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## FRAMEWORK AGREEMENT FOR THE SUPPLY OF TOILET PAPER

Cost of the Tender Document

€20.00

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Closing Date:

21<sup>st</sup> October 2010

at 10:00am CET

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PREVIEW

# SUPPLIES TENDER TEMPLATE

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PREVIEW

# VOLUME 1 SECTION 1 - INSTRUCTIONS TO TENDERERS

## A. GENERAL PART

### 1. General Instructions

- 1.1 In submitting a tender, the tenderer accepts in full and in its entirety, the content of this tender document, including subsequent Clarifications issued by the Central Government Authority, whatever his own corresponding conditions may be, which he hereby waives. Tenderers are expected to examine carefully and comply with all instructions, forms, contract provisions and specifications contained in this tender 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.

The Evaluation Committee shall, after having obtained approval by the General Contracts Committee, request rectifications in respect of incomplete/non-submitted information pertinent to the documentation as outlined in sub-Clause 16.1(a), 16.1(b), and 16.1(c) of these Instructions to Tenderers. Such rectification/s must be submitted within two (2) working days from notification, and will be subject to a non-refundable administrative penalty of €50: 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 outlined in sub-Clause 16.1(d), 16.1(e) and 16.1(f) of these Instructions to Tenderers. Only clarifications on the submitted information in respect of the latter may be eventually requested.

- 1.2 The subject of this tender is the Supply of Toilet Paper as and when required under period contract conditions. The supplies must comply fully with the technical specifications set out in this document and conform in all respects with the quantities, models, samples, measurements and other instructions.
- 1.3 The place of acceptance of the supplies shall be as and where directed to Government Departments and the INCOTERM<sup>2000</sup> applicable shall be **Delivery (Duty Paid)** inclusive of VAT, eco-contribution (if any) taxes and all other Government Department taxes/charges as may be applicable.
- 1.4 The tenderer will bear all costs associated with the preparation and submission of the tender. The Central Government Authority will in no case be responsible or liable for such costs, whatever the conduct or outcome of the procedure.
- 1.5 The Central Government Authority retains ownership of all tenders received under this tender procedure. Consequently, tenderers have no right to have their tenders returned to them.

## 2. Timetable

|                                                                                                                 | DATE                                    | TIME*   |
|-----------------------------------------------------------------------------------------------------------------|-----------------------------------------|---------|
| Clarification Meeting/Site Visit (Refer to Clause 9)                                                            | Not Applicable                          |         |
| Deadline for request for any additional information from the Contracting Authority                              | <i>16 calendar days before deadline</i> |         |
| Last date on which additional information are issued by the Contracting Authority                               | <i>6 calendar days before deadline</i>  |         |
| Deadline for submission of tenders / Tender Opening Session (unless otherwise modified in terms of Clause 11.3) | As indicated in the Government Gazette  | 10:00am |

\* All times Central European Time (CET)

## 3. Lots

- 3.1 The tenderer must offer the whole of quantity indicated. Under no circumstances will tenders for part of the quantities required be taken into consideration.
- 3.2 The Contracting Authority will choose the most favorable overall solution.

## 4. Financing

- 4.1 The project is financed from local budget funds.
- 4.2 The beneficiary of the financing is Various Government Departments.

## 5. Eligibility

- 5.1 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, any other country in accordance with Regulation 76 of the Public Procurement Regulations.
- 5.2 Natural persons, companies or undertakings who fall under any of the conditions set out in Regulation 50 of the Public Contracts Regulations, 2010 (Legal Notice 296 of 2010) may be excluded from participation in and the award of contracts. Tenderers or candidates who have been guilty of making false declarations will also incur financial penalties representing 10% of the total value of the contract being awarded.
- 5.3 Tenders submitted by companies forming a joint venture/consortium 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 are bound to remain in the joint venture/consortium until the conclusion of the contracting procedure. The consortium/joint venture 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.

5.4 All materials, equipment and services to be supplied under the contract must originate in an eligible country. For these purposes, "origin" means the place where the materials and/or equipment are mined, grown, produced or manufactured and/or from which services are provided.

## **6. Selection Criteria**

6.1 In order to be considered eligible for the award of the contract, tenderers must provide evidence that they meet or exceed certain minimum qualification criteria described hereunder.

**In the case of a joint venture, the joint venture as a whole must satisfy the minimum qualifications required below.**

- 6.1.1 No evidence of financial and economic standing is required.
- 6.1.2 Information about the tenderer's technical capacity.

*(An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for the execution of the contract, for example, by producing an undertaking by those entities to place the necessary resources at the disposal of the economic operator)*

This information must follow the form in Volume 1, Section 4 of the tender documents and include:

- (a) A list of principal deliveries effected during the last 5 years (Form 4.8 of Volume 1, Section 4).

The minimum number of deliveries of a similar scope/nature completed in the last 5 years must be at least 3 in number.

In so listing the end clients, the tenderer is giving his consent to the Evaluation Committee, so that the latter may, if it deems necessary, contact the relevant clients, with a view to obtain from them an opinion on the works provided to them, by the tenderer. The Evaluation Committee reserves the right to request additional documentation in respect of the deliveries listed.

## **7. Only One Tender Per Tenderer**

7.1 Submission or participation by a tenderer in more than one tender for a contract will result in the disqualification of all those tenders for that

contract in which the party is involved.

- 7.2 A company may not tender for a given contract both individually and as a partner in a joint venture/consortium.
- 7.3 A company 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.
- 7.4 A company 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.

## **8. Tender Expenses**

- 8.1 The tenderer will bear all costs associated with the preparation and submission of the tender.
- 8.2 The Central Government Authority 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.

## **9. Clarification Meeting/Site Visit**

- 9.1 No clarification meeting/site visit is planned.

## **B. TENDER DOCUMENTS**

### **10. Content of Tender Document**

- 10.1 The set of tender documents comprises the following documents and should be read in conjunction with any clarification notes issued in accordance with Clause 24:
- |          |                                                                                                                  |
|----------|------------------------------------------------------------------------------------------------------------------|
| Volume 1 | Instructions to Tenderers                                                                                        |
| Volume 2 | Draft Contract <ul style="list-style-type: none"><li>• Special Conditions</li><li>• General Conditions</li></ul> |
| Volume 3 | Technical Specifications                                                                                         |
| Volume 4 | Model Financial Bid/Bill of Quantities                                                                           |
- 10.2 Tenderers bear sole liability for examining with appropriate care the tender documents, including those design documents available for inspection, and any clarification notes to the tender 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 works. In the event that the tenderer is successful, no claim for alteration of the tender amount will be entertained on the grounds of errors or omissions in the obligations of the tenderer described above.
- 10.3 The tenderer must provide all documents required by the provisions of the tender document. All such documents, without exception, must comply strictly with these conditions and provisions and contain no alterations

made by the tenderer.

### **11. Explanations/Clarification Notes Concerning Tender Documents**

- 11.1 Tenderers may submit questions in writing at [info@contracts.gov.mt](mailto:info@contracts.gov.mt) up to 16 calendar days before the deadline for submission of tenders. The Central Government Authority must reply to all tenderers' questions, and amend the tender documents by publishing clarification notes, up to at least 6 calendar days before the deadline for submission of tenders.
- 11.2 Questions and answers, and alterations to the tender document will be published as a clarification note on the website of the Department of Contracts ([www.contracts.gov.mt/tenders](http://www.contracts.gov.mt/tenders)) within the respective tender's page, under the subheading "Preview & Free Tender Documents, and Clarifications". Clarification notes will constitute an integral part of the tender documentation, and it is the responsibility of tenderers to visit this website and be aware of the latest information published online prior to submitting their Tender.
- 11.3 The Central Government Authority may, at its own discretion, as necessary and in accordance with Clause 24, extend the deadline for submission of tenders to give tenderers sufficient time to take clarification notes into account when preparing their tenders.

### **12. Labour Law**

- 12.1 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.

### **13. Law**

- 13.1 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.

## **C. TENDER PREPARATION**

### **14. Language of Tenders**

- 14.1 The tender and all correspondence and documents related to the tender exchanged by the tenderer and the Central Government Authority must be written in English.
- 14.2 Supporting documents and printed literature furnished by the tenderer may be in another language, provided they are accompanied by an accurate translation into English. For the purposes of interpretation of the tender, the English language will prevail.

