



[23/09/2026]

[CT2274/2026 - Services - Tender for the Implementation of a Fully Compliant European Digital Identity Wallet (EUDIW), Supporting Trust Ecosystem and use cases for the Malta Digital Innovation Authority (MDIA)]

Clarification Note # [27]

To all prospective bidders

Reference is made to the above-captioned tender for which the deadline for submission of offers is **[05/11/2026]** at **[09:30am]**.

Please find a set of clarifications which are construed to form an integral part of the tender document.

Question No. [01]: *Question No. 1 – Recognition of an auditor established in another Member State (“warranted Auditor”)*

Section 1, Clause 5(B)(b) requires a signed declaration by a warranted Auditor confirming the minimum average yearly turnover, and Section 1, Clause 5(B)(c)(c) requires a signed declaration by a warranted Auditor confirming the successful execution and the cumulative value of the reference projects. The form “Form – List of Projects” further provides a field for the auditor’s “Warrant no”.

The warrant is a Maltese public licence granted under the Accountancy Profession Act. No corresponding institute exists in the Czech Republic: a statutory auditor is registered with the Chamber of Auditors of the Czech Republic under Act No. 93/2009 Coll., which transposes Directive 2006/43/EC, and is issued a licence bearing a registration number rather than a warrant. An auditor established in another Member State therefore has no warrant number to insert into the form. In addition, the confirmation by an auditor of the successful completion of reference projects is not a customary auditing engagement in the Czech Republic; technical and professional ability is habitually evidenced there by a list of significant supplies accompanied by certificates issued by the clients concerned.

We therefore kindly request the Contracting Authority to confirm that a statutory auditor registered in another Member State of the European Union in accordance with Directive 2006/43/EC – in the Czech Republic an auditor registered with the Chamber of Auditors of the Czech Republic under Act No. 93/2009 Coll. – qualifies as a “warranted Auditor” for the purposes of Section 1, Clause 5(B), and that the registration number of that auditor’s licence may be inserted in the field “Warrant no”.

As regards the evidence of turnover, we kindly request confirmation of whether audited financial statements bearing the auditor's opinion for the financial years 2023, 2024 and 2025, accompanied by a declaration of the Economic Operator, are acceptable, or alternatively a report of factual findings issued by the auditor in accordance with ISRS 4400; and, if a specific wording is expected, that the Contracting Authority publishes the template of the declaration it requires.

As regards the evidence of the reference projects, we kindly request confirmation of whether the auditor's declaration may be replaced or supplemented by certificates issued by the clients concerned or, in respect of public contracts awarded in the Czech Republic, by reference to the publicly accessible Register of Contracts maintained under Act No. 340/2015 Coll. and to the contracting authorities' profiles.

*Note ** to "Form – List of Projects" excludes information which cannot be clearly evidenced through authenticated contracts, notarial deeds or other public instruments. The notarial deed as a form of commercial contract is an institute of Maltese (civil - law) notarial practice; works and service contracts concluded in the Czech Republic are private instruments and are frequently subject to confidentiality undertakings. We kindly request confirmation that signed contracts in the form of private instruments, certificates issued by the clients concerned and extracts from the Register of Contracts are accepted as equivalent evidence, and that contracts may be submitted in redacted form where full disclosure is precluded by a confidentiality undertaking.*

The form requires the auditor's signature to be provided in wet ink, whereas the offer is submitted exclusively by electronic means. We kindly request confirmation of whether a scan of the wet - ink original is accepted, or whether a qualified electronic signature issued by a qualified trust service provider established in another Member State may be used, such signature being required to be recognised in all Member States pursuant to Article 25 of Regulation (EU) No 910/2014.

Finally, we kindly request confirmation that, in the case of a grouping of economic operators, or of subcontractors upon whose capacity the Economic Operator relies, the declaration is to be issued by the auditor of each participating entity separately, and that for the purposes of the thresholds of EUR 2,500,000 in average yearly turnover and EUR 5,000,000 in cumulative value of the reference projects the figures of the participating entities are aggregated.

Answer No. [01]: Reference is being made to Tender Document – Section 1 – Article 5(B)(b) & (c) - In line with the "mutual recognition" public procurement principle, a signed declaration by a statutory auditor registered with the Chamber of Auditors of the Czech Republic under Act No. 93/2009 Coll., which transposes Directive 2006/43/EC, and is issued a licence bearing a registration number rather than a warrant is deemed acceptable to the Contracting Authority. Furthermore, the registration number of that auditor's licence may be inserted in the field "Warrant no".

