

MRA REF: MRA/ WAT/ 9/10

**STRATEGIC ENVIRONMENTAL ASSESSMENT (SEA) OF A PROPOSAL
FOR A WATER POLICY FOR MALTA**

Cost of the Tender Document

- Nil -

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Note:

No bid bond is being requested for this tender.

STRATEGIC ENVIRONMENTAL ASSESSMENT (SEA) OF A PROPOSAL FOR A WATER POLICY FOR MALTA

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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 Malta Resources 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 Malta Resources Authority shall, request rectifications in respect of incomplete/non-submitted information pertinent to the documentation as outlined in sub-Clause 16.1(b), and 16.1(c) of these Instructions to Tenderers. Such rectification/s must be submitted within two (2) working days from notification, and will be subject to a non-refundable administrative penalty of €50: failure to comply shall result in the tender offer not being considered any further.

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

- 1.2 This is a call for tenders for a Strategic Environmental Assessment of a Proposal for a Water Policy at Malta.
- 1.3 This is a global-price contract.
- 1.4 The tenderer will bear all costs associated with the preparation and submission of the tender. The Malta Resources Authority will in no case be responsible or liable for such costs, whatever the conduct or outcome of the procedure.
- 1.5 The Malta Resources Authority retains ownership of all tenders received under this tender procedure. Consequently, tenderers have no right to have their tenders returned to them.

2. Timetable

	DATE	TIME*
Clarification Meeting/Site Visit (Refer to Clause 8.2)	Not applicable	
Deadline for request for any additional information from the Contracting Authority	8 th April 2010	
Last date on which additional information are issued by the Contracting Authority	21 st April 2010	
Deadline for submission of tenders / Tender Opening Session (unless otherwise modified in terms of Clause 11.3)	29 th April 2010	10:00am

* All times Central European Time (CET)

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 lots.

4. Financing

- 4.1 The project is financed from local budget funds.
- 4.2 The beneficiary of the financing is the Malta Resources Authority.

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 75 of LN177/2005.
- 5.2 Natural persons, companies or undertakings who fall under any of the conditions set out in Regulation 49 of the Public Contracts Regulations, 2005 (Legal Notice 177 of 2005) 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:
- The tender must include all the information required by **Form 4.3** of Volume 1, Section 4 for each partner of the joint venture/consortium.
 - 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. This shall take the form of the 'Power of Attorney' form as per **Form 4.2** of Volume 1, Section 4.
 - 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 Evidence of financial and economic standing, and financial projections for the two years ahead, verified by an independent certified auditor, provided by using **Form 4.6** of Volume 1, Section 4.

(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 example, by producing an undertaking by those entities to that effect. Under the same conditions, a group of economic operators as referred to in regulation 31 of the Public Contracts Regulations may rely on the capabilities of participants in the group or of other entities)

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)

The technical capability must be compliant to the requirements specified below, both for the 'Consultant' as a whole and also more specifically for the experts that are being proposed. Proposals that do not provide the evidence and proof that their consultants satisfy these requirements shall not be considered further as they shall be deemed to be non-compliant.

The profiles, positions and responsibilities of the key experts required for this contract are as follows:

Key Expert 1: SEA Lead Expert (Team Leader)

The Tenderer is to nominate a Team Leader to coordinate the tasks specified in these TORs. The Team Leader should have adequate seniority and project management capability and demonstrable experience of managing similar assignments.

The SEA lead expert shall have the following professional qualifications, skills and experience:

Professional Qualifications and skills

- (i) higher university (postgraduate) degree in the environmental field, preferably environment protection, strategic environmental assessment or other related field;
- (ii) familiar with the requirements of national and EU directives and regulations in the field of environment and EU environmental policy;
- (iii) computer literacy (MS office and MS Project);
- (iv) good analytical, communication and writing skills
- (v) fluency in English (written and spoken)

General Professional Experience

- (i) at least 10 years of general professional experience;
- (ii) responsibility for managing at least 2 Environmental Impact Assessments or Strategic Environmental Assessments. (References to be included.)

Specific Professional Experience

- (i) at least 5 years experience in the preparation and co-ordination of Environmental Impact Assessments and /or Strategic Environmental Assessments; (References to be included.)
- (ii) at least 10 years experience in project management and similar assignments.

Key Expert 2: Expert on the Water Sector

The Tenderer is to nominate a key expert on the water sector. This Expert should have adequate seniority and demonstrable experience of managing projects relevant to the water sector.

This key expert shall have the following professional qualifications, skills and experience:

Professional Qualifications and skills

- (i) relevant university degree in engineering, hydrology or water resource management;
- (ii) be familiar with the requirements of national and EU directives and regulations in the water sector and EU water policy;
- (iii) computer literacy (MS office and MS Project);
- (iv) good analytical, communication and writing skills;
- (v) fluency in English (written and spoken)

General Professional Experience

- (i) at least 10 years general professional experience;
- (ii) management responsibility or signification participation in at least 2 projects (each project having with a total project cost of more than €100,000) and which were related to the water sector. (References to be included.)

