
General Rules Governing Tenders V4.3

*Department of
Contracts*

July 2021

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1. **Law**

- 1.1 By submitting their tenders, tenderers are accepting that this procedure is regulated by Maltese Law, and are deemed to know all relevant laws, acts and regulations of Malta that may in any way affect or govern the operations and activities covered by the tender and the resulting contract.
- 1.2 Particular attention is drawn to the conditions concerning the employment of labour in Malta and the obligation to comply with all regulations, rules or instructions concerning the conditions of employment of any class of employee.

2. **Participation**

- 2.1 Participation in tendering is open on equal terms to all natural and legal persons of the Member States of the European Union, the beneficiary country and any other country.

In case of a negotiated or restricted procedure, participation in tendering may be open only to the firms who have been invited by the Contracting Authority. Tenders should be submitted by the same tenderer who has been invited in this procedure. No change whatsoever in the identity or composition of the tenderer is permitted.

- 2.2 Natural persons, companies or undertakings who fall under any of the conditions set out in Part VI of the Public Procurement Regulations, 2016 shall be excluded from participation in and the award of contracts. Tenderers or candidates who have been guilty of making false declarations will incur financial penalties representing 10% of the total value of the contract that is subsequently awarded.

Provided that the economic operator does not prove in his/her offer that he should not be excluded as established under PART VI of the Public Procurement Regulations.

- 2.3 Tenders submitted by companies forming a joint venture/consortium/group of Economic Operators must also fulfil the following requirements:
 - One partner must be appointed lead partner and that appointment confirmed by submission of powers of attorney signed by legally empowered signatories representing all the individual partners. The tender must include a preliminary agreement or letter of intent stating that all partners assume joint and several liability for the execution of the contract, that the lead partner is authorised to bind, and receive instructions for and on behalf of, all partners, individually and collectively.

- All partners in the joint venture/consortium/group of Economic Operators are bound to remain in the joint venture/consortium/group of Economic Operators until the conclusion of the contracting procedure. The consortium/joint venture/group of Economic Operators winning this contract must include the same partners for the whole performance period of the contract other than as may be permitted or required by law.
- 2.4 In the case of a joint venture/consortium/group of Economic Operators, the joint venture/consortium/group of Economic Operators as a whole must satisfy the criteria established in the Instructions to Tenderers.
- 2.5 An economic operator may, where appropriate and for a particular contract, with regard to criteria relating to economic and financial standing and to criteria relating to technical and professional ability, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. With regard to criteria regarding educational and professional qualifications, or to relevant professional experience, economic operators may however only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required. Where an economic operator wants to rely on the capacities of other entities, it must in that case prove to the contracting authority that it will have at its disposal the resources necessary, for example, by producing an undertaking by those entities to that effect.

3. Multiple Tenders

- 3.1 An Economic Operator may submit multiple tender offers/different options. In such instances, the same Bid Bond (Tender Guarantee) may be uploaded for each respective offer, as applicable.
- 3.2 An Economic Operator may not, however, tender for a given contract both individually and as a partner in a joint venture/consortium.
- 3.3 An Economic Operator may not tender for a given contract both individually/partner in a joint venture/consortium, and at the same time be nominated as a subcontractor by any another tenderer, or joint venture/consortium.
- 3.4 An Economic Operator may act as a subcontractor for any number of tenderers, and joint ventures/consortia, provided that it does not participate individually or as part of a joint venture/consortium, and that the nominations do not lead to a conflict of interest, collusion, or improper practice.
- 3.5 The Central Government Authority and or the Contracting Authority is to ask an economic operator to replace the sub-contractor within 5 working days, if during the evaluation process it transpires that a sub-contractor is either black-listed or does not satisfy the exclusion-criteria listed under PART VI of the Public Procurement Regulations.

- 3.6 If the Economic operator does not comply with the request made by the Central Government Authority and or the Contracting Authority under clause 3.5 his offer shall be rejected unless he proves that the sub-contractor should not be excluded under PART VI of the Public Procurement Regulations.

4. Tender Expenses

- 4.1 The Economic Operator will bear all costs associated with the preparation and submission of the tender. The Central Government Authority/Sectorial Procurement Directorate/Contracting Authority (CGA/SPD/CA) will neither be responsible for, nor cover, any expenses or losses incurred by the tenderer through site visits and inspections or any other aspect of his tender.

5. Content of Tender Document

- 5.1 This tender document should be read in conjunction with any clarification notes issued in accordance with Clause 6.
- 5.2 Tenderers bear sole liability for examining with appropriate care the procurement documents, including those design documents available for inspection, and any clarification notes to the procurement documents issued during the tendering period, and for obtaining reliable information with respect to conditions and obligations that may in any way affect the amount or nature of the tender or the execution of the services/supplies/works. In the event that the tenderer is successful, no claim for alteration of the contract value will be entertained on the grounds of errors or omissions in the obligations of the tenderer described above.
- 5.3 The Economic Operator must provide all information and documents required by the provisions of the procurement document. All such documents, without exception, must comply strictly with these conditions and provisions and contain no alterations made by the tenderer.
- 5.4 In case any Economic Operator wishes to file a remedy before the closing date of the call for competition, the following Regulations shall apply:

Part IX Remedies – S.L.601.03

Remedies before Closing Date of a Call for Competition

262. (1) *Prospective candidates and tenderers may, within the first two thirds of the time period allocated in the call for competition for the submission of offers, file a reasoned application before the Public Contracts Review Board:*

