

DIPARTIMENT TAL-KUNTRATTI

Notre Dame Ravelin

Floriana FRN 1600 – MALTA



DEPARTMENT OF CONTRACTS

Notre Dame Ravelin

Floriana FRN 1600 – MALTA

Telephone: (+356) 2122 0212

(+356) 2122 0313

Fax: (+356) 2124 7681

e-Mail: [info.contracts@gov.mt](mailto:info.contracts@gov.mt)

## Directorate Policy Development and Programme Implementation

---

### Procurement Policy Note # 11

#### Key Experts

Date issued: 13.01.2015

#### 1 Purpose

The current policy is that public officers and employees of Government agencies and Government entities of the beneficiary country cannot be recruited as key experts.

On several instances this office is receiving request for guidance by Evaluation Committees on instances where key experts are lecturers with the University of Malta or Malta College for Art, Science and Technology (MCAST) or the Institute for Tourism Studies (ITS) or any other public entity. Furthermore, on a number of occasions the Public Contracts Review Board has ruled that specifically University lecturers are not to be considered as public officials and therefore are eligible for nomination as key experts.

#### 2 Organisational Scope

This is a Government-wide policy. It shall apply to all Entities/Departments/Ministries falling under Schedule 2 and 3 of the Public Procurement Regulations – L.N. 296/2010.

#### 3 Definitions

NIL

#### 4 Policy Content and Guidelines

The clause: Public officers and employees of government agencies and government entities of the beneficiary country cannot be recruited as experts in the current tender templates is being omitted with immediate effect.

This will be replaced by a self-declaration from the tenderer that none of the proposed personnel or specific key experts fall in any of the provisions laid down in the below extracts. This self-declaration shall be reflected in the revised version of the tender templates, both electronic and traditional.

- Extract from the Public Administration Act – Chapter 497 of the Laws of Malta – First Schedule Code of Ethics Article 5

#### **Conflicts of Interest**

**8. A conflict of interest may be defined as a situation in which a public employee has a private or personal interest sufficient to influence or appear to influence the objective exercise of his or her official duties.**

**9. Public employees shall avoid any financial or other interest or undertaking that could directly or indirectly compromise the performance of their duties.**

**10. In many cases only the individual employee will be aware of the potential for conflict. Therefore, the onus is on the employee to disclose to his or her senior if a potential or actual conflict of interest arises.**

**11. This includes the notification of all relevant personal, financial, business or other interests, in particular:**

**(a) any directorship, partnership, agency or any shareholding;**

**(b) any interest in any activity or business in which or with which the organisation is engaged;**

**(c) any interest in goods or services recommended or supplied to the organisation.**

**12. Public employees shall notify the head of the organisation in writing within a week whenever any of the above interests arise namely, upon assuming office, change in duties or due to a change in circumstances.**

- Extract from the General Rules Governing Tenders V.1.10

#### **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 committee or the Central Government Authority during the process of examining, clarifying, evaluating and comparing tenders will lead to the rejection of his candidacy or tender and may result in administrative penalties.*

*21.2 Without the Central Government Authority's prior written authorisation, the Contractor and his staff or any other company with which the Contractor is associated or linked may not, even on an ancillary or subcontracting basis, supply other services, carry out works or supply equipment for the project. This prohibition also applies to any other programmes or projects that could, owing to the nature of the contract, give rise to a conflict of interest on the part of the Contractor.*

21.3 *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 has no particular link with other tenderers or parties involved in the project.*

21.4 *The Contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of his profession. He must refrain from making public statements about the project or services without the Contracting Authority's prior approval. He may not commit the Contracting Authority in any way without its prior written consent.*

21.5 *For the duration of the contract, the Contractor and his staff must respect human rights and undertake not to offend the political, cultural and religious morals of Malta.*

21.6 *The Contractor may accept no payment connected with the contract other than that provided for therein.*

*The Contractor and his staff must not exercise any activity or receive any advantage inconsistent with their obligations to the Contracting Authority.*

21.7 *The Contractor and his staff are obliged to maintain professional secrecy for the entire duration of the contract and after its completion. All reports and documents drawn up or received by the Contractor are confidential.*

21.8 *The contract governs the Parties' use of all reports and documents drawn up, received or presented by them during the execution of the contract.*

21.9 *The Contractor shall refrain from any relationship likely to compromise his independence or that of his staff. If the Contractor ceases to be independent, the Central Government Authority may, regardless of injury, terminate the contract without further notice and without the Contractor having any claim to compensation.*

21.10 *The tender(s) concerned will be rejected or the contract terminated if it emerges that the award or execution of a contract has given rise to unusual commercial expenses. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commissions paid to a company which has every appearance of being a front company.*

**5 Effective**

Immediate.

**6 Legislative Compliance**

Public Administration Act – Chapter 497 of the Laws of Malta – First Schedule Code of Ethics Article 5

**7 References**

NIL

**8 Appendices**

NIL

**9 Other related policy notes published**  
NIL