Reference is being made to Tender Document – Section 1 – Article 5(B)(b) –

- a) Economic operators are free to submit audited financial statements bearing the auditor's opinion for the financial years 2023, 2024 and 2025, as long as these are accompanied by a signed declaration by a warranted (licensed) Auditor appointed by the economic operator, which confirms the minimum average yearly turnover during the past three (3) financial years (2023-2025) shall be not less than €2,500,000 - per year. No specific wording is being sought and no form has and needs to be provided as long as the declaration by the warranted (licensed) Auditor is clear.
- b) As regards the evidence of the reference projects, the Contracting Authority confirms that the auditor's declaration needs to be provided and not replaced. It may be supplemented by certificates issued by the clients concerned or, in respect of public contracts awarded in the Czech Republic, by reference to the publicly accessible Register of Contracts maintained under Act No. 340/2015 Coll. and to the contracting authorities' profiles.
- c) Albeit no such documentation is being requested at first instance for submission together with the "*Form - List of Projects*", it is hereby confirmed that signed contracts in the form of private instruments, certificates issued by the clients concerned and extracts from the Register of Contracts are accepted as equivalent evidence, and that contracts may be submitted in redacted form where full disclosure is precluded by a confidentiality undertaking.
- d) It is hereby being confirmed that a scan of the wet - ink original is accepted, as long as it is accompanied by the warrant (license) number.
- e) Reference is being made to the General Rules Governing Tenders v4.10 – Article 2.4 – "In the case of a joint venture/consortium/group of Economic Operators, the joint venture/consortium/group of Economic Operators as a whole must satisfy the criteria established in the Instructions to Tenderers." Auditor's declaration is to cover the whole submission which needs to be made through one (1) duly filled in "*Form - List of Projects*" clearly. In case of projects pertaining to different economic operators, the form needs to indicate the relevant economic operator who performed the said project.

Question No. [02]: *Question No. 2 – Authorisation to practise the profession in Malta in respect of the Key Experts*

The table contained in the "Key Experts Form" requires the Economic Operator to state, in respect of each of the seven Key Experts, the authorisation to practise the profession in Malta, and the "Professionals Declaration Form" contains a corresponding undertaking. Neither the tender document nor Section 3, Clause 6.1.1 identifies which of the roles the Contracting Authority regards as a regulated profession, or which body issues the authorisation concerned. The point has a direct bearing on the composition of the team and on the price of the offer, since a role which is treated as regulated would have to be filled by an expert authorised in Malta, in all likelihood engaged externally.

We therefore kindly request the Contracting Authority to state expressly which of the roles KE1 to KE7 it regards as a regulated profession requiring formal authorisation to practise in Malta and, in respect of each such role, to identify the competent body issuing that authorisation.

We further kindly request confirmation that, in respect of roles which do not constitute a regulated profession, the entry “N/A” may be made in the column “Authorisation to practice profession in Malta” without any consequence for the administrative compliance of the offer or for its evaluation under the BPQR award criteria.

In respect of KE6 (Legal Specialist), we kindly request confirmation that the role may be filled by a lawyer qualified in another Member State – in the Czech Republic an advocate entered in the register of the Czech Bar Association – without a Maltese warrant to practise as an advocate, given that the role as described in Section 3, Clause 6.1.1 consists of advice on Union law, regulatory compliance and support to the certification process, and does not entail representation before the Maltese courts. In the alternative, we kindly request confirmation that registration under the regime of Directives 98/5/EC and 2005/36/EC is sufficient for this purpose.

In respect of KE2 (Solution Architect), KE3 (Lead Developer) and KE7 (Systems and Network Engineer), we kindly request confirmation that the designation of these roles does not give rise to a requirement for a warrant under the Engineering Profession Act (Cap. 321), the subject matter of the roles being the design, development and operation of information systems. Should the Contracting Authority take a different view, we kindly request that the competent body and the customary duration of the proceedings for the granting of the warrant be stated.

The “Professionals Declaration Form” requires the documentation attesting to the authorisation to be provided within one month from notification of the award, failing which the Key Expert is to be substituted within two working days. Proceedings for the recognition of professional qualifications under Directive 2005/36/EC, and the assessment carried out by MQRIC, cannot be expedited by the Economic Operator. We kindly request confirmation that evidence of an application duly filed with the competent Maltese body suffices for the purposes of that time - limit, or alternatively that the time - limit will be extended by the duration of those proceedings where the delay is not attributable to the Economic Operator.