### **15. Presentation of Tenders**

- 15.1 Tenders must satisfy the following conditions:



- (a) All tenders must be submitted in one original, clearly marked “original”, and one identical copy (including all documentation as in the original) signed in the same way as the original and clearly marked “copy”.
- (b) Both documents are to be separately sealed and placed in another sealed envelope/package so that the bid can be identified as one tender submission. Following the tender opening session, the copy shall be kept, unopened, at the Department of Contracts, for verification purposes only should the need arise.
- (c) All tenders must be received by date and time indicated in the timetable at Clause 2 and deposited in the tender box at the entrance of the Department of Contracts, Notre Dame Ravelin, Floriana, FRN 1600, Malta.
- (d) All tenders, as per (b) above, must bear only:
  - (i) the above address;
  - (ii) the reference of the invitation to tender concerned;
  - (iii) if applicable, the number of the lot(s) to which the tender refers;
  - (iv) the name of the tenderer.

### **16. Content of Tender (Single-Envelope System)**

16.1 The tender must comprise the following duly completed documents, inserted in a single, sealed envelope (unless their volume requires a separate submission):

- (a) No bid bond is required.
- (b) *General/Administrative Information*<sup>(Note 2)</sup>
  - (i) Proof of Purchase of tender document (receipt) (Form 4.1 of Volume 1, Section 4)
  - (ii) Statement on Conditions of Employment (Form 4.6 of Volume 1, Section 4)

#### *Selection Criteria*

- (c) *Financial and Economic Standing*
  - (i) No evidence of economic and financial standing is required.
- (d) *Technical Capacity*<sup>(Note 3)</sup>
  - (i) List of principal deliveries effected during the last 5 years (Form 4.8 of Volume 1, Section 4)
- (e) *Evaluation Criteria/Technical Specifications*<sup>(Note 3)</sup>
  - (i) Tenderer’s Technical Offer in response to specifications (Volume 3)
  - (ii) List of Literature/Samples (Volume 1, Section 4)
  - (iii) Any other information deemed relevant (Form 4.15 of Volume 1, Section 4)

- (f) *Financial Offer/Bill of Quantities*<sup>(Note 3)</sup>
- (i) The Tender Form in accordance with the form provided in Volume 1, Section 2; a separate Tender Form is to be submitted for each option tendered, each form clearly marked 'Option 1', 'Option 2' etc.;
  - (ii) A financial bid calculated on a basis of **Delivered Duty Paid (DDP)** for the supplies tendered in the form provided in Volume 4.

**Notes to Clause 16.1:**

1. *Tenderers will be requested to clarify/rectify, within two working days from notification, the tender guarantee only in the following two circumstances: either incorrect validity date, and/or incorrect value.*
2. *Tenderers will be requested to either clarify/rectify any incorrect and/or incomplete documentation, and/or submit any missing documents within two working days from notification.*
3. *No rectification shall be allowed. Only clarifications on the submitted information may be requested.*

Tenderers must indicate where the above documentation is to be found in their offer by using an index. All documentation is to be securely bound/filed.

Tenderers are NOT required NOR expected to submit, with their offer, any components of the tender document except those specifically mentioned in Clause 16.

**17. Tender Prices**

- 17.1 Tenderers will be deemed to have satisfied themselves, before submitting their tender, to its correctness and completeness, 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.
- 17.2 The tender must be submitted in Euro (€).
- 17.3 Tenderers must quote all components of the price **inclusive** of taxes, customs and import duties, and any discounts. Except as may otherwise be provided for in the contract, no payment will be made for items which have not been costed.
- 17.4 Different options are to be clearly identifiable in the technical and financial submission; a **separate Tender Form (as per Volume 1, Section 2) marked 'Option 1', 'Option 2' etc. for each individual option clearly outlining the price of the relative option is to be submitted.**
- 17.5 If the tenderer offers a discount, the discount must be absorbed in the rates of the Bill of Quantities/Financial Statement.
- 17.6 The prices for the contract, must include all of the supplies to be provided. The prices quoted are fixed and not subject to revision or escalation in costs, unless otherwise provided for in the Special

Conditions.

### **18. Currencies of Tender and Payments**

- 18.1 The currency of the tender is the Euro (€). All sums in the breakdown of the overall price, in the questionnaire and in other documents must be expressed in Euro (€), with the possible exception of originals of bank and annual financial statements.
- 18.2 Payments will be made upon certification of works by the Contracting Authority, based on the invoice issued by the Contractor, in accordance with the timeframes, terms and conditions of the contract.
- 18.3 All correspondence relating to payments, including invoices and interim and final statements, must be submitted as outlined in the contract.

### **19. Period of Validity of Tenders**

- 19.1 Tenders must remain valid for a period of 150 days after the deadline for submission of tenders indicated in the contract notice, the tender document or as modified in accordance with Clauses 11.3 and/or 24. Any tenderer who quotes a shorter validity period will be rejected.
- 19.2 In exceptional circumstances the Central Government Authority may request that tenderers extend the validity of tenders for a specific period. Such requests and the responses to them must be made in writing. A tenderer may refuse to comply with such a request without forfeiting his tender guarantee (Bid Bond). However, his tender will no longer be considered for award. If the tenderer decides to accede to the extension, he may not modify his tender. He is, however, bound to extend the validity of his tender guarantee for the revised period of validity of the tender.
- 19.3 The successful tenderer must maintain his tender for a further 60 days from the date of notification of award.

### **20. Tender Guarantee (Bid Bond)- Not applicable**

- 20.1 No tender guarantee (bid bond) is required.

### **21. Variant Solutions**

- 21.1 No variant solutions will be accepted. Tenderers must submit a tender in accordance with the requirements of the tender document.

### **22. Preparation and Signing of Tenders**

- 22.1 All tenders must be submitted in one original, clearly marked "original", and one identical copy (including all documentation as in the original) signed in the same way as the original and clearly marked "copy". Tenders must comprise the documents specified in Clause 16 above.

It is the responsibility of the tenderers to ensure that both the original and the copy are an identical representation of one another.

- 22.2 The tenderer's submission must be typed in, or handwritten in indelible ink and signed by a person or persons empowered by the power of attorney submitted in accordance with Form 4.3 of Volume 1, Section 4 of the tender document. Any pages on which entries or corrections to his submission have been made must be initialled by the person or persons signing the tender. All pages must be numbered consecutively by hand, machine or in any other way acceptable to the Central Government Authority.
- 22.3 The tender must contain no changes or alterations, other than those made in accordance with instructions issued by the Central Government Authority (issued as clarification notes) or necessitated by errors on the part of the tenderer. In the latter case, corrections must be initialled by the person signing the tender.
- 22.4 The tender will be rejected if it contains any alteration, tampering, addition or deletion to the tender documents not specified in a clarification note issued by the Central Government Authority.

## **D. SUBMISSION OF TENDERS**

### ***23. Sealing and Marking of Tenders***

- 23.1 The tenders must be submitted in English and received before the deadline specified in Clause 2 or as otherwise specified in accordance with Clause 11.1 and/or 24.1. They must be submitted:

EITHER by recorded delivery (official postal/courier service) or hand delivered to:

**Department of Contracts,  
Notre Dame Ravelin,  
Floriana, FRN 1600  
Malta**

Tenders submitted by any other means will not be considered.

- 23.2 Tenderers must seal the original and the copy of their tender as outlined in Clause 15.
- 23.3 If the outer envelope is not sealed and marked as required in Sub clause 14.1.3, the Central Government Authority will assume no responsibility for the misplacement or premature opening of the tender.

### ***24. Extension of Deadline for Submission of Tenders***

- 24.1 The Central Government Authority may, at its own discretion, extend the deadline for submission of tenders by issuing a clarification note in accordance with Clause 11. In such cases, all rights and obligations of the Central Government Authority and the tenderer regarding the original date specified in the contract notice will be subject to the new date.

## **25. Late Tenders**

- 25.1 All tenders received after the deadline for submission specified in the contract notice or these instructions will be kept by the Central Government Authority. The associated guarantees will be returned to the tenderers.
- 25.2 No liability can be accepted for late delivery of tenders. Late tenders will be rejected and will not be evaluated.

