



**Employment & Training Corporation**

Head office, Hal Far BBG 3000, Malta

Telephone: (356) 22201100

Website: <http://www.etc.gov.mt>

**TENDER NO: ETC/IT/T/11/15**

**TENDER FOR THE SUPPLY AND DELIVERY OF  
THREE (3) UNINATERRUPTABLE POWER  
SUPPLIES**

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**Closing Date:** 17<sup>th</sup> July 2015 at 10:00am CET

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**Date Published:** 19<sup>th</sup> June 2015

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**IMPORTANT:**

- No Bid Bond is requested for this tender
- Clarifications shall be uploaded and will be available to view/download for [www.etc.gov.mt](http://www.etc.gov.mt) (under the subheading 'Resources' and 'Tenders and Quotations').

**Employment and Training Corporation**

Head Office, Hal Far Road, Hal Far BBG 3000

# TENDER FOR THE SUPPLY AND DELIVERY OF THREE (3) UNINATERRUPTABLE POWER SUPPLIES

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# VOLUME 1 SECTION 1 - INSTRUCTIONS TO TENDERERS

## A. GENERAL PART

### 1. General Instructions

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

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

The Evaluation Committee shall, after having obtained approval by the Departmental Contracts Committee, request rectifications in respect of incomplete/non-submitted information pertinent to the documentation as outlined in sub-Clause 16.1(a), 16.1(b), 16.1(c), 16.1(d) and 16.1(e)(i) of these Instructions to Tenderers. Such rectification/s must be submitted within five (5) working days from notification, and will be subject to a non-refundable administrative penalty of €50: failure to comply shall result in the tender offer not being considered any further.

No rectification shall be allowed in respect of the documentation as outlined in sub-Clause 16.1(e)(ii) and 16.1(f) of these Instructions to Tenderers. Only clarifications on the submitted information in respect of the latter may be eventually requested.

- 1.2 The subject of this tender is the supply and delivery of three (3) uninterruptable power supplies (UPSs).
- 1.3 The place of acceptance of the supplies shall be the Employment and Training Corporation, the time-limits for delivery shall be eight (8) weeks, and the INCOTERM<sup>2010</sup> applicable shall be **Delivery (Duty Paid)**.
- 1.4 This is a lump-sum contract.
- 1.5 The tenderer will bear all costs associated with the preparation and submission of the tender. The Contracting Authority will in no case be responsible or liable for such costs, whatever the conduct or outcome of the procedure.
- 1.6 The Contracting Authority retains ownership of all tenders received under this tender procedure. Consequently, tenderers have no right to have their tenders returned to them.

### 2. Timetable

|                                                                                                                 | DATE                       | TIME*   |
|-----------------------------------------------------------------------------------------------------------------|----------------------------|---------|
| Deadline for request for any additional information from the Contracting Authority                              | 2 <sup>nd</sup> July 2015  | -       |
| Last date on which additional information are issued by the Contracting Authority                               | 10 <sup>th</sup> July 2015 | -       |
| Deadline for submission of tenders / Tender Opening Session (unless otherwise modified in terms of Clause 11.3) | 17 <sup>th</sup> July 2015 | 10:00am |

\* All times Central European Time (CET)/Central European Summer Time (CEST)

\* Delete as applicable

### **3. Lots**

- 3.1 This tender is not divided into lots, and tenders must be for the whole of quantities indicated. Tenders will not be accepted for incomplete quantities.

### **4. Financing**

- 4.1 The project is financed from local budget funds.

### **5. Eligibility**

- 5.1 Participation in tendering is open on equal terms to all natural and legal persons of the Member States of the European Union, the beneficiary country, any other country in accordance with Regulation 69 of the Public Procurement Regulations.
- 5.2 Natural persons, companies or undertakings who fall under any of the conditions set out in Regulation 50 of the Public Procurement Regulations, 2010 (Legal Notice 296 of 2010) may be excluded from participation in and the award of contracts. Tenderers or candidates who have been guilty of making false declarations will also incur financial penalties representing 10% of the total value of the contract being awarded.
- 5.3 Tenders submitted by companies forming a joint venture/consortium must also fulfil the following requirements:
- One partner must be appointed lead partner and that appointment confirmed by submission of powers of attorney signed by legally empowered signatories representing all the individual partners. The tender must include a preliminary agreement or letter of intent stating that all partners assume joint and several liability for the execution of the contract, that the lead partner is authorised to bind, and receive instructions for and on behalf of, all partners, individually and collectively.
  - All partners in the joint venture/consortium are bound to remain in the joint venture/consortium until the conclusion of the contracting procedure. The consortium/joint venture winning this contract must include the same partners for the whole performance period of the contract other than as may be permitted or required by law.
- 5.4 All materials, equipment and services to be supplied under the contract must originate in an eligible country. For these purposes, "origin" means the place where the materials and/or equipment are mined, grown, produced or manufactured and/or from which services are provided.

### **6. Selection Criteria**

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

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

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

*(An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will*

*have at its disposal the resources necessary for the execution of the contract, for example, by producing an undertaking by those entities to place the necessary resources at the disposal of the economic operator)*

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

- No technical capacity is being requested.

## **7. Multiple Tenders**

- 7.1 A tenderer may submit multiple tender offers.
- 7.2 A company may not tender for a given contract both individually and as a partner in a joint venture/consortium.
- 7.3 A company may not tender for a given contract both individually/partner in a joint venture/consortium, and at the same time be nominated as a subcontractor by any another tenderer, or joint venture/consortium.
- 7.4 A company may act as a subcontractor for any number of tenderers, and joint ventures/consortia, provided that it does not participate individually or as part of a joint venture/consortium, and that the nominations do not lead to a conflict of interest, collusion, or improper practice.

## **8. Tender Expenses**

- 8.1 The tenderer will bear all costs associated with the preparation and submission of the tender.
- 8.2 The Contracting Authority will neither be responsible for, nor cover, any expenses or losses incurred by the tenderer through site visits and inspections or any other aspect of his tender.

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

- 9.1 No clarification meeting/site visit is planned.

