



REFERENCE NUMBER: **CT2114/2018**

FRAMEWORK AGREEMENT FOR THE PROVISION OF A NUMBER OF PROFESSIONAL SERVICES ACROSS ALL THE PUBLIC ADMINISTRATION

Date Published: **2nd May 2018**

Deadline for Submission: **5th June 2018** at **09:30am CEST**

Tender Opening: **5th June 2018** at **10:00am CEST**

IMPORTANT:

- No Bid Bond is requested for this tender.

IMPORTANT

Clarifications shall be uploaded and will be available to view/download from www.etenders.gov.mt

This e-tender does not require print-outs from this document. Please consider your environmental responsibility before printing.

Department of Contracts

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IMPORTANT NOTE

Submission of e-tenders

Tenders must be submitted by registered Economic Operators.

EPPS users holding a sole trader account are kindly reminded that their account can only be used to submit tenders under their sole trader's name and not on behalf of any other organisation.

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

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

Economic Operators are reminded that ONLY in the case of New Account Registrations, irrespective of the type and form of the Economic Operators, they have a choice between registering either directly through the ePPS at www.etenders.gov.mt or through the e-ID Service via the MyGov website at www.mygov.mt. In the case of the latter, Economic Operators must qualify for e-ID as per the ePPS Terms of Use for Economic Operators.

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

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

The Department of Contracts will disqualify Economic Operators who do not abide by these instructions.

Framework Agreement for the provision of a number of Professional Services across all the Public Administration

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## **Introductory Section:**

### **Overview of the Procurement Procedure for this Framework Agreement**

#### ***1. Objectives of this invitation***

Pursuant to the provisions of Directive 2014/24/EU and LN 352/2016, the beneficiary intends to issue a call for the provision of Professional Services for the award of Specific Contracts through Call Offs (Mini-competitions).

#### ***2. Scope of Service***

This is a call for the provision of Professional Services, on an *as and when required* basis, as per Section 4 of the Terms of Reference and as per call-offs for Specific Contracts.

#### ***3. Duration of contracted Professional Services***

The framework agreement shall run for a period of three (3) years with the possibility to be extended by a period of one (1) year up to an overall contract period of four (4) years.

#### ***4. Signing of the Framework Agreement***

If a shortlisted service provider fails to sign and return the agreement and any other required documentation within the prescribed timeframes, the Contracting Authority may consider the acceptance of the candidacy to be cancelled without prejudice to the Contracting Authority's right to claim compensation or pursue any other remedy in respect of such failure, and the successful candidate will have no claim whatsoever on the Contracting Authority.

Only the signed framework agreement will constitute an official commitment on the part of the Contracting Authority, and shortlisted candidates will not become shortlisted service providers until the framework agreement has been signed by the Contracting Authority and the selected service providers.

## **5. *Specific Contracts***

Service Providers who enter into this Framework Agreement shall be invited by the Contracting Authority to compete in subsequent restricted competitive procedure for award of Specific Contracts.

Subsequent to the signing of the Framework Agreement, there are no limitations to the number of specific contracts each candidate may apply for provided that the contractor confirms upon bidding for each call-off that he/she is in a position to entertain the services engaged.

Call-Off/Mini Competitions shall be adjudicated after a restricted competitive bid among Providers shortlisted under the Framework Agreement.

The Contracting Authority shall award any Call-Off/Mini Competition in accordance with the provisions of LN352 of 2016 - Public Procurement Regulations 2016, Section 173. Provided that in the event of equal bids (a draw) between Providers, the Contracting Authority shall request Providers to submit a discounted price.

Each Call-off/Mini Competition contract awarded to a Service Provider will be covered by a Specific Contract of Service.

The Provider will be required to collect and sign the Call-Off/Mini Competition agreement and to provide the related Performance Guarantee (if applicable) to the Contracting Authority within two (2) weeks from the date of notification thereto from the Contracting Authority/ Central Government Authority or the award may be revoked.

Contractors shall not be able to exchange, transfer, or otherwise re-assign any Call-Off/Mini Competitions adjudicated to them or to other contractors in the framework agreement without the written consent of the Contracting Authority.

## **6. *Pricing Mechanism***

The prices submitted by the shortlisted candidates at the call for competition to award a call-off contract shall be based on the cheapest priced offer which may be either fee-based or global price as the case may be.

# SECTION 1 - INSTRUCTIONS TO TENDERERS

## *1. General Instructions*

- 1.1 In submitting a tender (unless otherwise indicated, a tender offer above 100MB will not be accepted by the system (ePPS), the tenderer accepts in full and in its entirety, the content of this tender document, including subsequent Clarifications issued by the Central Government Authority/Contracting Authority (CGA/CA), whatever the economic operator's own corresponding conditions may be, which through the submission of the tender is waived. Tenderers are expected to examine carefully and comply with all instructions, forms, contract provisions and specifications contained in this tender document. These Instructions to Tenderers complement the General Rules Governing Tenders, the Terms of Use and the Manual for Economic Operators applicable to Government's e-Procurement Platform (available from [www.etenders.gov.mt](http://www.etenders.gov.mt)).