## **26. Alterations and Withdrawal of Tenders**

- 26.1 Tenderers may alter or withdraw their tenders by written notification prior to the deadline for submission of tenders. No tender may be altered after the deadline for submission.
- 26.2 Any notification of alteration or withdrawal must be prepared, sealed, marked and submitted in accordance with Clause 23, and the envelope must also be marked with "alteration" or "withdrawal".
- 26.3 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 provided for in Clause 20.

## **E. OPENING AND EVALUATION OF OFFERS**

### **27. Opening of Tenders**

- 27.1 Tenders will be opened in public session on the date and time indicated in the timetable at Clause 2 (or as otherwise specified in accordance with Clause 11.1 and/or 24.1) at the Department of Contracts, Notre Dame Ravelin, Floriana, FRN 1600, Malta by the General Contracts Committee. They will draw up a 'Summary of Tenders Received' which will be published on the notice board at the Department of Contracts and shall also be available to view on the Department's website, [www.contracts.gov.mt/tenders](http://www.contracts.gov.mt/tenders).
- 27.2 At the tender opening, the tenderers' names, the tender prices, written notification of alterations and withdrawals, the presence of the requisite tender guarantee and any other information the Central Government Authority may consider appropriate will be published.
- 27.3 Envelopes marked "withdrawal" will be read out first and returned to the tenderer.
- 27.4 Reductions or alterations to tender prices made by tenderers after submission will not be taken into consideration during the analysis and evaluation of tenders.

### **28. Secrecy of the Procedure**

- 28.1 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.**

- 28.2 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.
- 28.3 Any attempt by a tenderer to approach any member of the Evaluation Committee/Central Government Authority directly during the evaluation period will be considered legitimate grounds for disqualifying his tender.

## **29. Clarification of Tenders**

- 29.1 When checking and comparing tenders, the evaluation committee may, after obtaining approval from the General Contracts Committee, ask a tenderer to clarify any aspect of his tender.
- 29.2 Such requests and the responses to them must be made by e-mail or fax. They may in no circumstances alter or try to change the price or content of the tender, except to correct arithmetical errors discovered by the evaluation committee when analysing tenders, in accordance with Clause 31.

## **30. Tender Evaluation Process**

- 30.1 The following should be read in conjunction with Clause 27.

### **30.2 Part 1: Administrative Compliance**

The Evaluation Committee will check the compliance of tenders with the instructions given in the tender document, and in particular the documentation submitted in respect of Clause 16.

The Evaluation Committee shall, after having obtained approval by the General Contracts Committee, request rectifications in respect of incomplete/non-submitted information pertinent to the documentation as outlined in sub-Clause 16.1(a), 16.1(b), and 16.1(c) of these Instructions to Tenderers. Such rectification/s must be submitted within two (2) working days from notification, and will be subject to a non-refundable administrative penalty of €50: 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 outlined in sub-Clause 16.1 (d), 16.1(e), and 16.1(f) of these Instructions to Tenderers. Only clarifications on the submitted information in respect of the latter may be eventually requested.

### **30.3 Part 2: Eligibility and Selection Compliance**

Tenders which have been considered administratively compliant shall be evaluated for admissibility as outlined below:

#### ***(i) Eligibility Criteria***

- Tender Form (Volume 1, Section 2)

*(ii) Selection Criteria*

- Evidence of technical capacity (sub-Clause 6.1.2)

**30.4 Part 3: Technical Compliance**

At this step of the evaluation process, the Evaluation Committee will analyse the administratively-compliant tenders' technical conformity in relation to the technical specifications (Volume 3, and the documentation requested by the Contracting Authority as per sub-Clause 16(e)), classifying them technically compliant or non-compliant.

Tenders who are deemed to be provisionally technically compliant through the evaluation of their technical offer (especially the specifications) shall be requested to submit samples so that the Evaluation Committee will corroborate the technical compliance of the offers received.

In the case of a suppliers who are already supplying the product being offered, the tenderer may be exempted from submitting samples. However the specific brand name and the respective reference of the Letter of Acceptance/Contract must be clearly indicated in the tender submission.

**30.5 Part 4. Financial Evaluation**

The financial offers for tenders which were not eliminated during the technical evaluation (i.e., those found to be technically compliant) will be evaluated.

The Evaluation Committee will check that the financial offers contain no arithmetical errors as outlined in Clause 31. [If the tender procedure contains several lots, financial offers are compared for each lot.] The financial evaluation will have to identify the best financial offer [for each lot].

**31. Correction of Arithmetical Errors**

31.1 Admissible tenders will be checked for arithmetical errors by the Evaluation Committee. 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.

31.2 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 seek the prior approval of the General Contracts Committee to communicate the revised price to the tenderer. If the tenderer does not accept the adjustment, his tender will be rejected and his tender guarantee forfeited.



- 31.3 When analysing the tender, the evaluation committee will determine the final tender price after adjusting it on the basis of Clause 31.1.

## **F. CONTRACT AWARD**

### ***32. Criteria for Award***

- 32.1 The sole award criterion will be the price. The contract will be awarded to the cheapest priced tender satisfying the administrative and technical criteria.

### ***33. Right Of The Central Government Authority To Accept Or Reject Any Tender***

- 33.1 The Central Government Authority reserves the right to accept or reject any tender and/or to cancel the whole tender procedure and reject all tenders. The Central Government Authority reserves the right to initiate a new invitation to tender.
- 33.2 In the event of a tender procedure's cancellation, tenderers will be notified by the Central Government Authority. If the tender procedure is cancelled before the outer envelope of any tender has been opened, the sealed envelopes will be returned, unopened, to the tenderers.
- 33.3 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) there have been irregularities in the procedure, in particular where these have prevented fair competition.

**In no circumstances will the Central Government 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 has been advised of the possibility of damages. The publication of a contract notice does not commit the Central Government Authority to implement the programme or project announced.**

### ***34. Notification of Award, Contract Clarifications***

- 34.1 Prior to the expiration of the period of validity of tenders, the Central Government Authority will notify the successful tenderer, in writing, that his tender has been recommended for award by the General Contracts Committee, pending any appeal being lodged in terms of Part XIII of the Public Contracts Regulations (being reproduced in Volume 1, Section 6).
- 34.2 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 (if applicable);
- (v) the deadline for filing a notice of objection (appeal);
- (vi) the deposit required if lodging an appeal.

34.3 The recommendations of the General Contracts Committee shall be published on the Notice Board of the Department of Contracts, and published online on the Department's website, [www.contracts.gov.mt/gcc](http://www.contracts.gov.mt/gcc).

### **35. Contract Signing and Performance Guarantee**

35.1 After the lapse of the appeals period, and pending that no objections have been received and/or upheld, 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.

35.2 Within 15 calendar days of receiving the contract (against acknowledgment of receipt) from the Central Government Authority, the successful tenderer will sign and date the contract and return it to the Central Government Authority with the performance guarantee and the Financial Identification Form (if applicable). On signing of the contract by the Central Government Authority, the successful tenderer will become the Contractor and the contract will enter into force.

35.3 Before the 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 does not fall into any of the exclusion situations listed in Clause 7 of the Tender Form (Volume 1, Section 2). The above mentioned documents must be submitted by every member of a Joint Venture/Consortium (if applicable).

35.4 If the selected tenderer fails to sign and return the contract, other required documentation, and any guarantees required within the prescribed 15 calendar days, the Central Government Authority may consider the acceptance of the tender to be cancelled without prejudice to the Central Government Authority's right to seize the guarantee, 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.

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

35.5 Only the signed contract will constitute an official commitment on the part of the Central Government Authority, and activities may not begin until the contract has been signed by the Central Government Authority and the successful tenderer.

- 35.6 Tender guarantees (bid bonds) provided by tenderers who have not been selected shall be released within 30 calendar days from the signing of the contract. The tender guarantee of the successful tenderer shall be released on the signing of the contract, and on submission of a valid performance guarantee.
- 35.7 The performance guarantee referred to in the General Conditions is set at 10% of the amount of the contract and must be presented in the form specified in Volume 2, Section 4, to the tender document the performance guarantee shall be released within 30 days of the signing of the Final Statement of Account (Final Bill), unless the Special Conditions provide otherwise.