# **B. TENDER DOCUMENTS**

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

- 10.1 The set of tender documents comprises the following documents and should be read in conjunction with any clarification notes issued in accordance with Clause 24:
- |          |                                                                                                                                                                                                                                                     |
|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Volume 1 | Instructions to Tenderers                                                                                                                                                                                                                           |
| Volume 2 | Draft Contract                                                                                                                                                                                                                                      |
|          | <ul style="list-style-type: none"><li>• General Conditions (available online from <a href="http://contracts.gov.mt/en/Tenders/Pages/Tenders.aspx">http://contracts.gov.mt/en/Tenders/Pages/Tenders.aspx</a>)</li><li>• Special Conditions</li></ul> |
| Volume 3 | Technical Specifications                                                                                                                                                                                                                            |
| Volume 4 | Model Financial Bid/Bill of Quantities.                                                                                                                                                                                                             |
- 10.2 Tenderers bear sole liability for examining with appropriate care the tender documents, including those design documents available for inspection, and any clarification notes to the tender documents issued during the tendering period, and for obtaining reliable information with respect to conditions and obligations that may in any way affect the amount or nature of the tender or the execution of the works. In the event that the tenderer is successful, no claim for alteration of the tender amount will be entertained on the grounds of errors or omissions in the obligations of the tenderer described above.
- 10.3 The tenderer must provide all documents required by the provisions of the tender document. All such documents, without exception, must comply strictly with these

conditions and provisions and contain no alterations made by the tenderer.

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

- 11.1 Tenderers may submit questions in writing to the Contracting Authority through:
- sending an email to [tenders.etc@gov.mt](mailto:tenders.etc@gov.mt)
- up to 16 calendar days before the deadline for submission of tenders. The Contracting Authority must reply to all tenderers' questions, and amend the tender documents by publishing clarification notes, up to at least 8 calendar days before the deadline for submission of tenders.
- 11.2 Questions and answers, and alterations to the tender document will be published as a clarification note on the website of the Employment and Training Corporation ([www.etc.gov.mt](http://www.etc.gov.mt) under the sub heading 'Resources' and 'Tenders and Quotations') Clarification notes will constitute an integral part of the tender documentation, and it is the responsibility of tenderers to visit this website and be aware of the latest information published online prior to submitting their Tender.
- 11.3 The Contracting Authority may, at its own discretion, as necessary and in accordance with Clause 24, extend the deadline for submission of tenders to give tenderers sufficient time to take clarification notes into account when preparing their tenders.

## **12. Labour Law**

- 12.1 Particular attention is drawn to the conditions concerning the employment of labour in Malta and the obligation to comply with all regulations, rules or instructions concerning the conditions of employment of any class of employee.

## **13. Law**

- 13.1 By submitting their tenders, tenderers are accepting that this procedure is regulated by Maltese Law, and are deemed to know all relevant laws, acts and regulations of Malta that may in any way affect or govern the operations and activities covered by the tender and the resulting contract.

## **C. TENDER PREPARATION**

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

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

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

- 15.1 Tenders must satisfy the following conditions:
- (a) All tenders must be submitted in one original, clearly marked "original", and one identical copy (including all documentation as in the original) signed in the same way as the original and clearly marked "copy".
  - (b) Both documents are to be separately sealed and placed in another sealed envelope/package so that the bid can be identified as one tender submission. Following the tender opening session, the copy shall be kept, unopened, at the Employment and Training Corporation, for verification purposes only should the need arise during the Evaluation process.
  - (c) All tenders must be received by date and time indicated in the timetable at Clause 2 and deposited in the tender box at the Employment and Training Corporation, Head Office, Hal Far, BBG 3000.
  - (d) All packages, as per (b) above, must bear only:
    - (i) the above address;

- (ii) the tender number of the tender concerned;

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

- 16.1 The tender must comprise the following duly completed documents, inserted in a single, sealed envelope (unless their volume requires a separate submission):
- (a) No Bid Bond is being requested.<sup>(Note 1)</sup>
  - (b) *General/Administrative Information*<sup>(Note 2)</sup>
    - (i) Statement on Conditions of Employment (Volume 1, Section 4)
  - (c) *Financial and Economic Standing*<sup>(Note 2)</sup>
    - (i) No Evidence of economic and financial standing is required.
  - (d) *Technical Capacity*<sup>(Note 2)</sup>
    - (i) No technical capacity is being requested.
  - (e) *Evaluation Criteria/Technical*
    - (i) Product Literature List<sup>(Note 2)</sup>
    - (ii) Tenderer's Technical Offer in response to specifications (Volume 3)  
*Specifications*<sup>(Note 3)</sup>
  - (f) *Financial Offer/Bill of Quantities*<sup>(Note 3)</sup>
    - (i) The Tender Form in accordance with the form provided in Volume 1, Section 2; a separate Tender Form is to be submitted for each option tendered, each form clearly marked 'Option 1', 'Option 2' etc.;
    - (ii) A financial bid calculated on a basis of **Delivered Duty Paid (DDP)** for the supplies tendered [inclusive of the financial information re: spare parts/after-sales services/maintenance/ training as applicable] in the form provided in Volume 4.

### **Notes to Clause 16.1:**

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

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

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

## **17. Tender Prices**

- 17.1 Tenderers will be deemed to have satisfied themselves, before submitting their tender, to its correctness and completeness, to have taken account of all that is required for the full and proper performance of the contract, and to have included all



costs in their rates and prices.

- 17.2 The tender must be submitted in Euro (€). Three decimal points do not exist as currency; therefore such offers cannot be accepted. Offers are to be submitted up to two decimal points.
- 17.3 Tenderers must quote all components of the price **inclusive** of taxes, customs and import duties and any discounts **BUT** excluding VAT. VAT shall be paid in accordance with the applicable VAT Regulations.
- 17.4 Different options are to be clearly identifiable in the technical and financial submission; a separate Tender Form (as per Volume 1, Section 2) marked 'Option 1', 'Option 2' etc. for each individual option clearly outlining the price of the relative option is to be submitted.
- 17.5 If the tenderer offers a discount, the discount must be absorbed in the rates of the Bill of Quantities/Financial Statement.
- 17.7 The prices for the contract, must include all of the works to be provided. The prices quoted are fixed and not subject to revision or escalation in costs, except for any increases determined by government in respect to its policies or otherwise provided for in the Special Conditions.

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

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

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

- 19.1 Tenders must remain valid for a period of 90 days after the deadline for submission of tenders indicated in the contract notice, the tender document or as modified in accordance with Clauses 11.3 and/or 24. Any tenderer who quotes a shorter validity period will be rejected.
- 19.2 The Head of Contracting Authority may consider to cancel the tender following consultations with the Permanent Secretary;-in the event that the evaluation process has not been concluded by the end of the validity period of the submitted bids.
- 19.3 In exceptional circumstances the Contracting Authority may request that tenderers extend the validity of tenders, without extending the validity of the Tender Guarantee (Bid Bond), for two further periods of four (4) weeks each. Such requests and the responses to them must be made in writing. A tenderer may refuse to comply with such a request without forfeiting his tender guarantee (Bid Bond). However, his tender will no longer be considered for award. If the tenderer decides to accede to the extension, he may not modify his tender.
- 19.4 Following the further extension by eight (8) weeks, in accordance with Regulation 6(2)(c) of LN296/2010 the non conclusion of the evaluation process will automatically lead to the cancellation of the tender, provided that the Head of Contracting Authority shall consult the Permanent Secretary.
- 19.5 The successful tenderer must maintain his tender for a further 60 days from the date of notification of award.