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

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

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

**Note:**

Where in this tender document a standard is quoted, it is to be understood that the Contracting Authority will accept equivalent standards. However, it will be the responsibility of the respective bidders to prove that the standards they quoted are equivalent to the standards requested by the Contracting Authority.



1.2 The subject of this Framework Agreement is the provision of Professional Services, on an *as and when required* basis and shall apply to all Contracting Authorities falling under Schedule 2, Schedule 3 and Schedule 16 of the Public Procurement Regulations.

This framework agreement shall be valid up to a maximum of four years, including any extension to the contract, in accordance with the directives and Public Procurement Regulations. for the following Professional Services:

- Lot 1 - Legal Consultant Services
- Lot 2 - Perit (Architect & Civil Engineer) Services
- Lot 3 - Mechanical Engineer Services
- Lot 4 - Electrical Engineer Services
- Lot 5 - Quantity Surveyor Services
- Lot 6 - Accountant Services
- Lot 7 - Project Manager Services

1.3 The place of acceptance of the requested services and the time-limits for the execution shall vary according to the respective specific contract issued by the Contracting Authority. Consequently contract/s shall be awarded according to published call-offs (mini competitions).

1.4 This call for tenders is being issued under an open procedure.

1.5 This call for tenders is not a reserved contract.

1.6 The Contracting Authority for this tender is the Department of Contracts.

## 2. Timetable

2.

|                                                                                                                                                                                                                       | DATE                      | TIME     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|----------|
| Clarification Meeting (Refer to Clause 6.1)                                                                                                                                                                           | NA                        | NA       |
| Workshop (Refer to Clause 6.2)                                                                                                                                                                                        | Refer to 6.2              | -        |
| Deadline for request for any additional information from the Contracting Authority.<br>Clarifications by registered users to be sent online through <a href="http://www.etenders.gov.mt">www.etenders.gov.mt</a> ONLY | 24 <sup>th</sup> May 2018 | 23:45hrs |
| Last date on which additional information can be issued by the Contracting Authority                                                                                                                                  | 30 <sup>th</sup> May 2018 | 23:45hrs |
| Deadline for Submission of Tenders<br>(unless otherwise modified in terms of Clause 10.1 of the General Rules Governing Tenders)                                                                                      | 5 <sup>th</sup> June 2018 | 09:30hrs |
| Tender Opening Session<br>(unless otherwise modified in terms of Clause 10.1 of the General Rules Governing Tenders)                                                                                                  | 5 <sup>th</sup> June 2018 | 10:00hrs |
| * All times Central European Summer Time (CEST)                                                                                                                                                                       |                           |          |

### **3. Lots**

- 3.1 This tender (framework) is divided into lots. Tenderers may submit a tender for one lot, several lots (one or more lots) or all of the lots.

**Specific Contracts shall not be further divided into lots.**

- 3.2 In order to be shortlisted within the lots, the tenderer must offer the whole of the services indicated for each lot. Under no circumstances will tenders for part of the services required be taken into consideration. Each lot may form a separate contract under the Framework Agreement and the services indicated for different lots will be indivisible.
- 3.3 Specific Contracts for each lot will eventually be awarded in accordance with the award criteria at Article 9.

### **4. Variant Solutions**

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

### **5. Financing**

- 5 The project is financed from local budget funds.

### **6. Clarification Meeting/Workshop**

- 6.1 No clarification meeting/site visit is planned.
- 6.2 Economic operators may register to attend a workshop that will be organised in collaboration with the Institute for Public Services (Ex-CDRT: Centre for Development, Research and Training) at San Salvatore Bastion, Sa Maison Road, Floriana FRN1610. During this workshop, economic operators will be given the opportunity to familiarise themselves with Government's e-Procurement platform.

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

### **7. Selection and Award Requirements**

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

## **(A) Eligibility Criteria**

- (i) No Bid Bond is required. <sup>(Note 1)</sup>
- (ii) Declare agreement, conformity and compliance with the General Rules Governing Tenders in the Tender Response Format (available from [www.etenders.gov.mt](http://www.etenders.gov.mt)).
- (iii) Declare agreement, conformity and compliance with the provisions of the Tenderer's Declaration in Tender Response Format.
- (iv) Declare agreement, conformity and compliance with the provisions of the Statement on Conditions of Employment in Tender Response Format.
- (v) Power of Attorney (if applicable). <sup>(Note 2A)</sup>
- (vi) Declaration that following signature of contract by the successful bidder, evidence will be provided in respect of the requirements stipulated regarding Energy Efficiency through the Energy Efficiency Form (if applicable). <sup>(Note 2A)</sup>

## **(B) Exclusion (including Blacklisting) and Selection Criteria - information to be submitted through the European Single Procurement Document (ESPD)** <sup>(Note 2A)</sup>

- (i) Data Concerning the economic operator to be submitted by filling Part II of the European Single Procurement Document (ESPD). Part II (2A.1 till 2A.13.1) of the ESPD seeks background information about the economic operator.