### ***36. Period of Delivery***

- 36.1 The period of delivery shall commence from the 2<sup>nd</sup> January 2011 and the contract shall terminate on the 31<sup>st</sup> December 2011.

## **G. MISCELLANEOUS**

### ***37. Ethics Clauses***

- 37.1 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.
- 37.2 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.
- 37.3 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.
- 37.4 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.
- 37.5 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.

- 37.6 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.
- 37.7 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.
- 37.8 The contract governs the Parties' use of all reports and documents drawn up, received or presented by them during the execution of the contract.
- 37.9 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.
- 37.10 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.

### ***38. Data Protection and Freedom of Information***

- 38.1 Any personal data submitted in the framework of the procurement procedure and/or subsequently included in the contract shall be processed pursuant to the Data Protection Act (2001). 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/Contracting Authority without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in conformity with National and/or Community law.
- 38.2 The provisions of this contract are without prejudice to the obligations of the Central Government Authority in terms of the Freedom of Information Act (Cap. 496 of the Laws of Malta). The Central Government Authority, prior to disclosure of any information to a third party in relations to any provisions of this contract which have not yet been made public, shall consult the contractor 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 in terms of the Act.

### ***39. Gender Equality***

- 39.1 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 organization 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.

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## VOLUME 1 SECTION 2 - TENDER FORM

(A separate, distinct Tender Form must be submitted for EACH OPTION - if applicable - submitted)

Place and Date: .....  
 Publication reference:  
 Name and address of Central Government Authority - Contracts Department  
 Name of Tender:

### A TENDER SUBMITTED BY

|            | Name(s) of tenderer(s) | Nationality |
|------------|------------------------|-------------|
| Leader     |                        |             |
| Partner 2* |                        |             |
| Etc ... *  |                        |             |

\* add/delete additional lines for partners as appropriate. Note that a subcontractor is not considered to be a partner for the purposes of this tender procedure. If this tender is being submitted by an individual tenderer, the name of the tenderer should be entered as 'leader' (and all other lines should be deleted)

### B CONTACT PERSON (for this tender)

|           |              |
|-----------|--------------|
| Name      |              |
| Address   |              |
| Telephone | (____) _____ |
| Mobile    | (____) _____ |
| Fax       |              |
| E-mail    |              |

### C TENDERER'S DECLARATION(S)

To be completed and signed by the tenderer (including each partner in a consortium).

In response to your letter of invitation to tender for the above contract, we, the undersigned, hereby declare that:

1 We have examined, and accept in full and in its entirety, the content of this tender document (including subsequent Clarifications Notes issued by the Central Government Authority) for invitation to tender No [\_\_\_\_\_/\_\_\_\_\_] of [...../...../.....]. We hereby accept the contents thereto in their entirety, without reservation or restriction. We also understand that any disagreement, contradiction, alteration or deviation shall lead to our tender offer not being considered any further.

2 We offer to execute, in accordance with the terms of the tender document and the conditions and time limits laid down, without reserve or restriction, the following supplies:

Toilet Paper

3 The total price of our tender (including delivery to department, duties, VAT, other taxes and any discounts) is:

Lot No 1A: Euro per roll .....

Lot No 1B: Euro per roll .....

b/f from The Schedule

4 This tender is valid for a period of 150 days from the final date for submission of tenders.

5 If our tender is accepted, we undertake to provide a performance guarantee of 10% of the contract value as required by the General Conditions.

6 We are making this application in our own right and **[as partner in the consortium led by < name of the leader / ourselves > ]** for this tender [Lot No]. We confirm that we are not tendering for the same contract in any other form. **[We confirm, as a partner in the consortium, that all partners are jointly and severally liable by law for the performance of the contract, that the lead partner is authorised to bind, and receive instructions for and on behalf of, each member, and that all partners in the joint venture/consortium are bound to remain in the joint venture/consortium for the entire period of the contract's performance].** We are fully aware that, in the case of a consortium, the composition of the consortium cannot be modified in the course of the tender procedure.

7 We are not bankrupt or under an administration appointed by the Court, or under proceedings leading to a declaration of bankruptcy. We also declare that we have not been convicted criminally, or found guilty of professional misconduct. Furthermore, we are up-to-date in the payment of social security contributions and other taxes.

8 We accept that we shall be excluded from participation in the award of this tender if compliance certificates in respect of declarations made under Clause 7 of this declaration are not submitted by the indicated dates.

9 We agree to abide by the ethics clauses of the instructions to tenderers and, in particular, have no potential conflict of interests or any relation with other candidates or other parties in the tender procedure at the time of the submission of this application. We have no interest of any nature whatsoever in any other tender in this procedure. We recognise that our tender may be excluded if we propose key

experts who have been involved in preparing this project or engage such personnel as advisers in the preparation of our tender.

- 10 We will inform the Central Government Authority immediately if there is any change in the above circumstances at any stage during the implementation of the contract. We also fully recognise and accept that any false, inaccurate or incomplete information deliberately provided in this application may result in our exclusion from this and other contracts funded by the Government of Malta and the European Communities.
- 11 Our tender submission has been made in conformity with the Instructions to Tenderers, and in this respect we confirm having included in the appropriate packages as required, the following documentation:
- (a) **Tender Guarantee** <sup>(Note 1)</sup>
    - Bid Bond (Not Required)
  - (b) **General Information** <sup>(Note 2)</sup>
    - Proof of Purchase (Receipt)
    - Statement on Conditions of Employment
  - (c) **Selection Criteria**
    - (c) **Financial and Economic Standing - Not applicable** <sup>(Note 2)</sup>
  - (d) **Technical Capacity** <sup>(Note 3)</sup>
    - List of Principal Deliveries
  - (e) **Evaluation Criteria/Technical Specifications** <sup>(Note 3)</sup>
    - Tenderer's Technical Offer
    - List of Samples
  - (f) **Tender Form, and Financial Offer/Bill of Quantities**

**Notes:**

1. *Tenderers will be requested to clarify/rectify, within two working days from notification, the tender guarantee only in the following two circumstances: either incorrect validity date, and/or incorrect value. This is indicated by the symbol ○*
2. *Tenderers will be requested to either clarify/rectify any incorrect and/or incomplete documentation, and/or submit any missing documents within two working days from notification. This is indicated by the symbol ○*
3. *No rectification shall be allowed. Only clarifications on the submitted information may be requested. This is indicated by the symbol ●*

- 12 I acknowledge that the Central Government Authority and/or Contracting Authority shall request rectifications in respect of incomplete/non-submitted information pertinent to the documentation listed in Clause 11(a), 11(b), and 11(c) of this Tender Form. We understand that such rectification/s must be submitted within two (2) working days, and will be subject to a non-refundable administrative penalty of €50, and that failure to comply shall result in our offer not being considered any further.

13 We note that the Central Government Authority is not bound to proceed with this invitation to tender and that it reserves the right to cancel or award only part of the contract. It will incur no liability towards us should it do so.

Name and Surname: \_\_\_\_\_

I.D. / Passport Number: \_\_\_\_\_

Signature of tenderer: \_\_\_\_\_

Duly authorised to sign this  
tender on behalf of: \_\_\_\_\_

Company/Lead Partner VAT No:  
*(if applicable)* \_\_\_\_\_

Stamp of the firm/company: \_\_\_\_\_

Place and date: \_\_\_\_\_

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VOLUME 1 SECTION 3 - TENDER GUARANTEE FORM

*Not Applicable*

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***Annex To Tender Guarantee Form***

***Not Applicable***

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## VOLUME 1 SECTION 4 - QUESTIONNAIRE

*[The present questionnaire serves to describe the qualifications of a tenderer. The Contracting Authority has to set out in the tender documents any minimum qualifications required for the award of the contract. In the restricted procedure, the same forms can be used (substituting 'candidate' for 'tenderer' for describing the qualifications of candidates.)]*

### **Notes to Tenders**

1. All questions contained in the forms must be answered by the tenderer.
2. Additional sheets may be attached as necessary.
3. If a question does not apply to the tenderer, "not applicable" should be entered alongside with a brief explanation of why.
4. Every single page of each form must be numbered consecutively in the bottom right-hand corner.
5. Financial data and declarations presented by the tenderer must be given in Euro. Original bank statements may be also attached for reference.
6. Attached documentation/certificates must always be accompanied by a relevant translation in the language of the procedure.
7. Each partner in a joint venture/consortium must fill in and submit every form.
8. The person signing this questionnaire guarantees the truthfulness and accuracy of all the statements made.