- (a) to set aside or ensure the setting aside of decisions including clauses contained in the procurement document and clarification notes taken unlawfully at this stage or which are proven to be impossible to perform; or
- (b) to determine issues relating to the submission of an offer through the government's e-procurement platform; or
- (c) to remove discriminatory technical, economic or financial specifications which are present in the call for competition, in the contract documents, in clarifications notes or in any other document relating to the contract award procedure; or
- (d) to correct errors or to remove ambiguities of a particular term or clause included in a call for competition, in the contract documents, in clarifications notes or in any other document relating to the contract award procedure; or
- (e) to cancel the call for competition on the basis that the call for competition is in violation of any law or is likely to violate a particular law if it is continued.
- (2) The application shall only be valid if accompanied by a deposit equivalent to zero point five per cent (0.50%) of the estimated value set by the contracting authority of the whole tender or if the tender is divided into lots according to the estimated value of the tender set by the contracting authority for each lot submitted by the tenderer, provided that in no case shall the deposit be more than fifty thousand euro (€50,000) which may be refunded as the Public Contracts Review Board may decide in its decision.
- 5.5 **In case of any discrepancy the xml tender structure shall prevail, excluding where constituting of a Bill of Quantities (BoQ) or financial bid forms where the total can be arithmetically worked out and/or corrected if necessary and when applicable.**
- 5.6 Where in the tender document a standard, brand or label is quoted, it is to be understood that the Contracting Authority will accept equivalent standards, brands or labels. However, it will be the responsibility of the respective bidders, at tendering stage, to prove that the standards, brands or labels they quoted are equivalent to the standards, brands or labels requested by the Contracting Authority.
- 5.7 Economic operators may register to attend a workshop that will be organised in collaboration with the Institute for Public Services (IPS) at San Salvatore Bastion, Sa Maison Road, Floriana FRN1610. During this workshop, economic operators will be given the opportunity to familiarise themselves with Government's e-Procurement platform.

Economic operators are to register to attend this workshop by sending an email on etenders@gov.mt with the name, surname, role within the organisation, and contact details (telephone and email address) of the nominated person.

6. Explanations/Clarification Notes Concerning Procurement Documents

- 6.1 Economic Operators may submit questions to the Central Government Authority/Sectorial Procurement Directorate/Contracting Authority through the e-PPS and within the timeframes as detailed in the procurement document and/or on the CfT workspace. The Central Government Authority/Sectorial Procurement Directorate/Contracting Authority must reply to all Economic Operators' questions, and apply any necessary corrections to the procurement documents by publishing clarification notes, as well as issue corrigenda to the procurement document, up to at least 6 calendar days for tenders above the departmental threshold and up to at least 4 days for departmental tenders, before the deadline for submission of tenders. Clarifications received by other means will not be taken into consideration.
- 6.2 Questions and answers, minor alterations and corrigenda to the procurement document will be published as a clarification note on the Government's e-Procurement Platform (ePPS) www.etenders.gov.mt within the respective tender's workspace. Clarification notes will constitute an integral part of the procurement documentation, and it is the responsibility of Economic Operators to visit this website and be aware of the latest information published online prior to submitting their offer.
- 6.3 All correspondence and documents related to the procurement document exchanged by the Economic Operator and the Central Government Authority/Sectorial Procurement Directorate/Contracting Authority must be written in English. Supporting documents and printed literature furnished by the Economic Operator may be in another language, provided they are accompanied by an accurate translation into English. For the purposes of interpretation of the procurement document, the English language will prevail.
- 6.4 No .ink files or URLs are to be submitted as part of the offer. If these types of files or links are uploaded, these shall not be accessible to the Evaluation Committee since they usually refer to a location on the computer of the individual who is completing the Tender Structure or else may be retrieved online. When the Evaluation Committee encounter tender submissions with these types of files, they shall have no other alternative but to reject such tenders.

7. Tender Prices and Currencies

- 7.1 Before submitting their offer, Economic Operators are to ensure its correctness and completeness and to have taken account of all that is required for the full and proper performance of the contract, and to have included all costs in their rates and prices.

- 7.2 Economic Operators must quote all components of the price **inclusive** of taxes, customs and import duties and any discounts **BUT** excluding VAT. VAT shall be paid in accordance with the applicable VAT Regulations.
- 7.3 For EU-funded contracts over €250,000, where VAT is not an eligible cost, and whose output VAT is liable to be paid in Malta, such VAT will be paid directly to the VAT Department in Malta by the Final Beneficiary.
- 7.4 The price offered must include all of the works/services/supplies to be provided. Unless otherwise provided in the procurement documents, the prices quoted by the tenderer are fixed and not subject to revision or escalation in costs.
- 7.5 The currency of the tender is the Euro (€). **Offers are to be submitted up to two decimal points.** In accordance to the provisions of Council Regulation (EC) No. 974/98, it is here being reiterated that three (3) decimal points do not exist as currency. To this effect, any financial value/amount in the Financial Offer of a Procurement Call shall be up to two (2) decimal points. Therefore, if a Financial Bid offer contains a value with three (3) or more decimal points, such a bid cannot be accepted and shall thus be disqualified.
- 7.6 All instances where reference is made to the financial offer must be expressed in Euro (€), with the exception of bank and financial statements, where applicable.
- 7.7 Where Economic Operators submit bank and financial statements which are not denominated in Euro (€), the conversion rate used shall be the same conversion rate applicable on the date of the closing date for submission.

8. *Period of Validity of Tenders*

- 8.1 Tenders must remain valid for a period of 90 days after the deadline for submission of tenders indicated in the contract notice, the procurement document or as modified in accordance with Clause 10.1. Any tenderer who quotes a shorter validity period will be rejected.
- 8.2 The Director General Contracts/Sectorial Procurement Directorate/Head of Contracting Authority may consider cancelling the tender in line with what is established in Regulation 15 of the Public Procurement Regulations (2016).
- 8.3 In exceptional circumstances, the Tender Evaluation Committee, if approved to internally through the Contracting Authority, may request that tenderers extend the validity of tenders [without the need to extend the validity of the Tender Guarantee (Bid Bond) (as being referred to in Article 9.2 of these General Rules)] for two further periods of four (4) weeks each. Such requests and the responses to them must be made in writing through the ePPS in the form of a clarification,

with the prior consent of the relevant authority, namely the DCC/SPD or CGA as applicable. A tenderer may refuse to comply with such a request without forfeiting his tender guarantee (Bid Bond). However, his/her tender will no longer be considered for award. If the tenderer decides to accede to the extension, he/she may not modify his/her tender.