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

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

## **21. Variant Solutions**

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

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

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

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

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

## **D. SUBMISSION OF TENDERS**

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

- 23.1 The tenders must be submitted in English and deposited in the Corporation’s tender box **before** the deadline specified in Clause 2 or as otherwise specified in accordance with Clause 11.1 and/or 24.1. They must be submitted:

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

**Employment and Training Corporation  
Head Office  
Hal Far BBG 3000  
Malta**

Tenders submitted by any other means will not be considered.

- 23.2 Tenderers must seal the original and the copy of their tender as outlined in Clause 15.
- 23.3 If the outer envelope is not sealed and marked as required in Sub clause 15.1, the Contracting Authority will assume no responsibility for the misplacement or premature opening of the tender.

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

- 24.1 The Contracting Authority may, at its own discretion, extend the deadline for

submission of tenders by issuing a clarification note in accordance with Clause 11. In such cases, all rights and obligations of the Contracting Authority and the tenderer regarding the original date specified in the contract notice will be subject to the new date.

### ***25. Late Tenders***

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

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

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

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

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

- 27.1 Tenders will be opened in public session on the date and time indicated in the timetable at Clause 2 (or as otherwise specified in accordance with Clause 11.1 and/or 24.1) at the Employment and Training Corporation, Head office, Hal Far BBG 3000 Malta by the Evaluation Committee or its representatives. They will draw up a 'Summary of Tenders Received' which will be published on the notice board at the Employment and Training Corporation and shall also be available to view on Corporation's website [www.etc.gv.mt](http://www.etc.gv.mt) (under the subheadings 'Recourses' and 'Tenders and Quotations').
- 27.2 At the tender opening, the tenderers' names, the tender prices, variants, written notification of alterations and withdrawals, the presence of the requisite tender guarantee and any other information the Contracting Authority may consider appropriate will be published.
- 27.3 Envelopes marked "withdrawal" will be read out first and returned to the tenderer.
- 27.4 Reductions or alterations to tender prices made by tenderers after submission will not be taken into consideration during the analysis and evaluation of tenders.

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

- 28.1 After the opening of the tenders, no information about the examination, clarification, evaluation or comparison of tenders or decisions about the contract award may be disclosed before the notification of award.
- 28.2 Information concerning checking, explanation, opinions and comparison of tenders and recommendations concerning the award of contract, may not be disclosed to tenderers or any other person not officially involved in the process unless otherwise permitted or required by law.

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

### **29. Clarification of Tenders**

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

### **30. Tender Evaluation Process**

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

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

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

The Evaluation Committee shall, after having obtained approval by Departmental Contracts Committee, request rectifications in respect of incomplete/non-submitted information pertinent to the documentation as outlined in sub-Clause 16.1(a), 16.1(b), 16.1(c), 16.1(d) and 16.1(e)(i) of these Instructions to Tenderers. Such rectification/s must be submitted within five (5) working days from notification, and will be subject to a non-refundable administrative penalty of €50: failure to comply shall result in the tender offer not being considered any further. No rectification shall be allowed in respect of the documentation as outlined in sub-Clause 16.1(e)(ii) and 16.1(f) of these Instructions to Tenderers. Only clarifications on the submitted information in respect of the latter may be eventually requested.

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

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

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

- Tender Form (Volume 1, Section 2)
- Statement on Conditions of Employment (Volume 1, Section 4)

##### *(ii) Selection Criteria*

- No evidence of technical capacity is being requested (sub-Clause 6.1.2)

#### **30.4 Part 3: Technical Compliance**

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

- Tenderer's Technical Offer in response to specifications (Volume 3)
- Product Literature of the UPSs being offered (Volume 1, Section 4, Form 1)

## 30.5 Part 4. Financial Evaluation

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

The Evaluation Committee will check that the financial offers contain no arithmetical errors as outlined in Clause 31. The financial evaluation will have to identify the best financial offer.

### ***31. Correction of Arithmetical Errors***

- 31.1 Admissible tenders will be checked for arithmetical errors by the Evaluation Committee. Errors will be corrected as follows:
- (a) where there is a discrepancy between amounts in figures and in words, the amount in words will prevail;
  - (b) where there is a discrepancy between a unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will prevail.
- 31.2 The amount stated in the tender will be adjusted by the Evaluation Committee in the event of error, and the tenderer will be bound by that adjusted amount. In this regard, the Evaluation Committee shall seek the prior approval of the Departmental Contracts Committee to communicate the revised price to the tenderer. If the tenderer does not accept the adjustment, his tender will be rejected and his tender guarantee forfeited.
- 31.3 When analysing the tender, the evaluation committee will determine the final tender price after adjusting it on the basis of Clause 31.1.

## **F. CONTRACT AWARD**

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

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

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

- 33.1 The Contracting Authority reserves the right to accept or reject any tender and/or to cancel the whole tender procedure and reject all tenders. The Contracting Authority reserves the right to initiate a new invitation to tender.
- 33.2 In the event of a tender procedure's cancellation, tenderers will be notified by the Contracting Authority. If the tender procedure is cancelled before the outer envelope of any tender has been opened, the sealed envelopes will be returned, unopened, to the tenderers.
- 33.3 Cancellation may occur where:
- (a) the tender procedure has been unsuccessful, namely where no qualitatively or financially worthwhile tender has been received or there has been no response at all;
  - (b) the economic or technical parameters of the project have been fundamentally altered;
  - (c) exceptional circumstances or force majeure render normal performance of the project impossible;
  - (d) all technically compliant tenders exceed the financial resources available;
  - (e) there have been irregularities in the procedure, in particular where these have prevented fair competition.
  - (f) the duration of the evaluation has exceeded the stipulated time limit in Article 19 of Instructions to Tenderers

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

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

- 34.1 Prior to the expiration of the period of validity of tenders, the Contracting Authority will notify the successful tenderer, in writing, that his tender has been recommended for award by the Departmental Contracts Committee, pending any appeal being lodged in terms of Part XIII of the Public Procurement Regulations (being reproduced in Volume 1, Section 6).
- 34.2 Unsuccessful bidders shall be notified with the outcome of the evaluation process, and will be provided the following information:
- (i) the criteria for award;
  - (ii) the name of the successful tenderer;
  - (iii) the recommended price of the successful bidder;
  - (iv) the reasons why the tenderer did not meet the technical specifications/ notification that the offer was not the cheapest (if applicable);
  - (v) the deadline for filing a notice of objection (appeal);
  - (vi) the deposit required if lodging an appeal.
- 34.3 The recommendations of the Departmental Contracts Committee shall be published on the Notice Board of the Employment and Training Corporation, and published online on the Corporation's website, [www.etc.gov.mt](http://www.etc.gov.mt)