**The accuracy of the answers to the questionnaire, their completeness and the attached documentation will be taken into account in the tender evaluation. Please refer to Clause 1.1 of the Instructions to Tenderers.**

**Form 4.1 - Proof of Purchase (Receipt)**

I confirm that the tender document was purchased by ..... on our exclusive behalf  
*Insert name of purchaser*

on ..... via ..... as attested by the receipt  
*Insert date of purchase Department's website/Cash Office*

attached herewith.

(Please attach a copy of the purchase receipt, which demonstrates that the tender document was purchased before the closing time and date of this call for tenders.)

Signature: .....  
(the person or persons authorised to sign on behalf of the tenderer)

Date: .....

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**Form 4.2 - Contact Details**

***Not Applicable***

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**Form 4.3 - Power of Attorney**

*Not Applicable*

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**Form 4.4 - Data on Joint Venture/Consortium (Where applicable)**

***Not Applicable***

**PREVIEW**

*Form 4.5 - Sub-Contracting*

*Not Applicable*

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**Form 4.6 - Statement on Conditions of Employment**

It is hereby declared that all employees engaged on this contract shall enjoy working conditions such as wages, salaries, vacation and sick leave, maternity and parental leave as provided for in the relative Employment Legislation. Furthermore, we shall comply with Chapter 424 of the Laws of Malta (Occupational Health and Safety Authority Act) as well as any other national legislation, regulations, standards and/or codes of practice or any amendment thereto in effect during the execution of the contract.

In the event that it is proved otherwise during the execution of the contract it is hereby being consented that the contract is terminated with immediate effect and that no claim for damages or compensation be raised by us.

Signature: .....  
(the person or persons authorised to sign on behalf of the tenderer)

Date: .....

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**Form 4.7 -Financial Statement**

**(Not Applicable)**

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**Form 4.8 - List of Principal Deliveries**

List of principal deliveries effected during the past five years:

| Description of Supplies | Total Value of Supplies | Date of Delivery | Client*/ Contracting Authority* |
|-------------------------|-------------------------|------------------|---------------------------------|
|                         |                         |                  |                                 |
|                         |                         |                  |                                 |
|                         |                         |                  |                                 |
|                         |                         |                  |                                 |
|                         |                         |                  |                                 |
|                         |                         |                  |                                 |
|                         |                         |                  |                                 |
|                         |                         |                  |                                 |
|                         |                         |                  |                                 |

\* In so listing the end clients, I am giving my consent to the Evaluation Committee, so that the latter may, if it deems necessary, contact the relevant clients, with a view to obtain from them an opinion on the supplies provided to them.

Signature: .....  
 (the person or persons authorised to sign on behalf of the tenderer)

Date: .....

**Form 4.9 - Literature/List of Samples**

**1. List of literature to be submitted with the tender:**

| Item | Description  | Reference in Technical Specifications |
|------|--------------|---------------------------------------|
| 1.1  | Not required |                                       |
| 1.2  |              |                                       |
| 1.3  |              |                                       |
| 1.4  |              |                                       |
| 1.5  |              |                                       |
| 1.6  |              |                                       |
| 1.7  |              |                                       |
| 1.8  |              |                                       |
| 1.9  |              |                                       |

**2. List of samples to be submitted within Two days of being notified to do so:**

| Item | Description             | Reference in Technical Specifications    |
|------|-------------------------|------------------------------------------|
| 2.1  | Samples of Toilet Paper | Clause 5 of the Technical Specifications |
| 2.2  |                         |                                          |
| 2.3  |                         |                                          |
| 2.4  |                         |                                          |
| 2.5  |                         |                                          |
| 2.6  |                         |                                          |
| 2.7  |                         |                                          |
| 2.8  |                         |                                          |
| 2.9  |                         |                                          |

Signature: .....  
 (the person or persons authorised to sign on behalf of the tenderer)

Date: .....

*Form 4.10 - Quality Assurance System/s*

*Not Applicable*

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*Form 4.11 - List of Trained Personnel*

*Not Applicable*

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*Not Applicable*

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*Form 4.13 - After-Sales Services Proposal*

*Not Applicable*

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*Form 4.14 - Training Proposal*

*Not Applicable*

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**Form 4.15 - Further Information**

Tenderers may add here any further information that they deem useful for determining their qualifications or for the evaluation of their tenders.

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## VOLUME 1 SECTION 5 - GLOSSARY

### Definitions

*Note: the present definitions are given here for convenience only, in the context of the tender procedure. The definitions set out in the contract as concluded are determining for the relations between the parties to the contract.*

**Administrative order:** Any instruction or order issued by the Project Manager to the Contractor in writing regarding the execution of the contract.

**Breakdown of the overall price:** A heading-by-heading list of the rates and costs making up the price for a lump-sum contract.

**Central Government Authority:** means the Department of Contracts

**Contracting Authority:** means the final beneficiary.

**Conflict of interest:** Any event influencing the capacity of a candidate, tenderer or supplier to give an objective and impartial professional opinion, or preventing him, at any moment, from giving priority to the interests of the Central Government Authority and the Contracting Authority. Any consideration relating to possible contracts in the future or conflict with other commitments, past or present, of a candidate, tenderer or supplier, or any conflict with his own interests. These restrictions also apply to subcontractors and employees of the candidate, tenderer or supplier.

**Contract value:** The total value of the contract to be paid by the Contracting Authority in terms of the agreed terms and conditions.

**Contractor:** The successful tenderer, once all parties have signed the contract.

**Day:** Calendar day.

**Dayworks:** Varied work inputs subject to payment on an hourly basis for the Contractor's employees and plant.

**Defects Notification Period:** The period stated in the contract immediately following the date of provisional acceptance, during which the Contractor is required to complete the works and to remedy defects or faults as instructed by the Engineer.

**Drawings:** Drawings provided by the Contracting Authority and/or the Engineer, and/or drawings provided by the Contractor and approved by the Engineer, for the carrying out of the works.

**Engineer's representative:** Any natural or legal person, designated by the Engineer as such under the contract, and empowered to represent the Engineer in the performance of his functions, and in exercising such rights and/or powers as have been delegated to him. In this case, references to the Engineer will include his representative.

**Equipment:** Machinery, apparatus, components and any other articles intended for use in the works

**Evaluation Committee:** a committee made up of an odd number of voting members (at least three) appointed by the Central Government Authority and possessing the technical, linguistic and administrative capacities necessary to give an informed opinion on tenders.

**Final acceptance certificate:** Certificate(s) issued by the Engineer to the Contractor at the end of the defects notification period stating that the Contractor has completed his obligations to construct, complete, and maintain the works concerned.

**Final Beneficiary:** The Department/Entity or other government body on whose behalf the Department of Contracts has issued this tender.

**Foreign currency:** Any currency permissible under the applicable provisions and regulations other than the Euro, which has been indicated in the tender.

**General conditions:** The general contractual provisions setting out the administrative, financial, legal and technical clauses governing the execution of contracts.

**General damages:** The sum not stated beforehand in the contract, which is awarded by a court or an arbitration tribunal, or agreed between the parties, as compensation payable to an injured party for a breach of the contract by the other party.

**In writing:** This includes any hand-written, typed or printed communication, including fax transmissions and electronic mail (e-mail).

**Liquidated damages:** The sum stated in the contract as compensation payable by the Contractor to the Contracting Authority for failure to complete the contract or part thereof within the periods under the contract, or as payable by either party to the other for any specific breach identified in the contract.

**Modification:** An instruction given by the Engineer which modifies the works.

**National currency:** The currency of the country of the Contracting Authority.

**Period:** A period begins the day after the act or event chosen as its starting point. Where the last day of a period is not a working day, the period expires at the end of the next working day.

**Plant:** appliances and other machinery, and, where applicable under the law and/or practice of the state of the Contracting Authority, the temporary structures on the site required to carry out the works but excluding equipment or other items required to form part of the permanent works.

