verification) has to be signed between Caritas Austria and the respective auditor or auditing firm.

The expenditure verification contract shall be drafted by the auditor and shall:

- Be written in English
- Include these ToR as an annex and integral part of the contract
- Contain a confirmation that the auditor has read ADA's general conditions and acknowledge ADC's rules (if applicable – for ADA funded projects)
- Contain a time schedule for the auditing process (See also 9. Workplan)

11. CONTACTS

11.1. Caritas Austria

Office: Caritas Österreich, Storchengasse 1/E1 05, 1150 Vienna, Austria

Contact person 1: Vera Victoria Moll. vera.moll@caritas-austria.at, Tel.: +436767805534

Contact person 2: Theresa Sacher: t.sacher@caritas-kaernten.at, +43 (0)463/555 60 904

11.2. Implementing partner organisation

Caritas Kosova

Office: Address Str.Shën Nënë Tereza no.3, 70000 Ferizaj, Kosova;

Contact person 1: Alfred Pjetri, Executive Director

E-mail: alfred.pjetri@caritaskosova.org, tel :+38344470961.,

Contact person 2: Orhan Miftari, Project manager

E-mail: orhan.miftari@caritaskosova.org, +38348988681

Contact person 3: Florie Demaj and Lekë Laëi, Financial officer

E-mail: florie.demaj@caritaskosova.org, +38344500541 and

EXCLUSION CRITERIA

These criteria follow the rules for EC contracts

(PRAG: <https://wikis.ec.europa.eu/display/ExactExternalWiki/2.+Basic+rules#id-2.Basicrules-2.6.10.1.Exclusioncriteria>)

Version: 17.03.2023

1. Exclusion criteria applicable for participation in procurement and grant procedures

An economic operator will be excluded from participation in procurement and grant procedures if:

- a) it is bankrupt, subject to insolvency or winding-up procedures, where its assets are being administered by a liquidator or by a court, where it is in an arrangement with creditors, where its business activities are suspended, or where it is in any analogous situation arising from a similar procedure provided for under national laws or regulations;
- b) it has been established by a final judgment or a final administrative decision that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the applicable law;
- c) it has been established by a final judgment or a final administrative decision that the economic operator is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the economic operator belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes a wrongful intent or gross negligence, including, in particular, any of the following:
 - fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection criteria or in the performance of a contract;
 - entering into agreement with other economic operators with the aim of distorting competition;
 - violating intellectual property rights;
 - attempting to influence the decision-making process of the contracting authority during the procurement procedure;
 - attempting to obtain confidential information that may confer upon it undue advantages in the procurement procedure;
- d) it has been established by a final judgment that the economic operator is guilty of any of the following:
 - fraud, within the meaning of Article 3 of Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law and Article 1 of the Convention on the protection of the European Communities' financial interests drawn up by the Council Act of 26 July 1995;
 - corruption, as defined in Article 4(2) of Directive (EU) 2017/1371 and Article 3 of the Convention on the fight against corruption involving officials of the

European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997, and in Article 2(1) of Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector, as well as corruption as defined in the law of the country where the contracting authority is located, the country in which the economic operator is established or the country of the performance of the contract;

- conduct related to a criminal organisation referred to in Article 2 of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime;
 - money laundering or terrorist financing within the meaning of Article 1(3), (4) and (5) of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance) of the European Parliament and of the Council;
 - terrorist-related offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision of 13 June 2002 on combating terrorism, respectively, or inciting or aiding or abetting or attempting to commit such offences, as referred to in Article 4 of that Framework Decision;
 - child labour or other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA;
- e) the economic operator has shown significant deficiencies in complying with main obligations in the performance of a contract financed by the EU, which has led to the early termination of a legal commitment or to the application of liquidated damages or other contractual penalties or which has been discovered following checks and audits or investigations by an authorising officer, OLAF or the Court of Auditors;
- f) it has been established by a final judgment or final administrative decision that the economic operator has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests;
- g) it has been established by a final judgment or final administrative decision that the person or entity has created an entity under a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations of mandatory application in the jurisdiction of its registered office, central administration or principal place of business;
- h) it has been established by a final judgment or final administrative decision that an entity has been created with the intent provided for in point (g)

Point a) does not apply to the purchase of supplies on particularly advantageous terms either from a supplier that is definitively winding up its business activities or from liquidators of an insolvency procedure, an arrangement with creditors, or a similar procedure under EU or national law.