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

- 35.1 After the lapse of the appeals period, and pending that no objections have been received and/or upheld, the successful tenderer may be invited to clarify certain contractual questions raised therein. Such clarification will be confined to issues that had no direct bearing on the choice of the successful tender. The outcome of any such clarifications will be set out in a Memorandum of Understanding, to be signed by both parties and incorporated into the contract.
- 35.2 Before the Contracting Authority signs the contract with the successful tenderer, the successful tenderer may be requested to provide the documentary proof or statements required to show that it does not fall into any of the exclusion situations listed in Tenderer's Declaration of the Tender Response Format. The above mentioned documents must be submitted by every member of a Joint Venture/Consortium (if applicable).
- 35.3 The Contractor shall, within 15 calendar days of receipt of the contract, sign and date the contract and return it together with a copy of the Performance Guarantee. The Contractor is further obliged to forward the original performance guarantee to the Contracting Authority. The Contracting Authority will not effect any payment to the contractor until the performance guarantee is submitted.
- 35.4 If the selected tenderer fails to sign and return the contract, other required documentation, and any guarantees required within the prescribed 15 calendar days, the Contracting Authority may consider the acceptance of the tender to be cancelled without prejudice to the Contracting Authority's right to seize the guarantee, claim compensation or pursue any other remedy in respect of such failure, and the successful tenderer will have no claim whatsoever on the Contracting Authority.

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

- 35.5 Only the signed contract will constitute an official commitment on the part of the

Contracting Authority, and activities may not begin until the contract has been signed by the Contracting Authority and the successful tenderer.

- 35.7 The performance guarantee referred to in the General Conditions is set at 10% of the amount of the contract and must be presented in the form specified in Volume 2, Section 4, to the tender document the performance guarantee shall be released within 30 days of the signing of the Final Statement of Account (Final Bill), unless the Special Conditions provide otherwise.

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

- 36.1 The period of delivery indicated in Clause 1.3 of the Instructions to Tenderers commences from the date of last signature of contract.
- 36.2 The Contractor must inform the Contracting Authority's representative by return that he has received the notice.

## **G. MISCELLANEOUS**

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

- 37.1 Any attempt by a candidate or tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the committee or the Contracting Authority during the process of examining, clarifying, evaluating and comparing tenders will lead to the rejection of his candidacy or tender and may result in administrative penalties.
- 37.2 Without the Contracting Authority's prior written authorisation, the Contractor and his staff or any other company with which the Contractor is associated or linked may not, even on an ancillary or subcontracting basis, supply other services, carry out works or supply equipment for the project. This prohibition also applies to any other programmes or projects that could, owing to the nature of the contract, give rise to a conflict of interest on the part of the Contractor.
- 37.3 When putting forward a candidacy or tender, the candidate or tenderer must declare that he is affected by no potential conflict of interest, and that he has no particular link with other tenderers or parties involved in the project.
- 37.4 The Contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of his profession. He must refrain from making public statements about the project or services without the Contracting Authority's prior approval. He may not commit the Contracting Authority in any way without its prior written consent.
- 37.5 For the duration of the contract, the Contractor and his staff must respect human rights and undertake not to offend the political, cultural and religious morals of Malta.
- 37.6 The Contractor may accept no payment connected with the contract other than that provided for therein. The Contractor and his staff must not exercise any activity or receive any advantage inconsistent with their obligations to the Contracting Authority.
- 37.7 The Contractor and his staff are obliged to maintain professional secrecy for the entire duration of the contract and after its completion. All reports and documents drawn up or received by the Contractor are confidential.
- 37.8 The contract governs the Parties' use of all reports and documents drawn up, received or presented by them during the execution of the contract.
- 37.9 The Contractor shall refrain from any relationship likely to compromise his independence or that of his staff. If the Contractor ceases to be independent, the Contracting Authority may, regardless of injury, terminate the contract without further notice and without the Contractor having any claim to compensation.

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

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

- 38.1 Any personal data submitted in the framework of the procurement procedure and/or subsequently included in the contract shall be processed pursuant to the Data Protection Act (2001). It shall be processed solely for the purposes of the performance, management and follow-up of the procurement procedure and/or subsequent contract by the Contracting without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in conformity with National and/or Community law.
- 38.2 The provisions of this contract are without prejudice to the obligations of the Contracting Authority in terms of the Freedom of Information Act (Cap. 496 of the Laws of Malta). The Contracting Authority, prior to disclosure of any information in relation to any provisions of this contract which have not yet been made public, shall consult the contractor in accordance with the provisions of the said Act, pertinent subsidiary legislation and the Code of Practice issued pursuant to the Act. Such consultation shall in no way prejudice the obligations of the Contracting Authority in terms of the Act.

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

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



# VOLUME 1 SECTION 2 - TENDER FORM

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

Tender Number: ETC/IT/T/11/15  
 Tender Title: Tender for the supply and delivery of three (3) Uninterruptable Power Supplies

|                                               |                                                                   |                                                   |  |
|-----------------------------------------------|-------------------------------------------------------------------|---------------------------------------------------|--|
| <b>A. TENDER SUBMITTED BY:</b>                | <i>(This will be included in the Summary of Tenders Received)</i> |                                                   |  |
| <b>In case of a Joint Venture/Consortium:</b> | <b>Nationality</b>                                                | <b>Proportion of Responsibilities<sup>2</sup></b> |  |
| <b>Name(s) of Leader/Partner(s)</b>           |                                                                   |                                                   |  |
| Leader <sup>1</sup>                           |                                                                   |                                                   |  |
| Partner <sup>1</sup>                          |                                                                   |                                                   |  |
| Etc ...                                       |                                                                   |                                                   |  |

1. Add/delete additional lines for partners as appropriate. Note that a sub-contractor is not considered to be a partner for the purposes of this tender procedure. If this tender is being submitted by an individual tenderer, the name of the tenderer should be entered as 'leader' (and all other lines should be deleted)
2. Proposed proportion of responsibilities between partners (in %) with indication of the type of the works to be performed by each partner (the company acting as the lead partner in a joint venture/consortium, they must have the ability to carry out at least 50% of the contract works by its own means. If a company is another partner in a joint venture/consortium (i.e. not the lead partner) it must have the ability to carry out at least 10% of the contract works by its own means).