If the information to be submitted has already been submitted when registering with the EPPS, the economic operator in question is to leave the relevant field blank. <sup>(Note 2A)</sup>

- (ii) Part II A Reference 2A.14 till 2A.16.6 need only be filled in if the procurement is Reserved. <sup>(Note 2A)</sup> **NOT APPLICABLE**
- (iii) Part II A Reference 2A.17 till 2A.17.3 need only be filled in when the economic operator is part of a group, consortium, joint venture or similar. <sup>(Note 2A)</sup>
- (iv) Part II A Reference 2A.18 need only be filled where the tender is divided into lots. <sup>(Note 2A)</sup>
- (v) Data concerning exclusion grounds to be submitted by filling Part III of the European Single Procurement Document (ESPD). <sup>(Note 2a)</sup>
- (vi) Economic Operators must declare that they meet the minimum criteria established hereunder by filling Part IV of the European Single Procurement Document (ESPD). If no Selection Criteria is requested by the Contracting Authority, the relevant part of the ESPD is to be left blank. <sup>(Note 2A)</sup>

(a) Suitability <sup>(Note 2A)</sup> **NOT APPLICABLE**

(b) Economic and Financial Standing <sup>(Note 2A)</sup> **NOT APPLICABLE**

(c) Technical and Professional Ability <sup>(Note 2A)</sup>

All Service Providers must be independent and free from conflicts of interest in the responsibilities accorded to them.

**All Service Providers for all the lots shall be highly proficient in English, both written and spoken (MQF Level 3 or equivalent) and shall be computer literate. This has to be proven via CVs indicating relevant qualifications.** <sup>(Note 2A)</sup>

(i) Lot 1 - Legal Consultant Services

The Key Expert/s performing the services must have a Master's Degree in law, MQF Level 7 or equivalent, and have a valid warrant to practice in accordance with the laws of Malta.

(ii) Lot 2 - Perit (Architect & Civil Engineer) Services

The Key Expert/s performing the services must be a warranted Perit in Malta, possessing a minimum of an MQF level 6 or equivalent, who will assume all the responsibilities in terms of the legal obligations as arising under Maltese law.

(iii) Lot 3 - Mechanical Engineer Services

The Key Expert/s must be warranted to practice Mechanical Engineering in Malta. The Key Experts as a minimum must be in possession of a recognized degree equivalent to MQF Level 6 or equivalent in Mechanical Engineering.

(iv) Lot 4 - Electrical Engineer Services

The Key Expert/s must be warranted to practice Electrical Engineering in Malta. The Key Expert/s must as a minimum be in possession of a recognized degree equivalent to MQF Level 6 or equivalent in Electrical Engineering.

(v) Lot 5 - Quantity Surveyor Services

The Key Expert/s must possess a minimum MQF Level 6 or equivalent qualification in Quantity Surveying.

(vi) Lot 6 - Accountant Services

The Key Expert/s must be a warranted certified Public Accountant and be in possession of a minimum MQF Level 6 (or equivalent) qualification in Accountancy.

(vii) Lot 7 - Project Management Services

The Key Expert/s must as a minimum be in possession of an MQF Level 6 (or equivalent) in project management or risk management.

- d) Quality Assurance Schemes and Environmental Management Standards  
(Note 2A) **NOT APPLICABLE**

- (vii) Concluding Statements to be submitted by filling Part VI of the European Single Procurement Document (ESPD). (Note 2A)

### **(C) Technical Specifications**

- (i) Tenderer's Offer in response to the Terms of Reference is to be submitted in the format of an Organisation and Methodology Statement (as per form indicated) online through the prescribed Tender Response Format and by using the Tender Preparation Tool provided. (Note 3)
- (ii) A list of key expert/s as indicated in the Terms of Reference and other staff proposed for the execution of the Specific Contract as per Form marked Key Experts to be submitted online through the prescribed tender response format (tender structure). Submit a filled-in Key Experts list, outlining the proposed Key Expert/s, and their qualifications. A copy of the individuals' Curriculum Vitae (CV) and the relevant copies of warrants/certificates as applicable, highlighting their specific qualifications in relation to each lot is to be uploaded online through the prescribed Tender Response Format and by using the Tender Preparation Tool provided. (Note 2A)

### **(D) Financial Offer**

- (i) At this point of the process, no financial offer is requested. Insert the number "1" where a financial value is requested in the online system.

#### **Notes to Clause 7:**

1. Tenderers will be requested to clarify/rectify, within five (5) working days from notification, the tender guarantee only in the following four circumstances: incorrect validity date, and/or incorrect value, and/or incorrect addressee and incorrect name of the bidder. Rectification in respect of the Tender Guarantee (Bid Bond) is free of charge.

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

B) Tenderers will be requested to rectify/submit only missing documents within five (5) working days from notification. No changes to the information provided in the Literature submitted will be allowed. Literature submitted shall be rectifiable only in respect of any missing information.

All Rectifications are free of charge.