- 8.4 Following the further extension by eight (8) weeks, the non-conclusion of the evaluation process may lead to the cancellation of the tender.
- 8.5 The recommended bidder must maintain his/her tender for a further 60 days from the date of notification of award.
- 8.6 Once the recommendation has become definitive the recommended bidder is obliged to accept the offer through Government's e-procurement platform.

9. ***Submitting a Tender***

- 9.1 Tenders must be compiled, packed and uploaded on www.etenders.gov.mt before the deadline specified in the procurement document and/or the CfT workspace of the ePPS, or as otherwise modified in accordance with Clause 10 of this document. An email receipt will acknowledge the submission of the tender. Tenders submitted by any other means will not be considered.
- 9.2 If a Tender Guarantee (Bid Bond) is applicable, it must remain valid for a period of 90 days after the deadline for submission of tenders.

In case a tender needs to be submitted by:-

- a Partnership (P),
- a Joint Venture (JV) or
- Consortium (C)

the Tender Guarantee (Bid Bond) should be either in the name of the P, JV or C or else it can be in the name of one of the Economic Operators forming part of the same P, JV or C on behalf of the P, JV or C.

When a Tender Guarantee (Bid Bond) is requested, **a scanned copy will be submitted through the ePPS as indicated in the Tender Response Format**, followed by the submission of the original copy within five (5) working days from the closing date of tender, by registered mail or by hand, to the Department of Contracts, Notre Dame Ravelin, Floriana. In the case of a tenderer submitting an offer for one or more lots the tender guarantee, which is made out for the whole amount of the lots being tendered for, is to be uploaded in the space provided under each lot being tendered for in the Tender Response Format.

If the ORIGINAL Tender Guarantee (Bid Bond) is not submitted within five (5) working days from the closing date of the tender, the respective bid will be automatically disqualified.

Furthermore, if there is a recurrence of such unprofessional behaviour by the Economic Operator, the Department of Contracts may refer the matter to the appropriate Authority as this will be considered as a ground for professional misconduct.

The tender guarantee (bid bond) is intended as a pledge that the tenderer will not retract his offer up to the expiry date of the guarantee and, if successful, that he will enter into a contract with the CGA/CA on the terms and conditions stated in the tender document. Notwithstanding the aforementioned, although both the deadline for submission of offers and the validity of the offers may be extended in terms of Articles 8 above, the validity of the tender guarantee (bid bond) shall not be extended.

Tenderers will be requested to clarify/rectify, within five (5) working days from notification, the tender guarantee submitted, only in the following circumstances: incorrect validity date, and/or incorrect value and/or incorrect addressee and/or incorrect name of bidder. Such rectification/s must be submitted within five (5) working days. Failure to comply shall result in the tender offer not being considered any further.

Prospective Bidders are to note that the original copy of the Tender Guarantee (Bid Bond) is to be submitted by hand or by registered mail at the Department of Contracts, Notre Dame Ravelin, Floriana FRN1600, every working day from Monday to Friday (excluding Public Holidays) up to the date indicated in the procurement document from 08:30hrs to 12:00hrs.

Prospective Bidders are to ensure that when delivering the original copy by hand they are given a receipt.

During the evaluation of offers, the Evaluation Committee members will check and verify the correctness of the original tender guarantee (bid bond), dated and time stamped by the Department of Contracts. The Evaluation Committee shall confirm that all were compliant and received within the pre-stipulated time frame accordingly. If not, the Evaluation Board will indicate which submissions were incomplete or not submitted within the due date and time.

9.3 Tenders must be submitted by registered Economic Operators.

Electronic Public Procurement System (ePPS) users holding a sole trader account are kindly reminded that their account can only be used to submit tenders under their sole trader's name and not on behalf of any other organisation.

In case a tender needs to be submitted by any other type of Economic Operator (e.g. Company/Joint Venture/Consortium), an account needs to be created either through the ePPS as per Terms of Use for Economic Operators and only this account must be used to submit the tender.

In the case where a person requires to submit a tender on behalf of an entity which may be an organisation or Joint Venture/Consortium, the submission must be performed through the account of the entity. The latter must assign the person an account to perform the submission on its behalf, if the person is not already assigned. The entity will be considered as the economic operator submitting the tender.

Prospective Bidders are reminded that when submitting more than one option for a particular CfT, they should submit multiple tenders.

Prospective Bidders are reminded to follow the above instructions and other instructions in the Terms of Use of the ePPS and the Manual for Economic Operators available under the 'Help' tab of the epps homepage.

The Department of Contracts/Contracting Authority/Sectorial Procurement Directorate or the Evaluation Board will disqualify Economic Operators who do not abide by the above instructions.

- 9.4 In submitting a tender (unless otherwise indicated) a tender offer above 100MB will not be accepted by the system (ePPS), the tenderer accepts in full and in its entirety, the content of this tender document, including subsequent Clarifications issued by the Central Government Authority/Contracting Authority (CGA/CA), whatever the economic operator's own corresponding conditions may be, which through the submission of the tender is waived. Tenderers are expected to examine carefully and comply with all instructions, forms, contract provisions and specifications contained in this procurement document.

No account can be taken of any reservation in the tender as regards the tender document; any disagreement, contradiction, alteration or deviation shall lead to the tender offer not being considered any further.

Prospective tenderers must submit their response to this tender online, at www.etenders.gov.mt, by completing the prescribed tender response format using the Tender Preparation Tool (TPT) provided by the System. Please note that the TPT was recently updated. This means that anyone who has downloaded the TPT in the past will need to download this tool again. If this is not done, the tender package, created using the old version of the tool, will not be accepted by the etenders portal. Therefore, to avoid the inconvenience of having the tender package rejected, please make sure that you fill in the tender structure using the latest version which can be downloaded from the www.etenders.gov.mt portal. **In case of any discrepancy the xml tender structure/CfT workspace, (ePPS) shall prevail.**

Prospective tenderers take full responsibility to submit their electronic tender response (offer) well before the tender submission deadline in order to avoid last minute upload restrictions. Tender offers must be fully uploaded/accepted by the ePPS prior to the deadline for submission of offers, that is, tenders in transit upon tender submission deadline will be rejected.