**B CONTACT PERSON (for this tender)**

|                  |                         |                |              |
|------------------|-------------------------|----------------|--------------|
| <b>Name</b>      |                         | <b>Surname</b> |              |
| <b>Telephone</b> | (____) _____            | <b>Fax</b>     | (____) _____ |
| <b>Address</b>   | .....<br>.....<br>..... |                |              |
| <b>E-mail</b>    |                         |                |              |

**C TENDERER'S DECLARATION(S)**

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

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

- 1 We have examined, and accept in full and in its entirety, the content of this tender document (including subsequent Clarifications Notes issued by the Contracting Authority) for invitation to tender No ETC/IT/T/11/15. We hereby accept the contents thereto in their entirety, without reservation or restriction. We also understand that any disagreement, contradiction, alteration or deviation shall lead to our tender offer not being considered any further.
- 2 We offer to provide, in accordance with the terms of the tender document and the conditions and time limits laid down, without reserve or restriction, the following supplies:

**The Supply and delivery of three (3) Uninterruptable Power Supplies**

- 3 The total price of our tender (inclusive of duties, other taxes and any discounts BUT exclusive of VAT) is:  
[.....]
- 4 This tender is valid for a period of **90** days from the final date for submission of tenders.
- 5 If our tender is accepted, we undertake to provide a performance guarantee of 10% of the contract value as required by the General Conditions.
- 6 We are making this application in our own right and **[as partner in the consortium led by < name of the leader / ourselves > ]** for this tender. We confirm that we are not tendering for the same contract in any other form. **[We confirm, as a partner in the consortium, that all partners are jointly and severally liable by law for the performance of the contract, that the lead partner is authorised to bind, and receive instructions for and on behalf of, each member, and that all partners in the joint venture/consortium are bound to remain in the joint venture/consortium for the entire period of the contract's performance].** We are fully aware that, in the case of a consortium, the composition of the consortium cannot be modified in the course of the tender procedure.
- 7 We are not bankrupt or under an administration appointed by the Court, or under proceedings leading to a declaration of bankruptcy. We also declare that we have not been convicted criminally, or found guilty of professional misconduct. Furthermore, we are up-to-date in the payment of social security contributions and other taxes.
- 8 We accept that we shall be excluded from participation in the award of this tender if compliance certificates in respect of declarations made under Clause 7 of this declaration are not submitted by the indicated dates.
- 9 We agree to abide by the ethics clauses of the instructions to tenderers and, in particular, have no potential conflict of interests or any relation with other candidates or other parties in the tender procedure at the time of the submission of this application. We have no interest of any nature whatsoever in any other tender in this procedure. We recognise that our tender may be excluded if we propose key experts who have been involved in preparing this project or engage such personnel as advisers in the preparation of our tender.
- 10 We will inform the Contracting Authority immediately if there is any change in the above circumstances at any stage during the implementation of the contract. We also fully recognise and accept that any false, inaccurate or incomplete information deliberately provided in this application may result in our exclusion from this and other contracts funded by the Government of Malta and the European Communities.
- 11 Our tender submission has been made in conformity with the Instructions to Tenderers, and in this respect we confirm having included in the appropriate packages as required, the following documentation:

*This section is to tally to the requirements under Clause 6 and 16 of the ITT.*

- (a) **Tender Guarantee** <sup>(Note 1)</sup>
  - o No Bid Bond is being requested
- (b) **General Information** <sup>(Note 2)</sup>

- Statement on Conditions of Employment

**Selection Criteria** <sup>(Note 2)</sup>

- (c) **Financial and Economic Standing** <sup>(Note 2)</sup>
  - No evidence of economic and financial standing is required
- (d) **Technical Capacity** <sup>(Note 2)</sup>
  - No technical capacity is being requested
- (e) **Evaluation Criteria/Technical Specifications**
  - Product Literature list <sup>(Note 2)</sup>
  - Tenderer's Technical Offer <sup>(Note 3)</sup>
- (f) **Tender Form, and Financial Offer/Bill of Quantities** <sup>(Note 3)</sup>

**Notes:**

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

- 12 I acknowledge that the Contracting Authority shall request rectifications in respect of incomplete/non-submitted information pertinent to the documentation listed in Clause 11(a), 11(b), 11(c), 11(d) and 11(e) first bullet of this Tender Form. We understand that such rectification/s must be submitted within five (5) working days, and will be subject to a non-refundable administrative penalty of €50, and that failure to comply shall result in our offer not being considered any further.
- 13 We note that the Contracting Authority is not bound to proceed with this invitation to tender and that it reserves the right to cancel or award only part of the contract. It will incur no liability towards us should it do so.

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

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

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

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

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

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

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

# VOLUME 1 SECTION 4 - TENDERER'S STATEMENTS

## 1. Statement on Conditions of Employment

**Tenderers are to ensure that self-employed personnel are not engaged on this contract.  
Non-compliance will invalidate the contract.**

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

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

Signature: .....

*(the person or persons authorised to sign on behalf of the tenderer)*

Date: .....

### 3 - Product Literature list

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

| Item | Description                                                            | Reference in Technical Specifications |
|------|------------------------------------------------------------------------|---------------------------------------|
| 1.1  | UPS full specifications document (an English language version)         |                                       |
| 1.2  | UPS battery full specifications document (an English language version) |                                       |
| 1.3  |                                                                        |                                       |
| 1.4  |                                                                        |                                       |
| 1.5  |                                                                        |                                       |
| 1.6  |                                                                        |                                       |
| 1.7  |                                                                        |                                       |
| 1.8  |                                                                        |                                       |
| 1.9  |                                                                        |                                       |

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

Date: .....

# VOLUME 1 SECTION 5 - GLOSSARY

## Definitions

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

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

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

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

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

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

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

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

**Day:** Calendar day.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### *Part II - Rules governing public contracts whose value does not exceed one hundred and twenty thousand euro (€120,000)*