3. No rectification shall be allowed. Only clarifications on the submitted information may be requested.

## ***8. Tender Guarantee (Bid Bond)***

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

## ***9. Criteria for Award***

- 9.1 All offers satisfying the administrative and technical criteria shall be shortlisted to participate in the Call Offs / Mini Competitions. The award criteria in the Call Offs / Mini Competitions shall be the cheapest priced offer.

## SECTION 2 - EXTRACTS FROM THE PUBLIC PROCUREMENT REGULATIONS

### *Part IX of the Public Procurement Regulations*

#### Appeals from decisions taken after the closing date for the submissions of an offer

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

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

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

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

**274.** The Secretary of the Public Contracts Review Board shall immediately notify the Director, the Ministerial Procurement Unit and, or the contracting authority, as the case may be, that an objection had been filed with his authority thereby immediately suspending the award procedure.

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

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

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

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

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

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

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

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

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

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



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

## SECTION 3 - SPECIAL CONDITIONS

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. Other Special Conditions should be indicated afterwards.

### Article 2: Notices and Written Communications

#### 2.4 Without prejudice to what is being stated in the General Conditions the DoC is also making the following conditions:

All communication must be addressed in writing in the English language.

Apart from methods described in the General Conditions, communication between the Contracting Authorities and/or the Supervisor on the one hand **following the award of the specific contract**, and the Service Provider on the other hand can also be sent by Electronic Mail.

The contact details of the Contracting Authority shall be provided for each call off.

### Article 5: Supply of Information

#### 5.1 Further to the provision of the General Conditions the Contracting Authority shall supply the service providers promptly with any information and/or documentation at its disposal which may be relevant to the performance of the contract allocations. All information and/or document relating to the Specific Contract shall be returned to the Contracting Authority at the end of the period of execution of the contract allocation.

The Contracting Authority shall as far as possible co-operate with the Service Provider to provide information that the latter may reasonably request in order to perform the contract.

### Article 6: Assistance with Local Regulations

#### 6.1 As per General Conditions.

- 6.4 Further to the provisions of the General Conditions, the Service Provider shall be responsible for observing all applicable laws and regulations in the course of execution of contract, including the procuring of the necessary permits, licences or other official authorizations as may be necessary for the contract.

#### **Article 7: Obligations of the Service Provider**

- 7.12 The Service Provider shall, within 15 calendar days of receipt of the contract following a call-off or mini-competition, sign and date the contract and return it together with a copy of the Performance Guarantee (if applicable). The Contractor is further obliged to forward the original performance guarantee to the Contracting Authority. The Contract will not be endorsed by the Contracting Authority until the performance guarantee is submitted. The amount of the guarantee shall not exceed 4% where the amount of the total contract value is between €10,000 and €500,000 ex VAT, and 10% where the amount of the total contract value is €500,000 or above.

In the case that the value of the contract does not exceed €10,000, no Performance Guarantee is required.

Economic Operators have the possibility to provide the Contracting Authority with a Single Bond covering the Performance guarantees for all the contracts **with the same Contracting Authority**. If an additional contract is awarded to a given contractor, which results in an Economic Operator's current Cumulative Contracts Value to go beyond the contract value range currently covered by the single Bond, the Contractor is to be requested to: either submit a separate Performance Guarantee for the additional contact; or else submit a new Single Bond to cover the new total contracts value.

The Performance guarantee shall be held against payment to the Contracting Authority for any loss resulting from the Service Provider's failure to perform his contractual obligations fully and properly.

The Performance Guarantee shall be in the format given by the Contracting Authority, and must be provided in the form of a bank guarantee. **The Contracting Authority will not effect any payment to the Service Provider until the Performance Guarantee has been submitted.**

- 7.15 The performance guarantee shall be released on the issuance of the Provisional Acceptance Certificate.

- 7.16 In the performance of his professional duties the Service Provider shall be generally responsible for his/her actions and omissions and shall fulfill his/her obligations under any applicable law in Malta in force at the time of the Specific Contract. If and where applicable, the Service Provider also agrees to indemnify and hold the Contracting Authority harmless from and against any and all liabilities, damages or losses arising out of damage to property or physical injury to persons to the extent caused by or through negligent acts or omissions of the Service Provider.

#### **Article 10: Administrative and Financial Penalties**

- 10.3 Applicable penalties shall be specified in each Specific Contract and in accordance to Article 19 of the Special Conditions. Penalties for delay in execution and for failure to deliver on the obligations of the contract allocations will be valued per calendar day which shall be indicated in each Specific Contract.

The financial limit up to which these penalties shall be applied shall not exceed 20% of the total contract value.

#### **Article 13: Medical, Insurance and Security Arrangements**

- 13.2 As per General Conditions.
- 13.3 As per General Conditions.