Answer No. [02]: Reference is being made to Tender Document - Section 3 – Article - 6.1.1 - Key Experts.

- a) In line with the requirements set in the above-mentioned article, no one of the Key Experts requires a formal authorisation to practise in Malta. Economic operators are to ensure that proposed Key Experts fulfil the minimum requirements set in the said article.
- b) It is hereby being confirmed that in respect of roles which do not constitute a regulated profession, the entry “N/A” may be made in the column “Authorisation to practice

profession in Malta” without any consequence for the administrative compliance of the offer or for its evaluation under the BPQR award criteria.

- c) In respect of KE6 (Legal Specialist) the Contracting Authority is not asking for a warranted lawyer but, amongst others, a specialist that as a minimum, be in possession of a recognised academic qualification equivalent to E/MQF Level 6 (subject to a minimum of 180 ECTS/ECVET credits or equivalent) in Law.
- d) In respect of KE2 (Solution Architect), KE3 (Lead Developer) and KE7 (Systems and Network Engineer) bidders are kindly requested to propose natural persons that possess as a minimum the requirements set in Tender Document - Section 3 – Article - 6.1.1 - Key Experts.
- e) Albeit included as a standard document within the published procurement documents the “Professionals Declaration Form” is not required for any of the seven (7) Key Experts being requested in view of the reply given in (a) above.

Question No. [03]: *Question No. 3 – Evidence of the MQF level of qualifications awarded in another Member State*

The answer given in Clarification Note 06 to question 02(i) restates the obligation of the tenderer to ascertain the equivalence of the qualifications of its Key Experts with reference to MFHEA and MQRIC. Since the Malta Qualifications Framework is referenced to the European Qualifications Framework, and since Czech higher education diplomas state the EQF level in the Europass Diploma Supplement (bachelor’s degree corresponding to EQF level 6 and engineer’s or master’s degree to EQF level 7), the Economic Operator needs to establish what evidence is sufficient as at the date of submission of the offer.

We therefore kindly request the Contracting Authority to confirm that, in respect of qualifications awarded in another Member State, evidence of the EQF level by way of the Europass Diploma Supplement, or of the national qualifications framework referenced to the EQF, is sufficient as at the date of submission of the offer, without an individual determination of MQRIC being required at that stage. Should the Contracting Authority require such a determination, we kindly request that the time - limit and the form in which it is to be produced be stated, having regard to the duration of the proceedings before MQRIC.

In respect of KE6, we kindly request confirmation that a master’s degree in law awarded upon completion of a five - year study programme, comprising 300 ECTS credits and corresponding to EQF level 7, satisfies and exceeds the requirement of a qualification at MQF level 6 subject to a minimum of 180 ECTS credits.

We further kindly request confirmation of whether, in respect of documents drawn up in a language other than English – including diplomas, extracts from public registers and certificates issued by public authorities – a translation into English procured by the Economic Operator and

accompanied by a declaration as to its accuracy is sufficient, or whether the Contracting Authority requires a certified (sworn) translation, an apostille or notarised copies.

Answer No. [03]: Reference is being made to Tender Document - Section 3 – Article - 6.1.1 - Key Experts - The Contracting Authority confirms that, in respect of qualifications awarded in another Member State, evidence of the EQF level by way of the Europass Diploma Supplement, is sufficient as at the date of submission of the offer.

In respect of KE6's necessary qualification, the Contracting Authority can confirm that a Key Expert possessing a qualification in Law at E/MQF level 7 would be deemed compliant from an academic qualification point of view.

Reference is being made to the General Rules Governing Tenders v4.10 – sub-article 6.3 which establishes the set requirements vis-à-vis the language (or translation) requirements: “All correspondence and documents related to the procurement document exchanged by the Economic Operator and the Central Government Authority/Sectoral Procurement Directorate/Contracting Authority must be written in English. Supporting documents and printed literature furnished by the Economic Operator may be in another language, provided they are accompanied by an accurate translation into English. For the purposes of interpretation of the procurement document, the English language will prevail.”