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

- 21(1) Where the estimated value of the public contract exceeds twelve thousand euro (€12,000) and is issued by an authority listed in Schedule 1, any tenderer or candidate concerned shall have a right to make a complaint to the Review Board in accordance with this regulation.
- (2) (a) The contracting authority shall be obliged to issue a notice and affix an advertisement, in a prominent place at its premises, indicating the awarded public contract, the financial aspect of the award and the name of the successful tenderer. The contracting authority shall, by electronic means or by fax, inform the tenderer or candidate concerned of the publication of the award. The contracting authority shall be precluded from concluding the contract during the period allowed for the submission of appeals.  
(b) The award process shall be completely suspended if an appeal is eventually submitted.
- (3) Any tenderer or candidate concerned who is aggrieved by the award indicated by the contract authority may, within five working days from the publication of the notice, file a letter of objection, together with a deposit, with the contracting authority, clearly setting forth any reason for his complaint. The deposit to be paid in respect of tenders valued at less than forty-seven thousand euro (€47,000) shall be four hundred euro (€400), while those between forty-seven thousand euro (€47,000) and one hundred and twenty thousand euro (€120,000) shall be 0.5% of the estimated value of the tender, with a minimum deposit of four hundred euro (€400). The letter by the complaining tenderer shall be affixed on the notice board of the contracting authority and shall be brought to the attention of the recommended tenderer.
- (4) After the expiry of the period allowed for the submission of a complaint, the contracting authority shall deliver the letter of complaint, the deposit receipt and all documents relating to the public contract in question to the Review Board who shall examine the matter in a fair and equitable manner. In its deliberation the Review Board shall have the authority to obtain, in any manner it deems appropriate, any other information not already provided by the contracting authority. The Review Board shall determine the complaint by upholding or rejecting it. The written decision of the Review Board shall be affixed on the notice board of the contracting authority and copies thereof shall be forwarded to the Director of Contracts and all the parties involved.
- (5) (a) Any tenderer or candidate who feels aggrieved by a decision taken by the Review Board may appeal to the Court of Appeal (Superior Jurisdiction) as constituted in accordance with article 41(1) of the Code of Organization and Civil Procedure by means of an application filed in the registry of that court within twenty calendar days from the decision on which that decision has been made public.  
(b) A copy of the appeal application shall be served on the Contracting Authority and on the recommended tenderer, if any, who may file a written reply within twenty days from the date of service.  
(c) The Court of Appeal shall set down the cause for hearing at an early date, in no case later than two months from the date on which the appeal is brought before it and shall cause notice of such date to be given to the parties who, on their part, shall assume the responsibility to visit the court registry and be aware of the latest information regarding the appointment for the hearing of the case.  
(d) After appointing the application for hearing, and after listening to the oral submissions made by all parties, the Court shall decide the application on its merits, within the shortest time possible but not any later than four months from the day when the appeal had been filed and the parties have been duly notified. Pending the decision of the Court, the process of the call for tenders shall be suspended.



- (6) Tender documents issued in terms of this Part shall include a clause informing tenderers that the award of the contract is subject to the right of recourse as provided for in this regulation, a copy of which should be reproduced in the documents.
- (7) The Minister shall have the authority by order to extend the provisions of this regulation in order that recourse as provided in this regulation be made available also by authorities listed in Schedule 3 and to prescribe the procedure by which such recourse is to be granted.

**Form 1 - Power of Attorney (where applicable)**

Please attach here the power of attorney empowering the signatory of the tender and all related documentation.

Signature: .....

*(the person or persons authorised to sign on behalf of the tenderer)*

Date: .....

**Form 2 - Data on Joint Venture/Consortium (Where applicable)**

|   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                        |  |
|---|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|--|
| 1 | Name                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | .....                                                                  |  |
| 2 | Managing Board's Contact Details                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Address: .....<br>.....<br>Telephone: ..... Fax: .....<br>Email: ..... |  |
| 3 | Agency in the state of the Contracting Authority, if any<br><i>(in the case of a Joint Venture/Consortium with a foreign lead partner)</i>                                                                                                                                                                                                                                                                                                                                                    | Address: .....<br>.....<br>Telephone: ..... Fax: .....<br>Email: ..... |  |
| 4 | Names of Partners                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | (i) .....<br>(ii) .....<br>(iii) .....<br>(iv) .....                   |  |
| 5 | Name of Lead Partner                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | .....                                                                  |  |
| 6 | Agreement governing the formation of the Joint Venture/Consortium<br><i>(Enclose Joint Venture/ Consortium Agreement)</i>                                                                                                                                                                                                                                                                                                                                                                     |                                                                        |  |
|   | Place of Signature:                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Date of Signature:                                                     |  |
|   | .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | .....                                                                  |  |
| 7 | Proposed proportion of responsibilities between partners (in %) with indication of the type of the works to be performed by each*<br>* The company acting as the lead partner in a joint venture/consortium, they must have the ability to carry out at least 50% of the contract works by its own means. If a company is another partner in a joint venture/consortium (i.e. not the lead partner) it must have the ability to carry out at least 10% of the contract works by its own means |                                                                        |  |
|   | ..... - .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | ..... - .....                                                          |  |
|   | ..... - .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | ..... - .....                                                          |  |

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

Date: .....

## VOLUME 2

### VOLUME 2 SECTION 1 - DRAFT CONTRACT FORM

This contract is concluded between:

Employment and Training Corporation  
Head Office  
Hal Far BBG 3000  
Malta

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

[Name of Contractor]  
[Address]

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

Whereas the Contracting Authority is desirous that certain supplies should be supplied by the Contractor, viz.:

#### **Tender for the supply and delivery of Three (3) Uninterruptable power suppliers**

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

It is hereby agreed as follows:

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

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

4. In consideration of the payments to be made by the Contracting Authority to the Contractor as hereinafter mentioned, the Contractor undertakes to deliver all supplies, and remedy defects therein in full compliance with the provisions of the contract.
5. The Contracting Authority hereby agrees to pay the Contractor in consideration of the execution and completion of the works and remedying of defects therein the amount of:
  - Contract price (**excluding** VAT but including other taxes): €.....
  - Contract price in words:..... Euro

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

6. The Contractor hereby agrees to submit a performance guarantee amounting to €..... equivalent to 10% of the contract value together with the signed contract.
7. The provisions of this contract are without prejudice to the obligations of the Contracting Authority in terms of the Freedom of Information Act (Cap. 496 of the Laws of Malta). The Contracting Authority, prior to disclosure of any information to a third party in relation to any provisions of this contract which have not yet been made public, shall consult the contractor in accordance with the provisions of the said Act, pertinent subsidiary legislation and the Code of Practice issued pursuant to the Act. Such consultation shall in no way prejudice the obligations of the Contracting Authority in terms of the Act.
8. In witness whereof the parties hereto have signed the contract. This contract shall take effect on the date on which it is signed by the last party.

Done in English in two originals: one for the Contracting Authority and one for the Contractor.

**Contracting Authority:**

**Contractor:**

Signed by:

Signed by:

.....

.....

In the capacity of:

In the capacity of:

.....

.....

Being fully authorized by and acting on behalf of

Being fully authorized by and acting on behalf of

.....

.....

Date: .....

Date: .....

## VOLUME 2 SECTION 2 - GENERAL CONDITIONS

The full set of General Conditions for Supply Contracts (Version 1.05 dated 20 January 2015) can be viewed/downloaded from:

<http://contracts.gov.mt/en/Tenders/Pages/Tenders.aspx>

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.