10. *Extension of Deadline for Submission of Tenders*

The Central Government Authority/Sectorial Procurement Directorate/Contracting Authority may, at its own discretion, extend the deadline for submission of tenders to give Economic Operators sufficient time to take clarification notes into account when preparing their tenders. Economic Operators will be notified with any such extension through the issuing of a clarification note. In such cases, all rights and obligations of the Central Government Authority/Sectorial Procurement Directorate/Contracting Authority and the tenderer regarding the original date specified in the contract notice will be subject to the new date.

11. *Late Tenders*

- 11.1 Economic Operators will not be able to upload a tender offer once the deadline for submission of tenders has expired.
- 11.2 No liability can be accepted for delays or technical difficulties (as per Terms of Use and Manual for Economic Operators of the Government e-Procurement Platform) that preclude tender offers from being submitted in time.

12. *Amendments and Withdrawal of Tenders*

- 12.1 Tenderers may amend/replace or withdraw their tenders online from www.etenders.gov.mt until the expiry of the deadline for submission. No tender may be amended or withdrawn after the deadline for submission.
- 12.2 The withdrawal of a tender in the period between the deadline for submission and the date of expiry of the validity of the tender will result in forfeiture of the tender guarantee when so provided for in the Instructions to Tenderers.
- 12.3 In instances where no bid bond is requested and the recommended tenderer withdraws his offer between the deadline for submission and the date of expiry of the validity of the tender, he shall be liable for the payment of any difference between his offer and the awarded offer.

13. Opening of Tenders

- 13.1 Tenders shall be opened in public session at the place and on the date and time indicated in the timetable on the CfT workspace of the ePPS (or as otherwise modified in accordance with these General Rules Governing Tendering). The Summary of Tenders received will be immediately available to view on www.etenders.gov.mt.
- 13.2 At the tender opening session, the tenderers' names, the tender ID, and where applicable the tendered price will be published.

14. Secrecy of the Procedure

- 14.1 After the opening of the tenders, no information about the examination, clarification, evaluation or comparison of tenders or decisions about the contract award may be disclosed before the notification of award.
- 14.2 Information concerning checking, explanation, opinions and comparison of tenders and recommendations concerning the award of contract, may not be disclosed to tenderers or any other person not officially involved in the process unless otherwise permitted or required by law. Any attempt by a tenderer to approach any member of the Evaluation Committee, or of the Central Government Authority/Sectorial Procurement Directorate/Contracting Authority directly during the evaluation period will be considered legitimate grounds for disqualifying his tender.

15. Clarification of Tenders

- 15.1 When checking tenders, the evaluation committee may, after obtaining approval from the Director General (Contracts)/Departmental Contracts Committee/Sectorial Procurement Directorate, as the case may be, ask a tenderer to clarify any aspect of his tender.
- 15.2 Such requests and the responses to them must be made through the Government's e-Procurement Platform (www.etenders.gov.mt). They may in no circumstances alter or try to change the price or content of the tender, except for rectifications as allowed in terms of what is stipulated in the procurement document or to correct arithmetical errors discovered by the evaluation committee when analysing tenders, in accordance with Clause 17 below.

On the other hand, a revised financial offer may be requested by the Tender Evaluation Committee (through a generic e-mail), which response is to be submitted in the tender box as per Article 17.5 – only in the specific circumstances being referred to in the same Article accordingly.

16. **Tender Evaluation Process**

Without prejudice to what is stated in Clause 9 of these General Rules, and unless otherwise consented to by DG Contracts in specific circumstances, the evaluation process is to follow the process established hereunder:

16.1 **Part 1: Review of eligibility of tenderers**

The Evaluation Committee will check the compliance of tender submissions with the instructions given in the procurement documents, and in particular the documentation submitted in respect of the requirements detailed in Clause 5¹(A) of the Instructions to Tenderers. The Evaluation Committee can request clarifications and rectifications, in which case the Evaluation Committee shall obtain the prior approval of the Director General (Contracts)/Sectorial Procurement Directorate/Departmental Contracts Committee. In the case where a rectification is requested this shall be regulated by Notes 1 and 2 in Clause 5 of the Instructions to Tenderers. Rectification/s must be submitted within five (5) working days from notification, and will be free of charge: failure to comply shall result in the tender offer not being considered any further.

Rectifications are classified under Note 2 as follows:

2) Tenderers will be requested to either clarify/rectify any incorrect and/or incomplete documentation, and/or submit any missing documents within five (5) working days from notification.

In evaluating the information submitted by the tenderer following a request for a rectification, the Evaluation Committee must ensure that an economic operator is *ab initio* eligible to qualify for a tender and must consequently be in possession of all the requirements stipulated in the procurement documents by the closing date for the submission of the same.

16.2 **Part 2: Review of exclusion (including Blacklisting) and selection criteria**

Submissions which have been considered as eligible shall be evaluated to ensure compliance with Clause 5(B) of the Instructions to Tenderers.

In order for the evaluation committee to carry out the evaluation, it may ask tenderers and candidates during the procedure to submit all or part of the supporting documents where this is necessary to ensure the proper evaluation of the criteria listed under Clause 5(B).

Wherever, experience requirements are requested in the procurement document and the tenderer provides a list of clients, the Evaluation Committee reserves the right to verify the information and documentation provided, by contacting directly the respective clients mentioned by the tenderer.

¹ The contents of these General Rules Governing Tendering apply in principle also for Call for Quotations **and to Dynamic Purchasing Systems' Specific Contracts** – nevertheless, the Articles/Sections quoted may therefore differ in number reference.