Question No. [04]: ***Question No. 4 – Purely national exclusion grounds, blacklisting and evidence from another Member State***

Part III, Section D of the ESPD refers to purely national exclusion grounds, and Section 1, Clause 5(B) of the tender document refers to blacklisting under the applicable Maltese provisions. An economic operator established in another Member State is not in a position to determine which Maltese documents are to be replaced by documents issued in its Member State of establishment. In the Czech Republic the corresponding matters are evidenced by an extract from the Criminal Records Register in respect of the legal person and of the members of its statutory body, by certificates issued by the competent tax authority and by the Czech Social Security Administration, by an extract from the Commercial Register and by a search of the Insolvency Register.

We therefore kindly request the Contracting Authority to state which purely national exclusion grounds and which provisions concerning blacklisting apply to an economic operator established in another Member State, and which documents are required in respect of each of them.

We further kindly request confirmation that documents issued in the Economic Operator's Member State of establishment are accepted for those purposes, in particular an extract from the Criminal Records Register in respect of the legal person and of the members of its statutory body, certificates issued by the tax authority and by the social security institution, an extract from the Commercial Register and evidence that no insolvency proceedings are pending;

alternatively, that the Contracting Authority refers the Economic Operator to the corresponding entries in the e - Certis system.

Finally, we kindly request that the maximum age of those documents as at the date of submission of the offer be stated, and that the Contracting Authority confirm whether they are to be submitted together with the offer or, in accordance with Article 59 of Directive 2014/24/EU, only by the tenderer to whom the contract is to be awarded.

Answer No. [04]: Kindly note that in line with Tender Document – Section 1 – Article B - The Exclusion (including Blacklisting) criteria are to be completed by the Economic Operator in the ESPD through the online Tender response format. No submission of supporting documentation is required vis-a-vis the information related to Exclusion and Blacklisting Criteria within the ESPD.

Question No. [05]: ***Question No. 5 – The UBO form and the register of beneficial owners***

Section 4, Clause 3 of the tender document requires the completion of the Ultimate Beneficiary Owner form. In the Czech Republic, particulars of beneficial owners are entered in the Register of Beneficial Owners maintained under Act No. 37/2021 Coll. and are evidenced by an extract from that register.

We kindly request the Contracting Authority to confirm that an extract (partial extract) from the Czech Register of Beneficial Owners, accompanied by a translation into English, may be attached to the UBO form as supporting evidence, and to state to which level of the ownership structure the particulars are required and whether the form is also to be completed in respect of the members of a grouping of economic operators and in respect of subcontractors.

Answer No. [05]: The Ultimate Beneficial Owner Declaration Form shall be completed only by the successful Economic Operator at Contract Signing Stage. The applicable UBO Declaration Form can be accessed from the Resources section of the eTenders portal. The latest extract from the applicable National Register indicating the Beneficial Owners of the company shall be submitted together with the UBO Declaration Form. Therefore, an extract from the Czech Register of Beneficial Owners is acceptable for this purpose. Where the extract is not in the English language, an English translation shall also be submitted undertaken by a sworn translator. Where the successful Economic Operator is a Joint Venture, Consortium, Partnership or other Group of Economic Operators, the applicable sections of the UBO Declaration Form shall be completed in respect of each Economic Operator forming part of the group. The UBO Declaration requirements also extend to all declared subcontractors and all entities upon whose capacities the Economic Operator relied in meeting the Economic and Financial Standing and/or Technical and Professional Ability selection criteria. The respective identification and beneficial ownership sections of the UBO Declaration Form shall therefore be completed for each such entity.

Question No. [06]: *Question No. 6 – The Power of Attorney and the form required*

Under Czech law the offer is signed by a member of the statutory body within the scope of the entry made in the Commercial Register, and a power of attorney takes the form of a private instrument, whereas in Malta the notarisation of instruments of representation is customary.

We kindly request the Contracting Authority to confirm that, where the offer is signed by a person empowered to represent the Economic Operator in accordance with the entry made in a public commercial register, no power of attorney is required and an extract from that register is sufficient.

Answer No. [06:] Where the tender is submitted and signed by a person who is legally authorised to represent and bind the Economic Operator by virtue of his/her position or the applicable company registration, a Power of Attorney is not required.

Question No. [07]: *Question No. 7 – The Performance Guarantee – issuing institution, form and scope*

Under Section 2, Clauses 7.12 and 7.15, a performance guarantee amounting to 10% of the total contract value is to be provided in the form of a bank guarantee, the original of which is to be forwarded within 15 calendar days of receipt of the contract, in the format given by the Contracting Authority, and is released in instalments against the successful completion of sixteen milestones over a period of up to ninety months. Having regard to the estimated procurement value, the instrument concerned is of the order of EUR 1.5 million, and its parameters must be reflected in the price of the offer. The format referred to in Clause 7.12 does not form part of the published tender document.