## VOLUME 2 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: Law Applicable***

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

### ***Article 4: Communications***

As per General Conditions

### ***Article 7: Supply of Documents***

As per General Conditions

### ***Article 8: Assistance with Local Regulations***

As per General Conditions

### ***Article 9: The Contractor's Obligations***

- 9.2 The Contractor shall comply with administrative orders given by the Project Manager. Where the Contractor considers that the requirement of an administrative order goes beyond the scope of the contract, he shall, on pain of breach of contract, notify the Project Manager thereof, giving his reasons, within 30 days of receipt of the order. Execution of the administrative order shall not be suspended because of this notice.
- 9.3 The Contractor shall respect and abide by all laws and regulations in force in the state of the Contracting Authority and shall ensure that his personnel, their dependants, and his local employees also respect and abide by all such laws and regulations.

### ***Article 10: Origin***

- 10.1 As per General Conditions

### ***Article 11: Performance Guarantee***

- 11.1 The Contractor shall, within 15 days of receipt of the contract for signature, furnish the Contracting Authority with a guarantee for the full and proper performance of the contract.
- 11.3 The performance guarantee shall be in the format given in Section 5 and shall be provided in the form of a bank guarantee.

### ***Article 12: Insurance***

- 12.1 As per General Conditions

**Article 15: Tender Prices**

15.1 As per General Conditions

**Article 16: Tax and customs arrangements**

As per General Conditions.

**Article 17: Patents and Licences**

17.1 As per General Conditions

**Article 18: Commencement Order**

In addition to the conditions stipulated in Article 18 of the General Conditions which shall be applied as and where applicable, the following additional conditions shall apply:

18.3 The delivery/commencement of the contract shall be within eight (8) weeks from the date of the signature of the contract by both parties.

**Article 19: Period of Execution of Tasks**

19.1 The period of execution of tasks shall commence on the date fixed in accordance with Article 18 and shall be as stated in the contract, without prejudice to extensions of the period which may be granted under Article 20.

**Article 22: Variations**

22.1 No Variations shall be accepted

**Article 24: Quality of Supplies**

24.2 As per General Conditions

**Article 25: Inspection and Testing**

25.1 The Contractor shall ensure that the supplies are delivered to the place of acceptance in time to allow the Project Manager to proceed with acceptance of the supplies. The Contractor is deemed to have fully appreciated the difficulties which he might encounter in this respect, and he shall not be permitted to advance any grounds for delay.

**Article 26: Methods of Payment**

26.1 Payments will be made in Euro.

Payments shall be authorized by the Contracting Authority, and paid by the Treasury Department.

26.3 There shall be a maximum period of 60 days in which payments are to be effected, failing which the provisions of the Late payments directive will come into effect. The Contractor shall be paid in full when the van is delivered to the Contracting Authority.

26.9 As per General Conditions



### ***Article 28: Delayed Payments***

28.1 As per General Conditions.

### ***Article 29: Delivery***

29.1 The Contractor shall bear all risks relating to the goods until provisional acceptance at destination.

29.5/6 Full specifications and user manuals (an English language version) for all hardware requested.

### ***Article 31: Provisional Acceptance***

31.1 The supplies shall be taken over by the Contracting Authority when they have been delivered in accordance with the contract, have satisfactorily passed the required tests, or have been commissioned as the case may be, and a certificate of provisional acceptance has been issued or is deemed to have been issued.

### ***Article 32: Warranty***

32.1 This warranty shall remain valid for thirty-six (36) months from date of installation.

### ***Article 33: After-Sales Service***

33.1 The contractor shall provide and secure the provision of reliable and regular after-sales and must conform to the following

- Time to Fix response time shall not exceed 24hrs from time of call log, excluding weekends.
- Supply of Parts must remain available for a minimum of fifteen (15) years from the date of purchase.

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

35.3 Without prejudice to the Government's right to dissolve 'ipso jure' the contract in the case of infringement of any condition thereunder and apart from the deduction established for delay in delivery, any such infringement shall render the contractor, in each case, liable to a deduction by way of damages of 5 per cent of the value of the contract, unless the Government elects, with regard to each particular infringement, but not necessarily with regard to all infringements, to claim actual damages incurred.

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

If no settlement is reached within 120 days of the start of the amicable dispute-settlement procedure, each Party may seek:

- a) either a ruling from a national court, or
- b) an arbitration ruling, in the case where the parties by agreement decide to refer the matter to arbitration.

## VOLUME 2 SECTION 4 - SPECIMEN PERFORMANCE GUARANTEE

(LETTERHEAD OF THE REGISTERED FINANCIAL INSTITUTION PROVIDING THE GUARANTEE)

Procurement and Purchasing Unit  
Employment & Training Corporation  
Head Office  
Hal Far, BBG 3000  
Malta

[Date]

Dear Sir,

Our Guarantee Number ..... for €.....

Account: [Account Holder's Name]

In connection with the contract entered into between yourself on behalf of the Director of Contracts and [Name and Address of Contractor] hereinafter referred to as "the Contractor" as per the latter's tender and your acceptance under ETC/IT/T/11/15 whereby the contractor undertook the supply and delivery of three (3) Uninterruptable Power Supplies in accordance with Article 11 of the Special Conditions the supplies as mentioned, enumerated or referred to in the Specification and/or Bills of Quantities forming part of the contract documents, we hereby guarantee to pay you on demand a maximum sum of €[amount in words and numbers] in case the obligations of the above-mentioned contract are not duly performed by the Contractor.