**Project Manager :** The legal or natural person responsible for monitoring the execution of the contract on behalf of the Contracting Authority, where the latter is not the Central Government Authority.

**Provisional sum:** A sum included in the contract and so designated for the execution of works or the supply of goods, materials, plant or services, or for contingencies, which sum may be used in whole or in part, or not at all, as instructed by the Engineer.

**Site:** The places provided by the Contracting Authority where the works are to be carried out and other places stated in the contract as forming part of the site.

**Special conditions:** The special conditions laid down by the Contracting Authority as an integral part of the tender document, amplifying and supplementing the general conditions, clauses specific to the contract and the terms of reference (for a service contract) or technical specifications (for a supply or works contract).

**Supervisor/Engineer:** The legal or natural person responsible for administering the contract on behalf of the Employer.

**Tender document/s:** The dossier compiled by the Contracting Authority and containing all the documents needed to prepare and submit a tender.

**Tender price:** The sum stated by the tenderer in his tender for carrying out the contract.

**Works:** Works of a permanent or temporary nature executed under the contract.

**Written communications:** Certificates, notices, orders and instructions issued in writing under the contract.

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## VOLUME 1 SECTION 6 - EXTRACTS FROM THE PUBLIC CONTRACTS REGULATIONS

### Right of Recourse

#### Article 21

The procedure for the submission of appeals is stipulated in Article 21 of the Public Contracts Regulations (Legal Notice 296/2010), reproduced hereunder for ease of reference.

(1) Where the estimated value of the public contract exceeds twelve thousand euro (€12,000) and is issued by an authority listed in Schedule 1, any tenderer or candidate concerned shall have a right to make a complaint to the Review Board in accordance with this regulation.

(2) (a) The contracting authority shall be obliged to issue a notice and affix an advertisement, in a prominent place at its premises, indicating the awarded public contract, the financial aspect of the award and the name of the successful tenderer. The contracting authority shall, by electronic means or by fax, inform the tenderer or candidate concerned of the publication of the award. The contracting authority shall be precluded from concluding the contract during the period allowed for the submission of appeals.

(b) The award process shall be completely suspended if an appeal is eventually submitted.

(3) Any tenderer or candidate concerned who is aggrieved by the award indicated by the contract authority may, within five working days from the publication of the notice, file a letter of objection, together with a deposit, with the contracting authority, clearly setting forth any reason for his complaint. The deposit to be paid in respect of tenders valued at less than forty-seven thousand euro (€47,000) shall be four hundred euro (€400), while those between forty-seven thousand euro (€47,000) and one hundred and twenty thousand euro (€120,000) shall be 0.5% of the estimated value of the tender, with a minimum deposit of four hundred euro (€400). The letter by the complaining tenderer shall be affixed on the notice board of the contracting authority and shall be brought to the attention of the recommended tenderer.

(4) After the expiry of the period allowed for the submission of a complaint, the contracting authority shall deliver the letter of complaint, the deposit receipt and all documents relating to the public contract in question to the Review Board who shall examine the matter in a fair and equitable manner. In its deliberation the Review Board shall have the authority to obtain, in any manner it deems appropriate, any other information not already provided by the contracting authority. The Review Board shall determine the complaint by upholding or rejecting it. The written decision of the Review Board shall be affixed on the notice board of the contracting authority and copies thereof shall be forwarded to the Director of Contracts and all the parties involved.

(5) The tenderer or candidate concerned who is not satisfied with the decision granted by the Review Board may refer the matter to the Court of Appeal (Inferior Jurisdiction) in terms of article 41(6) of the Code of Organization and Civil Procedure within a period of

sixty days. Such recourse however may not delay the Head of the contracting authority from implementing the Review Board's decision.

(6) Tender documents issued in terms of this Part shall include a clause informing tenderers that the award of the contract is subject to the right of recourse as provided for in this regulation, a copy of which should be reproduced in the documents.

(7) The Minister shall have the authority by order to extend the provisions of this regulation in order that recourse as provided in this regulation be made available also by authorities listed in Schedule 3 and to prescribe the procedure by which such recourse is to be granted.

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## VOLUME 2

### VOLUME 2 SECTION 1 - DRAFT CONTRACT FORM

This contract is concluded between:

Department of Contracts  
Notre Dame Ravelin  
Floriana FRN 1600  
Malta

(hereinafter called “The Central Government Authority”) on behalf of [name of Contracting Authority and address] on the one part, and

[Name of Contractor]  
[Address]

(hereinafter called “The Contractor”) on the other part,

Whereas the Central Government Authority is desirous that certain supplies should be [supplied, manufactured, delivered, installed, commissioned, maintained, etc.] by the Contractor, viz.:

**[Contract Title]**

and has accepted a tender by the Contractor for the provision of such supplies and the remedying of any defects therein.

**It is hereby agreed as follows:**

1. In this contract words and expressions shall have the meanings assigned to them in the contractual conditions set out below.
2. The place of acceptance of the supplies shall be as and when directed, the time limits for delivery shall be [.....], and the INCOTERM<sup>2000</sup> applicable shall be delivery duty paid (DDP) inclusive of Vat, Eco-Contribution and all other charges/taxes as may be applicable.
3. The following documents shall be deemed to form and be read and construed as part of this contract, in the following order of precedence:
  - (a) this Contract,
  - (b) the Special Conditions,
  - (c) the General Conditions,
  - (d) the technical specifications and design documentation,
  - (e) the Contractor’s technical offer (including any clarifications),
  - (f) the financial offer (after arithmetical corrections)/breakdown,
  - (g) the tender form,
  - (h) any other documents forming part of the contract.



Addenda shall have the order of precedence of the document they are modifying.

4. In consideration of the payments to be made by the Contracting Authority to the Contractor as hereinafter mentioned, the Contractor undertakes to deliver all supplies, and remedy defects therein in full compliance with the provisions of the contract.

5. The Contracting Authority hereby agrees to pay the Contractor in consideration of the execution and completion of the works and remedying of defects therein the amount of:

- Total contract price (Delivery Duty Paid *including* VAT/other taxes):

Lot 1A \_\_\_\_\_ Euro per roll

Lot 1B \_\_\_\_\_ Euro per roll

- Total contract price in words

Lot 1A \_\_\_\_\_ Euro per roll

Lot 1B \_\_\_\_\_ Euro per roll

or such other sum as may become payable under the provisions of the contract at the times and in the manner prescribed by the contract. VAT shall be paid in compliance with National Law (in particular the VAT Act 1998, the Act No X of 2003 and relevant Legal Notices).

6. The Contractor hereby agrees to submit a performance guarantee amounting to €..... equivalent to 10% of the contract value together with the signed contract.

7. In witness whereof the parties hereto have signed the contract. This contract shall take effect on the date on which it is signed by the last party.

Done in English in three originals: one for the Central Government Authority, one for the Contracting Authority, and one for the Contractor.

**Central Government Authority:**

**Contractor:**

Signed by:

Signed by:

.....  
In the capacity of:

.....  
In the capacity of:

.....  
Being fully authorized by and acting on behalf of

.....  
Being fully authorized by and acting on behalf of

.....

.....

Date:

Date:

.....

.....

## VOLUME 2 SECTION 2 - GENERAL CONDITIONS

The full set of General Conditions for Supply Contracts (Version 1.01 dated 15 March 2010) can be viewed/downloaded from:

[www.contracts.gov.mt/conditions](http://www.contracts.gov.mt/conditions)

It is hereby construed that the tenderers have availed themselves of these general conditions, and have read and accepted in full and without reservation the conditions outlined therein, and are therefore waiving any standard terms and conditions which they may have.

These general conditions will form an integral part of the contract that will be signed with the successful tenderer/s.