We therefore kindly request the Contracting Authority to confirm that the bank guarantee may be issued by a credit institution established in another Member State of the European Union, where appropriate through a correspondent bank, and to state whether confirmation of the guarantee by a Maltese bank is required.

We further kindly request that the governing law, the language and the address for delivery of the guarantee be stated, and that the Contracting Authority confirm whether an electronically signed guarantee is accepted in place of a physical original delivered to Malta.

We kindly request that the template of the Performance Guarantee, being the format given by the Contracting Authority, be published in advance of the deadline for the submission of tenders, so as to enable its issuance to be agreed with the issuing institution and priced.

We further kindly request confirmation of the basis on which the amount of the guarantee is calculated, namely whether the 10% is calculated by reference to the value of the initial period of execution of ninety months or by reference to that value including both possible extensions of twenty - four months each referred to in Section 2, Clause 30.1.

Finally, we kindly request that the required period of validity of the guarantee be stated, and that the Contracting Authority confirm whether a guarantee issued for a shorter period, subject to an obligation of renewal throughout the term of the contract, is acceptable.

Answer No. [07]: The Performance Guarantee may be issued by an authorised bank established in another member state, provided that the guarantee fully complies with the prescribed Performance Guarantee Specimen. The Performance Guarantee Specimen Template is available through the Resources section of the etenders portal. The Contractor is required to submit the original Performance Guarantee to the Contracting Authority. A copy of the guarantee does not substitute the requirement to submit the original. The Performance Guarantee at contract signing shall be calculated on the awarded Contract Value. The possible extension periods provided under Article 30.1 are options which may subsequently be exercised subject to the conditions established therein. Where an extension is exercised, the Contractor shall ensure that the Performance Guarantee continues to provide the required contractual cover and is extended and/or adjusted as applicable. The Performance Guarantee shall remain continuously valid until the relevant contractual obligations have been fully and properly performed. Where a guarantee contains a specific expiry date, the Contractor shall be responsible for ensuring that it is renewed or extended sufficiently in advance so that there is no interruption in the guarantee cover.

Question No. [08]: *Question No. 8 – Professional indemnity and cyber insurance*

Section 2, Clause 13.2 requires a full professional indemnity and cyber insurance policy providing cover of a minimum of EUR 4,000,000 in aggregate, a copy of which is to be submitted within 100 calendar days of the last signature on the contract.

We kindly request the Contracting Authority to confirm that the policy may be taken out with an insurer authorised to pursue business in another Member State of the European Union under the freedom to provide services; that the limit of EUR 4,000,000 is to be understood in the aggregate per insurance year; and that no evidence of insurance is to be submitted with the offer, an undertaking to take out the policy being sufficient, with the scope of cover capable of being evidenced by a cover note issued by the insurer.

Answer No. [08]: Kindly refer to Article 13 of the Special Conditions. The required professional indemnity and cyber insurance policy may be obtained from an insurer legally authorised to provide the required insurance cover, including an insurer established in another Member State of the European Union, subject to compliance with all applicable regulatory requirements. The minimum required cover is €4,000,000 in aggregate and such level of cover shall be maintained throughout the applicable policy period and throughout the duration of the contract. Renewal documentation shall be submitted yearly in accordance with Article 13.2. No copy of the insurance policy is required at tender submission stage.

Question No. [09]: *Question No. 9 – Escrow – approval of the agent and allocation of costs*

Under Section 2, Clause 45.1 the Escrow Materials are to be deposited with an approved escrow agent within fourteen days of the contract and after each major release or milestone, and the escrow agent is to verify the completeness of the deposit and that the source code compiles and deploys; the Contracting Authority may in addition appoint an independent technical auditor for periodic verification. The tender document does not identify the body by which the escrow agent is approved, nor the item of the financial bid within which the associated costs are to be included.

We kindly request the Contracting Authority to state which body approves the escrow agent, or to publish a list of accepted agents, and to confirm whether an escrow agent established in the European Union outside Malta is acceptable.

We further kindly request confirmation of the item of the financial bid within which the costs of the escrow arrangement, of the periodic deposits and of the verification of the deposited materials are to be included, and of the party bearing the costs of the independent technical auditor referred to in Clause 45.1.