#### **Article 14: Intellectual and Industrial Property Rights**

- 14.3 Drawings, Specifications and other Documents (the “Plans”) prepared by the Key Experts for Specific Contracts (the “Project”) are Instruments of Services for use solely on the Specific Contract. The Contracting Authority shall retain copies, including reproducible copies, of the Plans or any other documentation for use in connection with the Specific Contract including any possible additions to the Specific Contract by others at a subsequent stage.
- 14.4 The Contracting Authority is fully authorized to submit or distribute the Plans to meet official regulatory requirements or for similar purposes in connection with the Specific Contract.
- 14.5 The Contracting Authority agrees not to use the Plans prepared by the Key Experts for the Specific Contract with respect to any other persons or for any other projects; to require subcontractors to agree to use the Plans only for the Specific Contract; and to place no limits on the Contracting Authority’s use of the Plans except that the Contracting Authority shall indemnify and hold the service provider

harmless from and against claims arising out of use of the Plans in a way not agreed upon by the service provider and the Contracting Authority where such use causes harm to the Contracting Authority, its clients or any third person.

**14.6** The Contracting Authority shall retain copies of the Instruments of Service, including non-editable Electronic Documents, for information and reference in connection with the Contracting Authority's use and occupancy of the Project.

**14.7** Copies of the Instruments of Service used may be used only for the purposes intended and for a one-time use, on the same site and for the same Specific Contract, by the Contracting Authority only and may not be offered for sale or transfer without the express written consent of the service provider. The Instruments of Service, including non-editable Electronic Documents, may be used for renovations, additions or alterations to the Specific Contract but shall not be used for renovations, additions or alterations to any other project without a written license from the service provider permitting the use of the Instruments of Service for such additional purposes.

#### **Article 15: Scope of the Services**

**15.1** The scope of the services is the provision of Professional Services as per generic requirements at Section 4 of the Terms of Reference which shall be amplified and tailored for each call-off for Specific Contracts.

#### **Article 16: Personnel and Equipment**

**16.5** The Service Provider shall adopt all measures necessary to provide and continue to provide its staff with the equipment and backup required to enable them to carry out their specified duties efficiently.

**16.6** The Service Provider shall utilize appropriately qualified key personnel where so required and request the Contracting Authority's approval of any change, which approval shall not unreasonably be withheld.

#### **Article 18: Execution of the Contract**

**18.1** The commencement date is the date of the last signature of the 'Specific Contract'. Service Providers shall start the services by not later than ten (10) working days starting from the commencement date or as directed by the Contracting Authority in the Specific Contract.

- 18.2** The duration of the Framework Agreement shall be three (3) years which may be extended up to a maximum of four (4) years, during which period the Contracting Authority shall invite shortlisted candidates to compete in subsequent restricted competition procedures for the award of Specific Contracts as and when requested by the Contracting Authority. The duration of each Specific Contract shall be indicated in this article for each Specific Contract.
- 18.3** Following the award to the Specific Contract the Contracting Authority shall issue a Commencement Order Notification, in which the Provider shall be given the date when he/she can mobilize and start the requested services.

#### **Article 19: Delays in Execution**

- 19.2** Without prejudice and in addition to penalties applicable laid down elsewhere in this document, a daily penalty per project or task delayed shall be charged to the Service Provider if he fails to satisfactorily provide the requested services as stipulated in the Specific Contract, and/or the service is found to be seriously lacking in quantity, quality or efficiency and/or the Contractor breaches any of the conditions stipulated in this Agreement Document.

In such case, the Contracting Authority shall issue Notification Warning letters or Default Notices, notifying the Service Provider of his/her breach of the contract and requesting immediate remedial action by the Service Provider who shall remedy the failure within the amount of working days stipulated in each Specific Contract which if not specified shall not exceed three (3) working days from the notification by the Contracting Authority.

The Contracting Authority shall have the right to deduct penalties from the retained payments, and/or claim it under the performance guarantee quoted above, and/or claim the amount directly from the Service Provider.

The maximum amount of damages shall not exceed 20% of the contract value, pursuant to which the Contracting Authority will have the right to invoke the clauses relating to the termination of the contract and subsequent penalties.

Moreover, the Contracting Authority reserves the right to engage any other service provider to execute the contract allocation and any extra expenses incurred, further to the contract rates, shall be borne by the Service Provider.

## **Article 20: Amendment of the Contract**

- 20.1** As per General Conditions.

## **Article 24: Interim and Final Progress Reports**

- 24.1** Further to the provision of the General conditions, reports in accordance to Section 4 of the Specific Contract must be submitted by the Service Provider.

## **Article 26: Payments and Interest on Late Payment**

- 26.1** The prices submitted by the shortlisted candidates at the call for competition to award a call-off contract may be fee-based or global priced and shall be indicated in this clause for each Specific Contract.  
The payment schedule will be specified in the Call-Offs for each Specific Contract.
- 26.2** As per General Conditions.
- 26.5** Payments will be made in Euro (€)
- 26.6** Payment of the final balance shall be subject to performance by the Service Provider for all obligations relating to the execution of all phases or parts of the services and to the approval by the Contracting Authority of the final phase or part of the services. Final payment shall be made only after the formal claim for payment in the form of an invoice shall have been submitted by the Service Provider and approved as satisfactory by the Contracting Authority.
- 26.7** If any of the following events occurs and persist, the Contracting Authority may, by written notice to the Service Provider, suspend in whole or in part, payments due to the Service Provider under the Contract:
- a) The Service Provider defaults in the execution of the contract;
  - b) Any other condition for which the Service Provider is responsible under the contract and which, in the opinion of the Contracting Authority, interfered, or threatens to interfere, with the successful completion of the Specific Contract.