PREVIEW

## SPECIAL CONDITIONS

### CONTENTS

These conditions amplify and supplement, if necessary, the General Conditions governing the contract. Unless the Special Conditions provide otherwise, those General Conditions remain fully applicable. The numbering of the Articles of the Special Conditions is not consecutive but follows the numbering of the Articles of the General Conditions. In exceptional cases, and with the authorisation of the Central Government Authority, other clauses may be introduced to cover specific situations.

|            |                                  |
|------------|----------------------------------|
| ARTICLE 2  | LAW APPLICABLE                   |
| ARTICLE 4  | COMMUNICATION                    |
| ARTICLE 9  | GENERAL OBLIGATIONS              |
| ARTICLE 10 | ORIGIN                           |
| ARTICLE 11 | PERFORMANCE GUARANTEE            |
| ARTICLE 16 | TAX AND CUSTOMS ARRANGEMENTS     |
| ARTICLE 18 | COMMENCEMENT ORDER               |
| ARTICLE 19 | PERIOD OF EXECUTION              |
| ARTICLE 21 | DELAYS IN EXECUTION              |
| ARTICLE 22 | QUANTITIES                       |
| ARTICLE 23 | SUSPENSIONS                      |
| ARTICLE 24 | QUALITY OF SUPPLIES              |
| ARTICLE 25 | INSPECTION AND TESTING           |
| ARTICLE 26 | METHODS OF PAYMENT               |
| ARTICLE 28 | DELAYED PAYMENTS                 |
| ARTICLE 29 | DELIVERY                         |
| ARTICLE 30 | VERIFICATION OPERATIONS          |
| ARTICLE 35 | BREACH OF CONTRACT               |
| ARTICLE 41 | DISPUTE SETTLEMENT BY LITIGATION |

## **Article 2 Law Applicable**

- 2.1 The laws of Malta shall apply in all matters not covered by the provisions of the contract.
- 2.2 The language used shall be English.

## **Article 4 Communication**

For the smooth working of the contract, contact at all times must be established between the successful contractor and the various officers concerned of the department and for this reason the contractor must have his / her own telephone.

## **Article 9 General Obligations**

The contractor shall abide strictly by any and all safety regulations concerning the construction and loading of the vehicles employed on this contract.

The contractor shall not employ on this contract any vehicle which is not covered by a Motor Vehicle Insurance (Third Party Risks) policy issued by a recognised Insurer in Malta.

It shall not be lawful for the contractor to employ any driver on any of the vehicles used on this contract who is not the holder of the requisite special driving licence issued by the Commissioner of Police.

The contractor may be required to dismiss at once any work-man who, in the opinion of the Head of Department, is considered incompetent, misbehaves, or whose presence on this contract is undesirable. He shall also be liable for any damages caused to Government property in any way by men employed by him.

Deliveries shall be effected only on working days during Government working hours and no deliveries shall be made or accepted on Saturdays, Sundays, Holidays of Obligation and Public Holidays. However, the Head of Department reserves the right to depart from this rule should circumstances so dictate.

Should the successful tenderer be resident abroad he shall be require to appoint a representative in Malta with whom all transactions in connection with the contract shall be made by the Government.

## **Article 10 Origin**

Supplies may originate in a Member State of the European Union or any other country as stipulated in Article 69 of the Public Contracts Regulations. The origin of the goods shall be determined according to the Community Customs Code or the international agreements to which the country concerned is a signatory.

**When submitting his tender, the tenderer must state expressly that all the goods meet the requirements concerning origin and must state the respective countries of origin. He may be asked to provide additional information in this connection.**

## **Article 11 Performance Guarantee**

### Malta Funds

11.1 The Contractor shall, within 15 days of receipt of the notification of the award of contract, furnish the Central Government Authority with a guarantee for the full and proper performance of the contract. The amount of the guarantee shall be 10% of the amount of the contract price, including any amounts stipulated in addenda to the contract. In the case that the value of the contract does not exceed €10,000, no performance guarantee is required.

11.3 The performance guarantee shall be in the format given in Annex IV and shall be provided in the form of a bank guarantee.

## **Article 16 Tax and Customs Arrangements**

### Malta Funds

16.2 For supplies manufactured locally, all internal fiscal charges applicable to their manufacture shall be included in the price.

16.2 For supplies to be imported into the country of the Contracting Authority, all duties and taxes applicable to their importation, including VAT shall be included in the price.

## **Article 18 Commencement Order**

18.1 This contract shall commence on the 2<sup>nd</sup> January 2011.

## **Article 19 Period of Execution**

19.1 The duration of this contract shall be up to 31<sup>st</sup> December 2011. However, this contract may be extended for a further three (3) months under the same terms and conditions.

## **Article 21 Delays in Execution**

Besides the fines stipulated the Government shall have the right to annul the contract if, (a) have supplied quantities of the goods and/or materials less than the quantities shown on the delivery note or (b) having supplied goods and/or materials of inferior quality not in accordance with the Specification or from non-approved sources, and in either of these two cases as may be, having been warned in writing, the contractor again supplies goods and/or materials less than the quantities shown on the delivery note or again supplies goods and/or materials of inferior quality or from non-approved sources.

## **Article 22 Quantities**

The quantities shown are only indicative and where necessary may be exceeded. Moreover Government reserves the right not to order the whole quantities shown and would not, by doing so, be held liable to any damages or other costs whatsoever.

The Government reserves the right of obtaining any quantity of the requested commodities during the period of the contract from sources other than the contractor.

## **Article 23 Suspension**

Should the contract be annulled in terms of clause 11 above, such annulment shall automatically entail a penalty equivalent to ten per cent of the value of the unperformed part of the contract to which the contractor shall become liable in addition to any compensation which may be due to the Government for damages.

Should the contractor fail, refuse or neglect to supply or to replace as in clause 9, any goods and/or materials within the period prescribed, he shall become liable for the whole period and on account of the delay to a penalty equivalent to one per cent per week of the value of the goods and/or materials the supply of which is in arrear, up to the day on which the delivery shall have been completed. The Head of Department shall moreover, without prejudice to the payment of the fines to which the contractor may have become liable, and without the necessity of any prior legal proceedings have the right to order from other sources, at his / her discretion such goods and/or materials at any price on account, and at the expense, of the contractor.

## **Article 24 Quality of Supplies**

Moreover, the contractor shall incur a fine equivalent to ten per cent of the value of the goods and/or materials delivered should they be found to be of inferior quality not in accordance with the Specifications and the approved sample/s or of having been supplied from sources other than those approved and accepted for the contract unless approval to supply from these sources has been obtained in writing from the Government.

## **Article 25 Inspection and Testing**

Inspection and testing of goods will be carried out upon collection.

## **Article 26 Methods of Payment**

**26.1** Payments shall be made in Euro.

### **Malta Funds**

The payments are to be effected within 30 days from the date on which an admissible payment request is registered by the competent department specified in the Special Conditions, for the goods received to the satisfaction of the Project Manager

Monthly payments shall be made to the contractor by the end of the month subsequent to that in which a supply shall have been made. The Head of Department shall however have the right to stop any payment due whenever in his/her opinion the contractor is under penalty for breach of any of the conditions of the contract.

## **Article 28 Delayed Payments**

### **Malta Funds**

In breach of the above, a contractor would become entitled to the payment of interest at 2% over the rate of interest established by the Central European Bank for the particular period.

## Article 29 Delivery

- a The Contractor shall bear all risks relating to the goods until provisional acceptance at destination. The supplies shall be packaged so as to prevent their damage or deterioration in transit to their destination. The contractor shall provide at his own expense all necessary labour and transport required for the execution of this contract.
- b The goods and/or materials shall be supplied, as and when required, on receipt of a Requisition or Order from the Head of Department concerned or his / her representative and shall be delivered to the place or places indicated on the Order within the time specified thereon.
- c Deliveries shall be effected only on working days during Government working hours and no deliveries shall be made or accepted on Saturdays, Sundays, Holidays of Obligation and Public Holidays. However, the Head of Department reserves the right to depart from this rule should circumstances so dictate.
- d The Government will not accept liability for verbal orders and will not meet claims for any value thereof even though the goods and/or materials may have been delivered and made use of by the department concerned.
- e Subject to the provisions of clause b above, the contractor may be required to supply and to deliver, on any day as directed, up to a maximum quantity in respect of each item equivalent to double the quantity specified in the Schedule divided by the number of working days falling within the contract period.
- f The contractor shall keep reasonable stocks of each item to meet all demands during the period of the contract. Whenever so requested, the contractor shall give two days' notice to the Head of Department or to the officer representing him of the date on which the supply of a requisition will be made, in default whereof he shall incur a penalty of Euro 4.66 for every requisition in respect of which he has not given notice and the Head of Department shall have the right to reject the supply covered by such requisition and, if he deems fit, to fix a later date for the delivery thereof.