Answer No. [09]: The escrow agent, if applicable, shall be agreed between the Contracting Authority and the Awarded Bidder following contract signature in line with Section 2, Article 45.5 which stipulates that the escrow agent has to be approved. The Contracting Authority does not prescribe a specific escrow agent, and an escrow agent established within the European Union shall be acceptable, subject to the Contracting Authority's approval.

Tenderers are required to include all costs associated with the escrow arrangement, including the establishment and maintenance of the escrow, periodic deposits and verification activities, within the relevant financial bid line items as deemed appropriate by the bidder.

Where the Contracting Authority elects to appoint an independent technical auditor pursuant to Section 2, Article 45.1, the associated costs shall be borne by the Contracting Authority.

Question No. [10]: ***Question No. 10 – Tax treatment, supply of hardware and the DDP term***
Under Section 1, Clause 1.2 the applicable INCOTERM 2020 is Delivered Duty Paid, and under Section 3, Clause 4.2.3.11.10 and items 11 and 12 of the Financial Bid Form the Economic Operator is to supply, install, configure and maintain all hardware within the MITA data centres. Whereas services supplied by a foreign economic operator to a public contracting authority are ordinarily subject to the reverse charge mechanism as between taxable persons, the supply and installation of hardware within Malta may give rise to an obligation to register for VAT purposes in Malta. The treatment applicable has a direct bearing on the calculation of the price.

We kindly request the Contracting Authority to confirm that prices are to be quoted exclusive of Maltese VAT and that the reverse charge mechanism applies to the services.

We further kindly request that the Contracting Authority state how an economic operator established in another Member State is expected to proceed in respect of the supply and

installation of hardware within Malta, in particular whether registration for Maltese VAT purposes, or the appointment of a fiscal representative, is envisaged.

Finally, we kindly request confirmation that all costs of importation, carriage, customs formalities and installation of the hardware are to be included within item 11 of the financial bid, and that no costs beyond that item are borne by the Contracting Authority.

Answer No. [10]: The contracting authority confirms that all prices shall be quoted exclusive of VAT. The Contracting Authority cannot provide individual tax advice on the tax-registration position of a prospective bidder. Economic Operators remain responsible for ensuring their own compliance with all applicable tax requirements. The reference to Delivered Duty Paid (DDP) means that all costs necessary to deliver the contractual requirements in accordance with the applicable Incoterm, including where applicable transportation, importation, customs clearance, duties, delivery, installation and associated costs, shall be taken into consideration by the Economic Operator in its financial offer.

Question No. [11]: *Question No. 11 – Application of Maltese employment law to a team performing from another Member State*

Section 2, Clause 40.1 binds the Contractor to conform with the Employment and Industrial Relations Act (Cap. 452) and its subsidiary legislation, including the Employment Agencies Regulations (S.L. 452.130). Clarification Note 01 confirmed that development and project management may be performed from the Economic Operator's own premises, and therefore predominantly outside Malta. From the perspective of an economic operator established in another Member State, the deployment of personnel to Malta constitutes a posting of workers within the meaning of Directive 96/71/EC, as amended by Directive (EU) 2018/957, evidenced by the A1 document issued under Regulation (EC) No 883/2004.

We kindly request the Contracting Authority to confirm that the obligations arising under Cap. 452 and its subsidiary legislation apply only to persons performing work within the territory of Malta and not to members of the team performing from another Member State.

We further kindly request confirmation that, in respect of workers posted to Malta, the A1 document together with the posting declaration required under Directive 96/71/EC and the corresponding Maltese implementing provisions is sufficient, and that the authority to which that declaration is to be made be identified.

Finally, we kindly request confirmation that the deployment of the Economic Operator's own employees for the performance of this contract does not give rise to an obligation to register as an employment agency under S.L. 452.130.

Answer No. [11]: Article 40.1 shall apply in accordance with its wording. The Contractor is required to comply with the Employment and Industrial Relations Act (Cap. 452), its subsidiary legislation and other applicable Maltese legislation, insofar as these are applicable to the Contractor's particular operating situation and nature of activities. Accordingly, the applicability

of specific Maltese employment requirements will depend on the activities being performed and the circumstances in which the personnel concerned are engaged. Personnel performing their duties entirely from another Member State are not, merely by reason of this contract, deemed to be working in Malta. However, where personnel are posted or otherwise perform work in Malta, the Contractor shall comply with all applicable Maltese requirements relating to posted workers and employment conditions.