## **Article 27: Pre-Financing Guarantee**

- 27.2** Not applicable.

27.5 Not applicable.

**Article 30: Revision of Prices**

30.1 Subject to the provision of Article 20 of the General Conditions, the price quoted in the Specific Contracts shall not be revised. Article 1639 of the Civil Code shall not apply and cannot be availed of by the Service Provider.

30.5 No additional payment shall be due, over and above that stipulated in the awarded contract value, for the carrying out of any measurements on works executed.

**Article 32: Breach of Contract**

32.2 As per General Conditions.

**Article 34: Termination by the Contracting Authority**

As per General Conditions.

**Article 39: Further Additional Clauses**

39.1 The Service Provider and his/her staff are bound not to divulge any information obtained in any way whether directly, indirectly, accidentally or otherwise during the performance of their duties especially in view of the assistance that will be provided during tender preparation.

39.2 Except with the Contracting Authority's knowledge and consent, the Service Provider shall neither engage in any activity nor accept any employment, interest or contribution that would unreasonably compromise his/her professional judgment with respect to the Project.

39.3 The Service Provider should abide at all times to the Public Procurement Regulations (Subsidiary Legislation 174.04) of the Laws of Malta and any relevant subsequent amendments by means of Legal Notices published from time to time in the Malta Government Gazette. Pleas of ignorance or lack of familiarity with these regulations will not be considered admissible and the Contracting Authority will take a serious view if these provisions are not observed by the Service Provider, his/her consultants and/or his/her employees. In case of doubt the Service Provider, his/her consultants and/or his/her employees are required to seek guidance for the Contracting Authority to act accordingly.



## SECTION 4 -TERMS OF REFERENCE (Note 3)

Where in this tender document a standard is quoted, it is to be understood that the Contracting Authority will accept equivalent standards. However, it will be the responsibility of the respective bidders to prove that the standards they quoted are equivalent to the standards requested by the Contracting Authority.

**IMPORTANT :** These Terms of Reference are generic and serve as the basis for the establishment of the Framework Agreement. *The Terms of Reference below will be amplified with details of specific requirements and shall be published individually for each call off for a Specific Contract.*

### 1. Background Information

#### 1.1 - *Beneficiary Country*

Malta

#### 1.2 - *Central Government Authority*

Department of Contracts

#### 1.3 - *Contracting Authority*

Contracting Authorities listed under Schedule 2, Schedule 3 and Schedule 16 of the Public Procurement Regulations.

#### 1.4 - *Relevant Country Background*

Not Applicable

### 2. Contract Objectives and Expected Results

#### 2.1 - *Overall Objectives*

The overall objective of this Agreement is the provision of professional services, as per Section 4 of the Terms of Reference and as per call-off for Specific Contracts.

#### 2.2 - *General Soft Skills Required*

- i. demonstrates analytical skills and an ability to develop solutions to address issues in hand;
- ii. establishes and maintains cooperative relationships with staff and management at all levels;
- iii. prioritises tasks and pays attention to detail, even when under time pressure;

- iv. write clear and precise reports;
- v. shows commitment to the achievement of organisational goals and to meet deadlines;
- vi. shares information and supports team members in the achievement of common goals;
- vii. has an ability to listen actively and to work on one's initiative with minimum guidance;
- viii. has well developed written and verbal communication skills;

### **2.3- Specific Objectives**

The Service Provider is required at all times to perform the services in accordance with the highest professional standard of efficiency and professionalism.

#### **Lot 1 - Legal Consultant Services**

The role of the Legal Consultant, when requested, may be, but not limited to:

- i. Preparation of tender documents
- ii. Providing professional services in order to achieve the targets set by the Contracting Authority within the established timeframes.
- iii. advising and assisting the Management of the Contracting Authority in all legal matters as required
- iv. Legally representing the Contracting Authority as may be required, including judicial proceeding in the Maltese Courts
- v. Attending meetings that require a legal input as and where required
- vi. addressing judicial and extra judicial matters on behalf of the Contracting Authority
- vii. Filing judicial acts as requested by the CA
- viii. Sending legal letters and filing of judicial letters at the Court Registry
- ix. Filing official reports with the Police

#### **Lot 2 - Senior Architect & Civil Engineer Services**

The role of the Architect and Civil Engineer, when requested, may be, but not limited to:

- i. Preparation of tender documents including the Bill of Quantities, for the execution of works;
- ii. Preparation of designs, plans, drawings, applications, reports and any other work that may be required by any authority authorized to approve or judge such applications;