Rectifications are classified under Note 2 as follows:

2) Tenderers will be requested to either clarify/rectify any incorrect and/or incomplete documentation, and/or submit any missing documents within five (5) working days from notification.

Rectification replies must be submitted within five (5) working days from notification, and will be free of charge: failure to comply shall result in the tender offer not being considered any further.

In respect to rectifications and clarifications, the processes established in Clause 16.1, shall *mutatis mutandis* apply to this clause.

16.3 **Part 3: Technical Compliance**

Submissions which have qualified under Part 2 shall have their technical offer evaluated to ensure compliance with Clause 5(C) of the Instructions to Tenderers. In order to be considered for this Evaluation, tenderers must submit a completed Technical Offer. Literature may also be requested with the technical offer so that the Evaluation Committee will corroborate the technical compliance of the offers.

Wherever, experience requirements are requested in the procurement document and the tenderer provides a list of clients, the Evaluation Committee reserves the right to verify the information and documentation provided, by contacting directly the respective clients mentioned by the tenderer.

Without prejudice to the possibility of requesting rectifications vis-a-vis Literature, if the Literature submitted with the Technical Offer does not corroborate the offer submitted, the tenderer shall be disqualified.

Wherever applicable, tenderers may be requested to submit samples so that the Evaluation Committee will corroborate the technical compliance of the offers received. Without prejudice to the possibility of requesting clarifications, where the samples do not corroborate the offer submitted, the tenderer shall be disqualified.

Rectifications are classified under Note 2 as follows:

2) Tenderers will be requested to either clarify/rectify any incorrect and/or incomplete documentation, and/or submit any missing documents within five (5) working days from notification.

In respect to rectifications and clarifications, the processes established in Clause 16.1, shall *mutatis mutandis* apply to this clause.

Rectification replies must be submitted within five (5) working days from notification, and will be free of charge: failure to comply shall result in the tender offer not being considered any further.

No rectification shall be allowed in respect of the documentation as accompanied by Note 3 in Clause 5 of the Instructions to Tenderers. Only clarifications on the submitted information in respect of the latter may be requested. No clarifications shall be allowed where there is no doubt that the submitted technical offer does not comply to the requested specifications.

In respect to rectifications and clarifications, the processes established in Clause 16.1, shall *mutatis mutandis* apply to this clause.

Clarification replies must be submitted within five (5) working days from notification, and will be free of charge: failure to comply shall result in the tender offer not being considered any further.

For tenders with BPQR award criteria the following methodology shall also apply:

At this step of the evaluation process, the Evaluation Committee will analyse the administratively-compliant tenders' technical conformity in relation to the published Terms of Reference/Technical Specifications (Section 3).

When evaluating technical offers, each evaluator awards for each criterion/sub-criterion a score out of a maximum of 100 in accordance with the technical criteria and any sub-criteria as outlined in the evaluation grid.

If thresholds are set for each/any of the criteria/sub-criteria by setting a value out of 100, those offers that do not obtain the set threshold for the individual criterion/sub-criterion will be eliminated.

The average technical score is arrived at by adding the individual weighted scores of each evaluator divided by the number of evaluators. Those tenderers that do not obtain the minimum set technical score per individual criterion will be eliminated.

The offer achieving the highest technical score will be awarded 100% of the technical weight. The other offers will be awarded scores in proportion to the offer with the highest technical score as per below formula;

$$\text{Technical score} = \frac{\text{Average Technical Score of the Respective Offer} \times \text{Technical Weight}}{\text{Highest Average Technical Score}}$$

16.4 Part 4: Financial Evaluation

Submissions which have qualified under Part 3 shall have their financial offer evaluated to ensure compliance with Clause 5(D) of the Instructions to Tenderers.

The Evaluation Committee will check that the financial offers contain no arithmetical errors as outlined in Clause 17 of these General Rules. Unless otherwise specified in the Instructions to tenderers, if the tender procedure contains several lots, financial offers are evaluated for each lot. The financial evaluation will have to identify the best financial offer for each lot.

No rectifications shall be allowed in respect of the documentation as accompanied by Note 3 in Clause 7 of the Instructions to Tenderers. Only clarifications on the submitted information in respect of the latter may be eventually requested.

In respect to clarifications, the processes established in Clause 16.1, shall *mutatis mutandis* apply to this clause.

Clarification replies must be submitted within five (5) working days from notification, and will be free of charge: failure to comply shall result in the tender offer not being considered any further.

For tenders with BPQR award criteria the following methodology shall also apply:

The financial offers for tenders which were not eliminated during the technical evaluation (i.e. those which have achieved the set threshold for individual criterion/sub-criterion) will be evaluated. The Evaluation Committee will also check that the financial offers contain no arithmetical errors.

The offer with the lowest price will be awarded 100% of the financial weight. The other offers will be awarded scores in proportion to the offer with the lowest price as per below formula;

$$\text{Financial score} = \frac{\text{Lowest Priced Offer}}{\text{Financial Offer of the Tender Being Considered}} \times \text{Financial Weight}$$

The BPQR will be awarded to the offer that has obtained the highest score after adding the respective technical and financial scores as visualised below;

Overall Best Price Quality Ratio (BPQR) evaluation

Conclusion of tender evaluation under BPQR:

$$\text{Score}_i = \left(\left(\frac{\text{Tech}_i}{\text{Tech}_{\max}} \times W_{\text{Tech}} \right) + \left(\frac{\text{Fin}_{\min}}{\text{Fin}_i} \times W_{\text{Fin}} \right) \right)$$

Where:

- Tech_i is the technical score of the supplier
- Tech_{\max} is the maximum technical score achieved amongst all suppliers
- Fin_{\min} is the minimum financial price offered amongst all suppliers
- Fin_i is the financial price of the supplier
- W_{Tech} is the weight of the technical envelope
- W_{Fin} is the weight of the financial envelope