## Article 30 Verification Operations

Each supply shall be measured on delivery by the representative of the Head of Department and shall be accompanied by a delivery note showing the quantity being supplied under each item of the Schedule and the Head of Department's representative shall receipt such note provided the quantities on the delivery note tally with the quantities supplied. Should the quantities shown on the delivery note as being supplied not conform to the quantities **actually** supplied, the contractor shall become liable to a fine equivalent to double the value, at the contract rate, of the quantity short-delivered.

The Head of Department or his / her representative shall have the power to reject any goods and/or materials supplied by the contractor should they be not in accordance with the Specifications or with the sample produced by the contractor and approved by Government and the contractor shall remove the rejected goods at his /her expense within the shortest possible time.

The contractor shall be bound to replace any rejected goods and/or materials with goods and/or materials of the approved quality within the time prescribed by the Head of the Department concerned.

#### **Article 35 Breach of Contract**

Should the contractor fail to effect delivery of any order or to effect replacement of any rejected goods and/or materials within the time prescribed in terms of the contract, without having previously obtained an extension in writing from the Head of Department – such an extension will be granted only in exceptional circumstances – Government shall have the right to dissolve the contract and to consider it as having been abandoned by the Contractor. Should the contract be so or otherwise abandoned, wholly or in part, the Contractor besides being liable to payment of the penalties incurred for delay and of any damages deriving from such abandonment shall incur a further penalty equivalent to ten per cent of the value of the unperformed part of the contract. Provided that no penalty for delay shall be enforced with respect to the specific Requisition giving place to the dissolution and abandonment of the contract.

Payment of any fine to which the Contractor may have become liable the exercise by the Government of any of its rights under clauses 13 and 14 hereof shall not exempt the contractor from his / her liabilities for damages deriving from his / her failure to supply any order or orders under this contract.

#### **Article 41 Dispute Settlement by Litigation**

Any dispute between the Parties that may arise during the performance of this contract and that has not been possible to settle otherwise between the Parties shall be submitted to the arbitration of the Malta Arbitration Centre in accordance with the Arbitration Act (Chapter 387) of the Laws of Malta.

This law is based on “Model Law” which is the Model Law on International Commercial Arbitration adopted on June 21, 1985 by the United Nations Commission on International Trade Law reproduced in the First Schedule of the Arbitration Act.



## VOLUME 2 SECTION 4 - SPECIMEN PERFORMANCE GUARANTEE

(LETTERHEAD OF THE REGISTERED FINANCIAL INSTITUTION PROVIDING THE GUARANTEE)

Director of Contracts  
Department of Contracts  
Notre Dame Ravelin  
Floriana FRN1600  
Malta

[Date]

Dear Sir,

Our Guarantee Number ..... for €.....

Account: [Account Holder's Name]

In connection with the contract entered into between yourself on behalf of the Director of Contracts and [Name and Address of Contractor] hereinafter referred to as "the Contractor" as per the latter's tender and your acceptance under [CT File Reference], whereby the contractor undertook the [title of contract] in accordance with Article 13 of the Special Conditions the [works/services/supplies] as mentioned, enumerated or referred to in the Specification and/or Bills of Quantities forming part of the contract documents, we hereby guarantee to pay you on demand a maximum sum of €[amount in works and numbers] in case the obligations of the above-mentioned contract are not duly performed by the Contractor.

This guarantee will become payable on your first demand and it shall not be incumbent upon us to verify whether such demand is justified.

For avoidance of doubt it is hereby declared that although this instrument gives rise to legal relations between the guarantor and the beneficiary, it is hereby specifically declared for all intents and purposes of law that this guarantee does not exempt the above-mentioned Contractor from any obligations, acts of performance or undertaking assumed under the tender documents as ratified in the contract.

Any payments due to the contractor in respect of the obligations entered into under the contract above referred to shall be made through this Bank.

This guarantee expires on the [expiry date] and unless it is extended by us or returned to us for cancellation before that date any demand made by you for payment must be received in writing not later than the aforementioned expiry date.

This document should be returned to us on utilization or expiry or in the event of the guarantee being no longer required.

After the expiry date and in the absence of a written demand being received by us before such expiry date, this guarantee shall be null and void, whether returned to us or not, and our liability hereunder shall terminate.

This guarantee is personal to you, and is not transferable or assignable.

Yours Faithfully,

.....  
[Signatory on behalf of Guarantor]

PREVIEW

VOLUME 2 SECTION 5 - SPECIMEN PREFINANCING PAYMENT GUARANTEE

*Not Applicable*

PREVIEW

VOLUME 2 SECTION 6 - SPECIMEN RETENTION GUARANTEE

*Not Applicable*

PREVIEW

## TECHNICAL SPECIFICATIONS

1. The toilet paper rolls shall have the following characteristics:-
  - a. The two ply toilet paper rolls shall be of extra soft grade. The average grammage of the double ply paper shall be not less than 34g/m<sup>2</sup>.
  - b. They shall consist of unglazed soft tissue paper and shall be free from deleterious defects such as fibre bundles and wood splinters and other defects that may impair its serviceability.
  - c. The length of paper per rolls shall be not less than 26m and not more than 28m. Any shortages from the agreed length in any one roll shall not exceed 2%.
  - d. The width of the sheets shall be 100mm plus or minus 2mm. The sheets are to be neatly and firmly rolled on a cylindrical core of the same width. The sides of each roll shall be clearly cut and the paper at the other end of the roll shall not be glued to the underlying paper.
  - e. The length of a sheet on a roll shall be not less than 110mm and not more than 130mm.
  - f. The perforations shall be functional and allow a clear tear on the sheet.
  - g. The inside diameter of the core of a toilet paper roll shall not be less than 32mm and not more than 45mm. The outside diameter of the roll shall not exceed 125mm.
  - h. The tensile strength of the paper shall be not less than 2.1 N/15mm of width in the machine direction, 0.6N/15mm of width in the cross direction and 1.5N/15mm of width in the average of both the machine direction and cross direction.
  - i. The softness of the paper shall not exceed 150mN.
  - j. If any dye is used to colour the paper it should conform to Health Standards.
2. Each roll shall be indelibly stamped with the letter 'G.M.' at one end or on the core.
3. The rolls shall be packed in hygienic, dirt and damp proof strong polythene bags of approximately 60 rolls to each bag, to allow uniform stacking up to a height of at least three (3) metres.
4. Tenderers submitting offers for toilet paper manufactured from recycled selected tissue, besides complying with clauses 7, 8 and 9 above are to submit with their quotation and whenever requested during the duration of the contract, a Quality Control Analysis Report issued by an independent recognized laboratory, showing that the product being supplied has a very good hygiene standard and do not pose any bacteriological risk to health. In this connection test results should confirm that the bacterial count do not exceed 1cfu per cm<sup>2</sup>.
5. Samples: Within two days of being notified, tenderers must submit samples (10 rolls of each type offered) showing the quality and workmanship of the toilet paper being supplied. Samples are to bear a label marked clearly with the name and address of the bidder.

# FINANCIAL OFFER

## The Schedule

### Toilet Paper

| Item No. | Description of Article                                                           | Qty in Rolls * | Rate per roll delivered to Department inclusive of VAT, Customs Import Duty, ECO Contribution (if any) and other charges as applicable |                                                      |
|----------|----------------------------------------------------------------------------------|----------------|----------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|
| 1.       | Toilet paper rolls in accordance with the attached specifications and conditions | 710,000        | <b>A</b><br>100% Pure Cellulose Paper<br>Colour - White                                                                                | <b>B</b><br>Recycled Paper<br>Colour – Greyish White |
|          |                                                                                  | Rate           |                                                                                                                                        |                                                      |
|          |                                                                                  | Total          |                                                                                                                                        |                                                      |

c/f to Form of Tender

**Note: \* Vide Article 22 of the Special Conditions**

Name of Tenderer \_\_\_\_\_

Signature \_\_\_\_\_

I.D. No. \_\_\_\_\_

Date \_\_\_\_\_