- iii. Carrying out architectural surveys, assisting in designing interventions and preparation of Method Statements as necessary;
- iv. Carrying out site supervision of works;
- v. Implementing CA programme of works;
- vi. Assisting CA Officers on sites if and when necessary;
- vii. Ensure that Contractors carrying out the works complies with the contract provisions
- viii. Represent the CA in relation to any contract of works being managed and all decisions taken by him shall be in accordance with the provision of the contract documents relative to the works to be executed
- ix. Bring to the immediate attention of the CA any infringements or omissions to the Contracts by the relevant Contractors
- x. Performing other duties as may be deemed appropriate by Director/Head of CA and/or representative;
- xi. Certify the partial or full completion of works and provide the CA with a detailed measurement of works;

### Lot 3 - Mechanical Engineer Services

The role of the Mechanical Engineer, when requested, may be, but not limited to:

- i. Preparation of the technical documents (including technical requirements, technical specifications, bills of quantities, financial estimates, and duration estimates) for the various works to be carried out
- ii. Advisory assistance for the design and production of drawings required to ensure the timely acquisition of the necessary permits (where relevant) required for the execution of works.
- iii. Review material and equipment technical submittals by Contractor
- iv. Measuring the performance of mechanical components, devices and engines
- v. Maintaining and modifying equipment to ensure that it is safe, reliable and efficient
- vi. Using computer-aided design/modelling software
- vii. Liaising with contractors
- viii. Producing and implementing designs and test procedures
- ix. Testing, evaluating, modifying and re-testing products
- x. Writing reports and documentation
- xi. Providing technical advice
- xii. Analysing and interpreting data
- xiii. Monitoring of the installation of all works and reporting any shortcomings including discrepancies with tender specifications

#### Lot 4 - Electrical Engineer Services

The role of the Electrical Engineer, when requested, may be, but not limited to:

- i. Preparation of the technical documents (including technical requirements, technical specifications, bills of quantities, financial estimates, and duration estimates) for the various works to be carried out
- ii. Evaluate electrical systems, products, components, and applications by designing and conducting research programs; applying knowledge of electricity and materials.
- iii. review material and equipment technical submittals by Contractor
- iv. Confirm system's and components' capabilities by designing testing methods; testing properties.
- v. Develop electrical products by studying customer requirements; researching and testing manufacturing and assembly methods and materials.
- vi. Develops manufacturing processes by designing and modifying equipment for building and assembling electrical components; soliciting observations from operators.
- vii. Assure product quality by designing electrical testing methods; testing finished products and system capabilities.
- viii. Prepare product reports by collecting, analyzing, and summarizing information and trends.
- ix. Provide engineering information by answering questions and requests.
- x. Maintain product data base by writing computer programs; entering data.
- xi. Contribute to team effort by accomplishing related results as needed

#### Lot 5 - Quantity Surveyor Services

The role of the Quantity Surveyor, when requested, may be, but not limited to:

- i. ensure that materials are suitable for the environment
- ii. monitor progress and keep photographic and other records of buried / concealed works as evidence to support measurements/work valuations and payments;
- iii. analyse and study the architectural and engineering drawings and specifications
- iv. measure all construction, mechanical and electrical works during the implementation of the project
- v. analysing completion of works
- vi. perform site visits and draw assessments on works carried out
- vii. Analyze costs for maintenance and additional building needs
- viii. Identify potential financial or construction risks
- ix. Attend site progress meetings, and other meetings as necessary.

## Lot 6 - Accountant Services

The role of the Accountant, when requested, may be, but not limited to:

- i. Provide advice on financial measures necessary to adhere to financial legal requirements
- ii. Examine statements to ensure accuracy
- iii. Ensure that statements and records comply with laws and regulations
- iv. Compute taxes owed, prepare tax returns, ensure prompt payment
- v. Carry out the necessary adjustments in the Contracting Authority's accounting system as required by the Auditors.
- vi. Inspect account books and accounting systems to keep up to date
- vii. Organize and maintain financial records
- viii. Improve businesses efficiency where money is concerned
- ix. Make best-practices recommendations to management
- x. Suggest ways to reduce costs, enhance revenues and improve profits
- xi. Provide auditing services for businesses and individuals

## Lot 7 - Project Manager Services

The role of the Project Manager, when requested, may be, but not limited to:

- i. Planning and Defining Scope
- ii. Design and manage quality, risk and management plans.
- iii. Provide the overall guidance and direction to the project, ensuring that it remains within the specified budget and project plan;
- iv. Resource Planning
- v. Developing Schedules
- vi. Time Estimating
- vii. Cost Estimating
- viii. Monitoring and Reporting Progress
- ix. Team Leadership

## 3. Assumptions and Risks

### ***3.1 - Assumptions Underlying the Project Intervention***

No particular assumptions are envisaged in the setting up of this Framework Agreement.

### **3.2- Risks**

No particular risks are envisaged in the setting up of this Framework Agreement.

## **4. Scope of the Work**

### **4.1 - General**

#### **4.1.1 Project Description**

The service provided by the Service Provider, his/her employees and his/her consultants consist of the Services described in these Terms of Reference

#### **4.1.2 Geographical Area to be covered**

Malta and Gozo. However the area will be specified in the call-off for Specific Contracts.