Question No. [12]: ***Question No. 12 – The requirement that KE7 be based in Malta***

Under Section 3, Clause 6.1.1 the Systems and Network Engineer is to be based in Malta, and under BPQR criterion 1.7(a) an add - on mark is allotted where the Project Manager is based in Malta for the duration of the project. In a contract with a period of execution of ninety months this constitutes a material organisational and cost commitment, and the tender document does not state how the requirement is to be evidenced or how it is delimited in time.

We kindly request the Contracting Authority to explain how it construes the requirement that a Key Expert be “based in Malta” and how compliance is to be evidenced, in particular whether residence in Malta, an employment relationship with an entity established in Malta, or a defined extent of physical presence during given periods is required.

We further kindly request confirmation of whether the role may be discharged by two qualified individuals on a rotational basis who together ensure a continuous presence in Malta, or through a subcontractor established in Malta.

We also kindly request confirmation of the point in time from which the requirement applies, in particular whether it applies from the commencement of the deployment of the infrastructure supporting Version 2 within the MITA data centres, or from the commencement of the contract.

In respect of add - on criterion 1.7(a), we kindly request that the Contracting Authority state how it is to be evidenced that the Project Manager is based in Malta, and whether an undertaking given by the Economic Operator for the duration of the project is sufficient.

Answer No. [12]: At submission stage Bidders shall be committing that the appointed Key Expert who is a natural person will be based in Malta. The engagement of the Key Expert may be directly with the bidder or through a declared subcontractor or other arrangement permitted under the procurement documents. The requirement does not include that the Key Expert must be employed by an entity established in Malta. Whilst the commitment to be based in Malta is mandatory for Key Expert 7, with respect to Key Expert 1 this commitment is not a mandatory minimum requirement but an Add-On. Evidence is to be submitted during the contract as stipulated below. The Contracting Authority reserves the right, during contract execution, to request reasonable supporting evidence to verify continued compliance with any commitment made in respect of Key Expert 1 or Key Expert 7. Failure to submit the necessary evidence, shall be dealt with in accordance with the applicable contractual provision.

As per Section 3, Clause 6.1.1 the responsibilities of the ‘Systems and Network Engineer’ are “deploying, configuring and hardening on-premises infrastructure supporting the Solution. This includes implementation and operation of hyper-converged infrastructure, configuration and management of enterprise networking including segmentation, firewalls, load balancing and secure connectivity between data centres. The expert is also responsible of supporting the integration of PKI components and HSMs in collaboration with the Trust Services Specialist together with ensuring infrastructure security baselines patching, monitoring, logging and backup/restore operations are correctly implemented” and “contribute to operational readiness through documentation, runbooks and knowledge transfer and should work closely with other engineers to ensure alignment with the overall Solution architecture”. The ‘Systems and Network Engineer’ needs to be physically present in Malta to fulfil the above responsibilities, which start from configuration and deployment, and include operation for the remaining portion of the contract.

For the purposes of Add-on Criterion 1.7(a), "based in Malta" shall mean that the proposed Project Manager is ordinarily working from Malta and is physically present and available in Malta to perform their responsibilities for the entire duration of the Contract. An undertaking by the Economic Operator confirming compliance with this requirement for the duration of the project shall be considered sufficient for the purposes of tender evaluation.

As per Section 3, Clause 6.1, one key expert is being requested for each role.

The Key Experts Form require Name and Surname, Nationality, Age, Qualifications and Professional authorisation (where applicable). These fields can only be completed by one natural person who possesses and/or displays the knowledge and skills in the subjects required, not by a company or team.

Question No. [13]: *Question No. 13 – Absence of a requirement for a local legal entity or establishment*

Clarification Note 01 confirmed that a permanent office in Malta is not required and that office accommodation is the responsibility of the Awarded Bidder pursuant to Section 3, Clause 6.2. The combination of the presence of KE7, of the operation and maintenance of hardware within the MITA data centres and of the obligations arising under Section 2, Clause 40 may nevertheless be understood as giving rise to requirements of local registration.

We kindly request the Contracting Authority to confirm that the Contractor is not required to incorporate a Maltese legal entity, to register a branch or to establish a place of business in Malta, whether before or after the award of the contract, and that neither the presence of individual Key Experts nor the operation of hardware within the MITA data centres of itself gives rise to such a requirement.