17. **Correction of Arithmetical Errors**

- 17.1 Admissible tenders will be checked for arithmetical errors by the Evaluation Committee. Without prejudice to other arithmetical errors which may be identified, the following errors will be corrected as follows:
- (a) where there is a discrepancy between amounts in figures and in words, the amount in words will prevail;
 - (b) where there is a discrepancy between a unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will prevail;
 - (c) where no rate or price has been entered, but a total has been provided, the rate is to be established by dividing the total against the quantity published;
 - (d) where a rate or price has been entered, but no total has been inputted, the rate is to be multiplied by the quantity published to derive the total;
 - (e) where there is an error in addition in the Grand Total, the evaluation committee will adjust with the correct amount.
- 17.2 Where no rate, price and total are entered against an item in the bill of quantities/financial offer, a confirmation request will be issued wherein the bidder is requested to confirm that the said item is included in the Grand Total and therefore the value of that item shall be calculated as being equivalent to '0'. Such confirmation shall denote that the specific item is absorbed in the grand total and will remain zero-rated in case of potential modifications. Therefore - in the exceptional eventuality that a modification shall be required wherein the said item needs to be procured, such item shall be provided free of charge. Failure on the part of the bidder to accept that the item is valued at '0' and/or submission of a fresh rate for that particular item would constitute a change in financial bid, thus rendering bid financially non-compliant;
- 17.3 The amount stated in the tender will be adjusted by the Evaluation Committee in the event of error, and the tenderer will be bound by that adjusted amount. In this regard, the Evaluation Committee shall communicate the revised price to the tenderer through a confirmation request via the ePPS. If the tenderer does not accept the adjustment within five (5) working days, his/her tender will be rejected and his tender guarantee forfeited (if applicable).
- 17.4 The final tender price, will be determined after adjusting it on the basis of Clause 17.1.
- 17.5 For tenders that do not fall under the 'pegging of rates' scheme, where the financial offers submitted by any of the Economic Operators are the same, the Central Government Authority/Sectorial Procurement Directorate/Contracting Authority may request Economic Operators whose bid is administratively and technically compliant to propose a revised financial offer, without altering in any way the technical offer submitted. This request will be forwarded to the Economic Operators through e-mail and the response is to be submitted through the tender

box until the date and time indicated in the same request. All the documentation shall be uploaded in the restricted area of the CfT for audit purposes. The Economic Operator, who is both administratively and technically compliant, and that submits the cheapest offer shall be awarded the contract. If no reply by the Economic Operator is submitted – providing a revised financial offer – the financial offer originally submitted shall be considered in the final financial ranking

18. *Right of the Central Government Authority / Contracting Authority To Accept Or Reject Any Tender*

- 18.1 The Central Government Authority/Sectorial Procurement Directorate/Contracting Authority reserves the right to accept or reject any tender and/or to cancel the whole tender procedure before and after the closing established for the submission of the tenders, including instances where the financial offer submitted exceeds the estimated value for the tender, and/or reject all tenders. The Central Government Authority/Sectorial Procurement Directorate/Contracting Authority reserves the right to initiate a new invitation to tender.
- 18.2 In the event of a tender procedure's cancellation, tenderers will be notified by the Central Government Authority/Sectorial Procurement Directorate/Contracting Authority.
- 18.3 Cancellation may occur where:
- (a) the tender procedure has been unsuccessful, namely where no qualitatively or financially worthwhile tender has been received or there has been no response at all;
 - (b) the economic or technical parameters of the project have been fundamentally altered;
 - (c) exceptional circumstances or force majeure render normal performance of the project impossible;
 - (d) all technically compliant tenders exceed the financial resources available;
 - (e) there have been irregularities in the procedure, in particular where these have prevented fair competition.
 - (f) the only administratively and technically compliant offer is deemed to be an abnormally low tender.
- 18.4 Further to the above, the CGA/SPD reserves the right to cancel the whole tendering process if it confirms that the duration of the evaluation has exceeded the stipulated time limit in clause 8 of these General Rules Governing Tendering.
- 18.5 In the case of Framework Agreements with mini-competitions, if only one submission is received, or if only one bidder is shortlisted, following the first phase of the procedure, the Contracting Authority/Sectorial Procurement Directorate/Central Government Authority shall cancel the tender procedure - on a lot by lot basis as applicable, due to lack of competition in the process.

In no circumstances will the Central Government Authority/Sectorial Procurement Directorate/Contracting Authority be liable for damages, whatever their nature (in particular damages for loss of profits) or relationship to the cancellation of a tender, even if the Central Government Authority/Sectorial Procurement Directorate/Contracting Authority has been advised of the possibility of damages. The publication of a contract notice does not commit Central Government Authority/Sectorial Procurement Directorate/Contracting Authority to implement the programme or project announced.

19. Notification of Award, Contract Clarifications

- 19.1 Prior to the expiration of the period of validity of the offers, the Central Government Authority/Sectorial Procurement Directorate/Contracting Authority will notify the successful tenderer in writing, that his/her submission has been recommended for award, pending any appeal being lodged in terms of the Public Procurement Regulations (being reproduced as follows):

Part IX of the Public Procurement Regulations – S.L. 601.03

Appeals from decisions taken after the closing date for the submissions of an offer (applicable to procurement where the estimated value meets or exceeds Euro5K)

270. *Where the estimated value of the public contract meets or exceeds five thousand euro (€5,000) any tenderer or candidate concerned, or any person, having or having had an interest or who has been harmed or risks being harmed by an alleged infringement or by any decision taken including a proposed award in obtaining a contract, a rejection of a tender or a cancellation of a call for tender after the lapse of the publication period, may file an appeal by means of an objection before the Public Contracts Review Board, which shall contain in a very clear manner the reasons for their complaints.*

271. *The objection shall be filed within ten (10) calendar days following the date on which the contracting authority or the authority responsible for the tendering process has by fax or other electronic means sent its proposed award decision or the rejection of a tender or the cancellation of the call for tenders after the lapse of the publication period.*