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

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

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

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

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

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

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

Yours Faithfully,

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

## VOLUME 3 - TECHNICAL SPECIFICATIONS

*Part 1 - To be specified by the Contracting Authority in the tender document*

**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.

| Minimum Required Specifications<br>(excluding those that state maximum)  |                                                                                                                    | Compliance with<br>Minimum<br>Required<br>Specifications<br><br><u>Write YES or NO</u> | Technical<br>Documentation<br><br><u>Indicate Page<br/>No on supplied<br/>manufacturer's<br/>documentation</u> |
|--------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|
| <b>Power Rating</b>                                                      | 10000VA (9KW)                                                                                                      |                                                                                        |                                                                                                                |
| <b>Input Frequency</b>                                                   | auto selection (50 or 60Hz)                                                                                        |                                                                                        |                                                                                                                |
| <b>Load Power Factor</b>                                                 | 0.9                                                                                                                |                                                                                        |                                                                                                                |
| <b>Input phase</b>                                                       | Single phase true on line                                                                                          |                                                                                        |                                                                                                                |
| <b>Input Voltage Range<br/>without transfer to<br/>battery operation</b> | 180 - 280VAC                                                                                                       |                                                                                        |                                                                                                                |
| <b>Input protection</b>                                                  | Required                                                                                                           |                                                                                        |                                                                                                                |
| <b>Overload protection</b>                                               | 105% to 130% 1 Minute<br>131% to 150% 10 seconds<br>151% to 200% 1 second<br>>200% (impact load) At least 5 cycles |                                                                                        |                                                                                                                |
| <b>Output</b>                                                            | 240VAC - Must have multiple output<br>options (minimum of 3 output<br>connectors)                                  |                                                                                        |                                                                                                                |
| <b>Power Input / Output<br/>connectors</b>                               | Must interface with 3 pole plug sockets<br>typ 123 (Rating 32A)                                                    |                                                                                        |                                                                                                                |
| <b>Network<br/>Communication</b>                                         | Must support the latest SNMP protocols,                                                                            |                                                                                        |                                                                                                                |
| <b>Management/Web<br/>interface card</b>                                 | Must offer Telnet capability.                                                                                      |                                                                                        |                                                                                                                |
|                                                                          | Must provide alarm notifications via<br>email and text messaging.                                                  |                                                                                        |                                                                                                                |
|                                                                          | Must Monitor UPS parameters via web<br>browser.                                                                    |                                                                                        |                                                                                                                |
|                                                                          | Must offer a minimum of 20 SNMP Trap<br>targets.                                                                   |                                                                                        |                                                                                                                |
|                                                                          | Must interface to an existing network.                                                                             |                                                                                        |                                                                                                                |
|                                                                          | Require no additional software<br>installation for basic monitoring.                                               |                                                                                        |                                                                                                                |
|                                                                          | Provide notification in the absence of a<br>comprehensive monitoring system.                                       |                                                                                        |                                                                                                                |
|                                                                          | Provide a single point of<br>information/control.                                                                  |                                                                                        |                                                                                                                |
|                                                                          | Support Modbus.                                                                                                    |                                                                                        |                                                                                                                |
| <b>Power Alert /</b>                                                     | Required (Mandatory to be compatible                                                                               |                                                                                        |                                                                                                                |

|                                                                    |                                                                                                                                                                                                      |  |  |
|--------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|
| Equipment Shutdown mechanism                                       | with Windows & LINUX Red Hat 32 and 64bit Operating Systems).                                                                                                                                        |  |  |
| Alarms and beep indicators                                         | Required                                                                                                                                                                                             |  |  |
| Software                                                           | Required for alerting and shutdown of servers equipment.                                                                                                                                             |  |  |
| Noise                                                              | <60dBA (1 metre from rear), <55dBA (1 metre from front and sides)                                                                                                                                    |  |  |
| External battery cabinet (240V)                                    | 1 cabinet per UPS                                                                                                                                                                                    |  |  |
| Battery Backup (with internal battery only)                        | Minimum of 3 minutes at 100% load, minimum of 15 minutes at 40% load.                                                                                                                                |  |  |
| Battery Backup (with internal battery and 1 external battery only) | Minimum of 10 minutes at 100% load, minimum of 40 minutes at 40% load                                                                                                                                |  |  |
| Hot Swappable Batteries                                            | Required                                                                                                                                                                                             |  |  |
| Recharge Time                                                      | Maximum of 4 hours to 90% capacity after full discharge with 100% load                                                                                                                               |  |  |
| Parallelable                                                       | Minimum up to 3 UPSs                                                                                                                                                                                 |  |  |
| QTY                                                                | 3 UPSs, 3 External batteries                                                                                                                                                                         |  |  |
| Environment                                                        | <ul style="list-style-type: none"> <li>• Operating Environment 0 to 40 °C</li> <li>• Operating Relative Humidity 0 to 85%</li> <li>• Operating Elevation 0 to 50 meters</li> </ul>                   |  |  |
| Mountability                                                       | <p>All hardware items (UPSs + External batteries) must be rack mountable. Rack unit on castors to be supplied.</p> <p><b>Note:</b> All hardware must pass through a door having a width of 70cm.</p> |  |  |
| State delivery lead time from date of order                        |                                                                                                                                                                                                      |  |  |

## Notes to Bidders:

### 1. Literature

Bidders must submit the relevant literature and a description of the equipment and its components, indicating clearly which models and accessories are being offered.

**All relevant literature must be supplied in the English Language.**

### 2. Warranty

The warranty must remain valid for a minimum of thirty six (36) months, from date of delivery. The Warranty shall cover all parts and labour (including internal and external batteries). During this period the maximum repair service response time must not exceed 24hrs.

### 3. Spare Parts

Bidders must guarantee the availability of Spare Parts for a minimum of fifteen (15) years from the date of purchase of the equipment.

**4. Installation**

Installation must include all the necessary accessories and required cabling. Bidders are also to note that installation will be carried outside the Contracting Authority’s working hours.

I \_\_\_\_\_ the undersigned, confirm that the items offered satisfy the technical specifications listed above.

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

Date: .....

## VOLUME 4 - FINANCIAL BID

**N.B - Three decimal points do not exist as currency; therefore such offers cannot be accepted. Offers are to be submitted up to two decimal points.**

The Total Price, Exclusive of VAT but inclusive of Taxes/Charges, other Duties & Discounts (Delivered Duty Paid - DDP) **MUST** be carried forward to the Tender Form.

### Breakdown of Costs

**Tender Title:       Tender for the Supply of Three (3) Uninterruptable Power Supplies**  
**Tender Number:   ETC/IT/T/11/15**

| A    | B                              | C        | D                                                                                              | E                                                                                              |
|------|--------------------------------|----------|------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|
| Item | Description                    | Quantity | Unit Cost                                                                                      | Total Price                                                                                    |
|      |                                |          | Excluding VAT but including Taxes/Charges, Other Duties & Discounts (Delivered Duty Paid- DDP) | Excluding VAT but including Taxes/Charges, Other Duties & Discounts (Delivered Duty Paid- DDP) |
|      |                                |          | €                                                                                              | (C X D)<br>€                                                                                   |
| 1    | Uninterruptable Power Supplies | 3        |                                                                                                |                                                                                                |

N.B.: The Evaluation will be on the Total price for Item 1 above. The prices below in respect of Items 2 - Maintenance Agreement are optional and thus are being requested for information purposes only.

Signature: .....

*(the person or persons authorised to sign on behalf of the tenderer)*

Date: .....

Financial Offer Cont...

The prices below are being requested for information purposes only.

| A    | B                     | C         | D                                                                                             | E                                                                                             |
|------|-----------------------|-----------|-----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| Item | Description           | Duration  | Price per year                                                                                | Total Price                                                                                   |
|      |                       |           | Excluding VAT but including Taxes/Charges, Other Duties & Discounts (Delivered Duty Paid-DDP) | Excluding VAT but including Taxes/Charges, Other Duties & Discounts (Delivered Duty Paid-DDP) |
|      |                       |           | €                                                                                             | (C X D)<br>€                                                                                  |
| 2    | Maintenance Agreement | 36 months |                                                                                               |                                                                                               |

N.B.: The price must include bi-annual preventive maintenance including component failure tests simulation.

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

Date: .....