#### **4.1.3 Target Groups**

Not Applicable

### **4.2 - Specific Activities**

Specific Activities shall be detailed individually in each call-off issued for a Specific Contract.

### **4.3 - Project Management**

#### **4.3.1 Responsible Body**

The final beneficiary which shall be responsible for managing the contract allocations is the responsible Contracting Authority.

#### **4.3.2 Management Structure**

The responsible Contracting Authority will be responsible for the Specific Contract.. Any queries, clarification, information requests and reports during the execution of the Contract should first be directed to the Project Supervisor. Details will be communicated to the Contractor on issue of the Commencement Order Notification.

#### **4.3.3 Facilities to be provided by the Contracting Authority and/or other parties**

Details shall be individually listed if any, in each call-off issued for a Specific Contract

## **5. Logistics and Timing**

### **5.1 - Location**

The Service Provider will be required to perform hi/her duties as requested by the Contracting Authority. However in the call-offs the Contracting Authority shall publish the location of the project related to the Specific Contract.

Any travelling costs shall be borne by the Service Provider.

### **5.2 - Commencement Date & Period of Execution**

As per Article 18.1 of the Special Conditions for each call off to a Specific Contract.

## **6. Requirements**

### **6.1 - Personnel**

#### **6.1.1 Other experts**

A list of the key experts and other staff proposed for the execution of the Specific Contracts shall be as eventually nominated for the Specific Contracts.

All experts proposed must be independent and free from conflicts of interest the responsibilities accorded to them.

#### **6.1.2 Support Staff and Backstopping**

The Service Provider shall be expected to deploy the appropriate amount of support staff and backstopping to ensure the smooth progress of the works of site.

### **6.2 Accommodation**

Office accommodation of a reasonable standard and of approximately 10 square metres for each expert working on the contract is to be provided as specified in each call off for a Specific Contract.

### ***6.3 - Facilities to be provided by the Contractor***

- 6.3.1 The Contracting Authority shall provide full information in each call off for the Specific Contracts.

### ***6.4 - Equipment***

No equipment is to be purchased on behalf of the Contracting Authority as part of this service contract or transferred to the Contracting Authority at the end of this contract. Any Equipment related to this contract which is to be acquired by the Contracting Authority must be purchased by means of a separate tender procedure.

## **7. Reports**

### ***7.1 - Reporting Requirements***

- 7.1.1 Details shall be individually listed if any, in each call-off issued for a Specific Contract.



## **TENDERER'S TECHNICAL OFFER (ORGANISATION & METHODOLOGY)** (Note 3)

*N.B. The Key Experts are subject to Note 2A. Any other components of the technical offer are subject to Note 3.*

Where in this tender document a standard is quoted, it is to be understood that the Contracting Authority will accept equivalent standards. However, it will be the responsibility of the respective bidders to prove that the standards they quoted are equivalent to the standards requested by the Contracting Authority.

A technical offer is to be provided by the Economic Operator in response to Terms of Reference. The submission shall be in a structured form as indicated below for ease of reference and evaluation.

**IMPORTANT :** In response to the Technical Offer and in order to be shortlisted in the Framework Agreement, the bidder is to provide an Organisation and Methodology Statement for each lot being tendered for as per below and submit online through the prescribed Tender Response Format and by using the Tender Preparation Tool provided.

*Specific Contracts shall detail individual requirements in the call-offs.*

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## **TENDERER'S TECHNICAL OFFER**

*Please provide a statement based on :*

### **1. RATIONALE**

- Any comments on the Terms of Reference of importance for the successful execution of activities for each lot, in particular its objectives and expected results, thus demonstrating the degree of understanding of the contract.
- An explanation of any risks and assumptions that may be pointed out.

### **2. STRATEGY, METHODOLOGY AND MOTIVATIONAL APPROACH**

- An outline of the general approach proposed for eventual contract implementation of the professional service in the lot being tendered for.
- A general methodology statement considered to be necessary for a professional service in the lot being tendered for.

## SECTION 5 - SUPPLEMENTARY DOCUMENTATION

### ***5.1 - Draft Contract Form***

### ***5.2 - Glossary***

### ***5.3 - Specimen Performance Guarantee***

### ***5.4 - Specimen Tender Guarantee (Bid Bond) - where applicable***

### ***5.5 - Specimen Pre-Financing Guarantee - where applicable***

### ***5.6 - Specimen Retention Guarantee - where applicable***

These are available to view and download from the 'Resources Section' at: [www.etenders.gov.mt](http://www.etenders.gov.mt).  
In this same section, it is also possible to download a copy of the ***European Single Procurement Document (ESPD)***.

### ***5.7 - General Conditions of Contract***

The full set of General Conditions for Works Contracts (Version 2.2), for Supplies Contracts (Version 2.2) and for Services Contracts (Version 2.2) can be viewed/downloaded from the 'Resources Section' at: [www.etenders.gov.mt](http://www.etenders.gov.mt)

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.