We further kindly request confirmation that, in the case of a grouping of economic operators, the grouping is not required to be constituted as a Maltese legal entity, and that the Contracting

Authority state in which form the joint and several liability of the members of the grouping is to be evidenced under Maltese law prior to the signature of the contract.

Answer No. [13]: The procurement documents do not impose a requirement on the successful Economic Operator to incorporate a Maltese legal entity, register a Maltese branch or otherwise establish a separate Maltese company solely for the purpose of participating in or performing this contract. Similarly, a Joint Venture/Consortium/Group of Economic Operators is not required by the tender to constitute itself as a separate Maltese legal entity.

Question No. [14]: *Question No. 14 – Registration and submission through the ePPS, electronic signatures and signature of the contract*

The offer is to be submitted exclusively by electronic means through the ePPS. For an economic operator established in another Member State it is material whether registration and signature require Maltese means of electronic identification, and whether qualified electronic signatures and seals issued in another Member State are accepted.

We kindly request the Contracting Authority to confirm that registration in the ePPS and the submission of the offer may be effected without Maltese means of electronic identification, and to state which particulars are required for the registration of a foreign economic operator.

We further kindly request confirmation that qualified electronic signatures and qualified electronic seals issued by a qualified trust service provider established in another Member State are accepted, in accordance with Article 25 of Regulation (EU) No 91 0/2014, for the signature of the offer and of its annexes.

Finally, we kindly request confirmation of whether the contract may be signed electronically and remotely within the period of fifteen calendar days referred to in Section 2, Clause 7.12, or whether physical signature in Malta, notarisisation, an apostille or the payment of any Maltese fees or duties is required.

Answer No. [14]: A Maltese ID Card or Maltese Passport is not required for non-Maltese (foreign) EOs to register on the e-PPS. Personal identification is not required for either Maltese or non-Maltese EOs during the registration process.

No signatures are required for submission of offers. Offers must be submitted by economic operators through their registered account on the etenders portal. With regards to contract signature, reference is being made to the draft contract agreement which can be accessed from the resources section of the etenders portal. The contract agreement shall be done in English and the original together with other original documents required such as the performance guarantee shall be retained. No physical presence is required in Malta to submit such documents.

In case of award, it will be allowed to either digitally sign the Contract with a Qualified Electronic Signature or make the necessary arrangements to collect a hard copy of the contract, sign the contract and return it with the necessary documentation.

Question No. [15]: *Question No. 15 – The undertaking of the Contracting Authority to procure 80% of the awarded contract value*

Under Section 2, Clause 26.1 the Contracting Authority is bound to procure 80% of the awarded contract value. Items 13, 14 and 16 of the Financial Bid Form are expressed in hours, amounting in aggregate to 28,600 hours, and their actual utilisation depends upon the requirements of the Contracting Authority.

We kindly request the Contracting Authority to state whether the undertaking to procure 80% of the awarded contract value is calculated by reference to the total price of the offer or separately in respect of the individual items of the financial bid, and how that undertaking applies to the hourly items 13, 14 and 16, in particular whether the guaranteed minimum utilisation extends to those items.

Answer No. [15]: Reference is made to Article 26.1 of the Special Conditions. The undertaking of the Contracting Authority to procure 80% relates to the overall awarded Contract Value and not to 80% of each individual Financial Bid item separately.

Question No. [16]: *Question No. 16 – The Maltese language version of the Solution and the supporting language resources*

Under Section 3, Clause 4.2.1.1 and the related requirements, Version 1 and Version 2 are to use approved branding in both Maltese and English and to be in line with the Accessibility Directive. An economic operator established in another Member State does not have in-house capacity in the Maltese language or in the terminology of the Maltese public administration.

We kindly request the Contracting Authority to confirm whether it will provide the Maltese language resources and the terminology of the public administration and carry out the linguistic validation of the user interface texts, or whether the translations, their maintenance and their validation are the sole responsibility of the Contractor; and to state the item of the financial bid within which the costs of Maltese localisation and of its ongoing maintenance for the duration of the contract are to be included.

Answer No. [16]: The translations to Maltese of the apps and any public facing web portal (e.g. related to Registration of Relying Parties) of the Solution are the sole responsibility of the Contractor. Costs of such translation are to be included within the relevant financial bid line items as deemed appropriate by the bidder.

All other tender documents, conditions and requirements, which are not superseded by this clarification remain in place.

Department of Contracts