272. *The communication to each tenderer or candidate concerned of the proposed award or of the cancellation of the call for tenders shall be accompanied by a summary of the relevant reasons relating to the rejection of the tender as set out in regulation 242 or the reasons why the call for tenders is being cancelled after the lapse of the publication period, and by a precise statement of the exact standstill period.*

273. *The objection shall only be valid if accompanied by a deposit equivalent to 0.50 per cent of the estimated value set by the contracting authority of the whole tender or if the tender is divided into lots according to the estimated value of the tender set by the contracting authority for each lot submitted by the tenderer, provided that in no case shall the deposit be less than four hundred euro (€400) or more than fifty thousand euro (€50,000) which may be refunded as the Public Contracts Review Board may decide in its decision.*

274. *The Secretary of the Public Contracts Review Board shall immediately notify the Director, the Sectorial Procurement Directorate and, or the contracting authority, as the case may be,*

that an objection had been filed with his authority thereby immediately suspending the award procedure.

275. *The Department of Contracts, the Sectorial Procurement Directorate or the contracting authority involved, as the case may be, shall be precluded from concluding the contract during the period of ten (10) calendar days allowed for the submission of appeals. The award process shall be completely suspended if an appeal is eventually submitted.*

276. *The procedure to be followed in submitting and determining appeals as well as the conditions under which such appeals may be filed shall be the following:*

(a) any decision by the General Contracts Committee, the Sectorial Procurement Directorate or the Special Contracts Committee or by the contracting authority, shall be made public by affixing it to the notice-board of the Department of Contracts, the Sectorial Procurement Directorate or of the office of the contracting authority, as the case may be, or by uploading it on government's e-procurement platform prior to the award of the contract if the call for tenders is administered by the Department of Contracts;

(b) the appeal of the complainant shall also be affixed to the notice-board of the Public Contracts Review Board and shall be communicated by fax or by other electronic means to all participating tenderers;

(c) the contracting authority and any interested party may, within ten (10) calendar days from the day on which the appeal is affixed to the notice board of the Review Board and uploaded where applicable on the government's e-procurement platform, file a written reply to the appeal. These replies shall also be affixed to the notice board of the Review Board and where applicable they shall also be uploaded on the government's eProcurement platform;

(d) the authority responsible for the tendering process shall within ten (10) days forward to the chairman of the Public Contracts Review Board all documentation pertaining to the call for tenders in question including files and tenders submitted;

(e) the secretary of the Review Board shall inform all the participants of the call for tenders, the Department of Contracts, the Sectorial Procurement Directorate and the contracting authority of the date or dates, as the case may be, when the appeal will be heard;

(f) when the oral hearing is concluded, the Public Contracts Review Board, if it does not deliver the decision on the same day, shall reserve decision for the earliest possible date to be fixed for the purpose, but not later than six (6) weeks from the day of the oral hearing:

Provided that for serious and justified reasons expressed in writing by means of an order notified to all the parties, the Public Contracts Review Board may postpone the judgment for a later period;

(g) the secretary of the Review Board shall keep a record of the grounds of each adjournment and of everything done in each sitting;

(h) after evaluating all the evidence and after considering all submissions put forward by the parties, the Public Contracts Review Board shall decide whether to accede or reject the appeal or even cancel the call if it appears to it that this is best in the circumstances of the case.

19.2 Unsuccessful bidders shall be notified with the outcome of the evaluation process, and will be provided the following information:

- (i) the criteria for award;
- (ii) the name of the successful tenderer;
- (iii) the recommended price of the successful bidder;
- (iv) the reasons why the tenderer did not meet the technical specifications/ notification that the offer was not the cheapest,
- (v) In case where the award criteria is linked to the best price quality ratio the contracting authority must inform the economic operator who has submitted an admissible tender of the characteristics and relative advantages of the selected offer (*only upon request as per Regulation 242 (2)*)
- (vi) the deadline for filing a notice of objection (appeal);
- (vii) the deposit required if lodging an appeal.

19.3 For tenders published through the ePPS, the recommendations of the General Contracts Committee/Departmental Contracts Committee shall, whenever applicable, be published online through the Government's E-procurement Platform.

20. Contract Signing and Performance Guarantee

20.1 After the lapse of the appeals period, and pending that no objections have been received and/or upheld, the successful tenderer is obliged to accept the contract through Government's e-procurement platform within two (2) working days from when he is notified to do so. If the contractor fails to comply with this obligation the Central Government Authority/Sectorial Procurement Directorate/Contracting Authority can revoke the award and recommend the next bidder. In this circumstance the bidder who has failed to accept the offer through Government's E-Procurement Platform shall forfeit the bid-bond. Where there is no Bid Bond the economic operator shall be liable for the payment of any difference between his/her offer and the awarded offer.

20.2 When the recommendation for award becomes definitive the successful tenderer may be invited to clarify certain contractual questions raised therein. Such clarification will be confined to issues that had no direct bearing on the choice of the successful tender. The outcome of any such clarifications will be set out in a Memorandum of Understanding, to be signed by both parties and incorporated into the contract.

20.3 Before the Central Government Authority/Sectorial Procurement Directorate/Contracting Authority signs the contract with the successful tenderer, the successful tenderer may be requested to provide the documentary proof or statements required to show that it or its sub-contractors does not fall into any of the exclusion situations listed in Tenderer's Declaration of the Tender Response Format. The above mentioned documents must be submitted by every

member of a Joint Venture/Consortium (if applicable) and by sub-contractors, if applicable and when requested.