In cases referred to in points c), d), f), g) and h) in the absence of a final judgment or a final administrative decision, or in the case referred to in point e), the contracting authority must exclude an economic operator on the basis of a preliminary classification in law having regard to established facts or other findings contained in the recommendation of the EDES panel. The EDES panel ensures a centralised assessment of those situations after giving the economic operator the opportunity to submit its observations. In indirect management, where applicable according to the correspondent financing or contribution agreement, the contracting authority/entrusted entity will transmit the information to the European Commission and the European Commission may refer the case to the EDES panel.

The contracting authority must exclude the economic operator where:

- a natural or legal person who is member of the administrative, management or supervisory body or has power of representation, decision or control on the economic operator is in a situation listed in points c) to h);
- a natural or legal person that assumes unlimited liability for the debts of that economic operator is in a situation listed in points a) or b);
- a natural or legal person who is essential for the award or for the implementation of the legal commitment and is in a situation referred to in point c) to h).

The contracting authority must not exclude an economic operator where i) it can demonstrate that adequate measures have been adopted which ensure its reliability, except in the cases listed in point d); ii) it is indispensable for the continuity of the service for a limited duration and pending the adoption of remedial measures; iii) where the exclusion would be disproportionate.

2. Rejection from a given procedure

The contracting authority must reject from a given award procedure a candidate, tenderer or applicant who:

- a) is in one of the exclusion situations established under Section I above;
- b) has misrepresented the information required by the contracting authority as a condition for participating in the procedure or has failed to supply that information;
- c) was previously involved in the preparation of procurement documents used in the award procedure where this entails a breach of the principle of equality of treatment, including distortion of competition that cannot be remedied otherwise.

In cases under (a), if the contracting authority becomes aware of a situation of exclusion where a recommendation of the EDES panel is required in accordance with Section I., it will immediately seize the EDES panel. The evaluation will not be suspended, except in procurement restricted procedures at shortlisting stage (in this case the establishment of the shortlist must be suspended until a decision on the rejection is taken). If the contract is to be awarded to the entity/person concerned by the situation of exclusion, the award of the contract will be suspended until the EDES panel has issued its recommendation. Where

necessary, the contracting authority may ask all tenderers to extend the period of validity of the offers accordingly. If the situation of exclusion is confirmed in the recommendation of the EDES panel, the relevant entity/person must be rejected from the given procedure and the procedure can resume with an award to the second tenderer on the list or, if necessary, cancellation. In parallel, after the recommendation of the EDES panel, a decision of exclusion must be taken according to Section I above.

If the rejection is justified by the fact that the participant is already included at exclusion level in the EDES, the decision of rejection must be taken directly without any contradictory procedure with the participant.

In cases under (b) and (c), before taking the decision to reject a tenderer, candidate or applicant from a given procedure, the contracting authority must give the economic operator the opportunity to submit its observations (right to be heard) and to prove, in case of (c) that its involvement in the preparation of documents used in the award procedure does not breach the principle of equal treatment, including distortion of competition.

These grounds of rejection may have serious consequences for the economic operator concerned as they may also qualify as grave professional misconduct according to Section I above and result in a decision of exclusion. In this case, after or in parallel to the decision of rejection, the contracting authority must refer the case to the EDES panel according to Section I above.

3. European Union Consolidated Financial Sanctions List

Caritas Austria will reject bids submitted by any person or entity subject to EU sanctions as defined by the European Commission (DG FISMA – Directorate General for Financial Stability, Financial Services and Capital Markets Union). The consolidated list of persons, groups and entities subject to EU financial sanctions can be consulted on the official portal for European Data under this link:

<https://data.europa.eu/data/datasets/consolidated-list-of-persons-groups-and-entities-subject-to-eu-financial-sanctions?locale=en>