- 20.4 The Contractor shall, within 15 calendar days of receipt of the contract agreement, sign and date the contract agreement and return it together with a copy of the Performance Guarantee (which copy is to be endorsed by the Contracting Authority before submission to the Central Government Authority). The Contractor is further obliged to forward the original performance guarantee to the Contracting Authority. The Contracting Authority/Central Government Authority/Sectorial Procurement Directorate will not endorse the contract until the performance guarantee is submitted.
- 20.5 If the selected tenderer fails to sign and return the contract, other required documentation, and any guarantees required within the prescribed periods, the Central Government Authority/Sectorial Procurement Directorate/Contracting Authority may consider the acceptance of the tender to be cancelled without prejudice to the Central Government Authority/Sectorial Procurement Directorate/Contracting Authority's right to seize the Bid Bond, claim compensation or pursue any other remedy in respect of such failure, and the successful tenderer will have no claim whatsoever on the Central Government Authority/Sectorial Procurement Directorate/Contracting Authority. Where the validity of the Bid Bond has expired the economic operator shall be liable for the payment of damages which shall be equal to any difference between the price submitted by him and the price submitted by the awarded offer.

The tenderer whose tender has been evaluated as second cheapest may be recommended for award, and so on and so forth.

- 20.6 Only the signed contract will constitute an official commitment on the part of the Central Government Authority/Sectorial Procurement Directorate/Contracting Authority.
- 20.7 Tender guarantees (bid bonds) provided by tenderers who have not been selected shall be released within 30 calendar days from the publication of award/cancellation of tender. The tender guarantee of the successful tenderer shall be released on the signing of the contract, and on submission of a valid performance guarantee.
- 20.8 The performance guarantee referred to in the General Conditions is set at:

4% where the amount of the contract is between €10,000 and €500,000 excluding VAT, and
10% where the amount of the contract exceeds €500,000 excluding VAT,

and must be presented in the form provided through www.etenders.gov.mt. The performance guarantee shall be released in accordance with the provisions of the General/Special Conditions of Contracts.

- 20.9 Economic operators have the possibility to provide the Contracting Authority with a Single Bond covering the performance guarantees for all the contracts **with the same Contracting Authority**. If an additional contract is awarded to a given contractor, which results in an economic operator's current Cumulative Contracts Value to go beyond the contract value range currently covered by the single bond, the contractor is to be requested to: either submit a separate Performance Guarantee for the additional contract; or else submit a new Single Bond to cover the new total contracts value. The following table provides the thresholds to be used in order to determine the single bond value:

Cumulative contracts value range / €		Single bond value / €
From	To	
10,001	150,000	2,000
150,001	320,000	6,000
320,001	500,000	12,800
500,001	750,000	50,000
750,001	1,000,000	75,000
1,000,001	1,500,000	100,000
1,500,001	2,000,000	150,000
2,000,001	3,000,000	200,000
3,000,001	5,000,000	300,000
>5,000,000		500,000

21. Ethics Clauses

- 21.1 Any attempt by a candidate or tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the outcome of the procurement procedure during the process of examining, clarifying, evaluating, comparing and the recommendation leading to the award or cancellation of tenders will result in the rejection of his/her candidacy or tender and may result in administrative penalties.
- 21.2 Unless otherwise provided for in the procurement documents, when putting forward a candidacy or tender, the candidate or tenderer must declare that he is affected by no potential conflict of interest, and that he/she has no particular link with other tenderers or parties involved in the project. A false declaration shall lead to the disqualification of the candidate or economic operator. In instances where a state of conflict of interest exists the economic operator or candidate are to be excluded from the award of that particular tender unless such a conflict of interest cannot be remedied by a less intrusive manner.

Where a contracting authority is of the opinion that the conflict of interest can be remedied without excluding the tenderer in question, after obtaining the prior approval of the Director, it shall give three (3) working days to the tenderer in question to remedy such conflict of interest. In default, the tenderer in question shall be excluded.

- 21.4 The tenderer shall refrain from any relationship likely to compromise his independence or that of his staff. If the tenderer ceases to be independent, the Central Government Authority/Sectorial Procurement Directorate/Contracting Authority may, regardless of injury, exclude the tenderer without further notice and without the tenderer having any claim to compensation.

22. *Data Protection and Freedom of Information*

- 22.1 Any personal data submitted in the framework of the procurement procedure and/or subsequently included in the contract shall be processed pursuant to 'Data Protection Legislation' meaning the General Data Protection Regulation 2016/679 (GDPR) and the Data Protection Act 2048 (Cap 586) on the protection of natural persons with regard to the processing of personal data, and on the free movement of such data whether held electronically or in manual form.

As part of the services, the service provider will be required to process personal data. The service provider confirms that the Services rendered are to be fully compliant to Data Protection meaning the General Data Protection Regulation 2016/679 (GDPR), and the Data Protection Act 2018 (Cap 586) on the protection of natural persons with regard to the processing of personal data, and on the free movement of such data whether held electronically or in manual form.

It shall be processed solely for the purposes of the performance, management and follow-up of the procurement procedure and/or subsequent contract by the Central Government Authority/Sectorial Procurement Directorate/Contracting Authority without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in conformity with law.

- 22.2 The provisions of this tender are without prejudice to the obligations of the Central Government Authority/Sectorial Procurement Directorate/Contracting Authority in terms of the Freedom of Information Act (Cap. 496 of the Laws of Malta). Unless otherwise provided in the Public Procurement Regulations, the Central Government Authority/Sectorial Procurement Directorate/Contracting Authority, prior to disclosure of any information to a third party in relation to any provisions of this tender which have not yet been made public, shall consult the tenderer in accordance with the provisions of the said Act, pertinent subsidiary legislation and the Code of Practice issued pursuant to the Act. Such consultation shall in no way prejudice the

obligations of the Central Government Authority/Sectorial Procurement Directorate/Contracting Authority in terms of the Act.

23. Gender Equality

- 23.1 In carrying out his/her obligations in pursuance of this contract, the tenderer shall ensure the application of the principle of gender equality and shall thus '*inter alia*' refrain from discriminating on the grounds of gender, marital status or family responsibilities. Tenderers are to ensure that these principles are manifest in the organigram of the company where the principles aforementioned, including the selection criteria for access to all jobs or posts, at all levels of the occupation hierarchy are amply proven. In this document, words importing one gender shall also include the other gender.