Specific Professional Experience

- (i) at least 5 years experience in the water sector (water resource regulation, water resource management, water policy or water engineering). (References to be included.)
- (ii) at least 2 years experience in institutional development.

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

- (a) A list of the key experts and other staff (**Form 4.9** of Volume 1, Section 4) proposed for the execution of the contract. The Evaluation Committee reserves the right to request the tenderers to substantiate their claims in respect to the staff proposed by requesting CVs of key staff and signed Declarations of Exclusivity and Availability during the evaluation stage.
- (c) Evidence of relevant experience in carrying out services of a similar nature (**Form 4.8** of Volume 1, Section 4) including the nature and value, as well as contracts in hand and contractually committed.

In so listing the end clients, the tenderer is giving his consent to the Evaluation Committee, so that the latter may, if it deems necessary, contact the relevant clients, with a view to obtain from them an opinion on the works provided to them, by the tenderer.
- (d) Data concerning sub-contractors and the percentage of services to be sub-contracted (**Form 4.4** of Volume 1, Section 4).

7. Only One Tender Per Tenderer

- 7.1 Submission or participation by a tenderer in more than one tender for a contract will result in the disqualification of all those tenders for that contract in which the party is involved.

- 7.2 A company may not tender for a given contract both individually and as a partner in a joint venture/consortium.
- 7.3 A company may not tender for a given contract both individually/partner in a joint venture/consortium, and at the same time be nominated as a sub-contractor by any other tenderer, or joint venture/consortium.
- 7.4 A company may act as a sub-contractor 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 Malta Resources 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. Site Inspection

- 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"> • Special Conditions • General Conditions
Volume 3	Technical Specifications (Terms of Reference)
Volume 4	Model Financial Bid

- 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 up to 16 calendar days before the deadline for submission of tenders. The Malta Resources Authority must reply to all tenderers' questions, and amend the tender documents by publishing clarification notes, up to at least 6 calendar days before the deadline for submission of tenders.

- 11.2 Questions and answers, and alterations to the tender document will be published as a clarification note on the website of the Malta Resources Authority (<http://www.mra.org.mt/tenders.shtml>). 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 Malta Resources 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 Malta Resources 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 Malta Resources Authority, for verification purposes only should the need arise.
 - (c) All tenders must be received by date and time indicated in the timetable at Clause 2 and deposited in the tender box at the Malta Resources Authority, Millennia, Aldo Moro Road, Marsa, MRS 9065, Malta.
 - (d) All tenders, as per (b) above, must bear only:
 - (i) the above address;
 - (ii) the reference of the invitation to tender concerned;
 - (iii) if applicable, the number of the lot(s) to which the tender refers;
 - (iv) the name of the tenderer.

16. Content of Tender (Single-Envelope System)

- 16.1 The tender must comprise the following duly completed documents, inserted in a single, sealed envelope (unless their volume requires a separate submission):
- (a) Not applicable

(b) *General/Administrative Information*^(Note 2)

- (i) Tenderer's Contact Details (Form 4.1 of Volume 1, Section 4)
- (ii) Power of Attorney (Form 4.2 of Volume 1, Section 4)
- (iii) Data on Joint Venture/Consortium (Form 4.3 of Volume 1, Section 4)
- (iv) Statement on Conditions of Employment (Form 4.5 of Volume 1, Section 4)
- (v) Overview of tenderer's personnel (Form 4.7 of Volume 1, Section 4)

Selection Criteria

(c) *Financial and Economic Standing*^(Note 2)

- (i) Financial Statement (Form 4.6 of Volume 1, Section 4)

(d) *Technical Capacity*^(Note 3)

- (i) Experience as Contractor (Form 4.8 of Volume 1, Section 4)
- (ii) Personnel (Key Experts) to be employed on contract (Form 4.9 of Volume 1, Section 4)
- (iii) Sub-Contracting (Form 4.4 of Volume 1, Section 4)

(e) *Evaluation Criteria/Technical Specifications*^(Note 3)

- (i) Tenderer's Technical Offer in response to specifications/Terms of Reference (Volume 3)
 - Organization & Methodology
 - Rationale
 - Strategy
 - Timetable of Activities
- (ii) List of Literature (Form 4. of Volume 1, Section 4)

(f) *Financial Offer/Bill of Quantities*^(Note 3)

- (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 in the form provided in Volume 4.

Notes to Clause 16.1:

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

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

Tenderers are to 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 The tender price must cover the whole of the works as described in the tender documents.

- 17.2 The tenderer must provide a breakdown of the overall price in Euro (€).
- 17.3 Tenderers must quote all components of the price inclusive of taxes, customs and import duties, and any discounts. Except as may otherwise be provided for in the contract, no payment will be made for items which have not been costed.
- 17.4 Different options are to be clearly identifiable in the technical and financial submission; a **separate Tender Form (as per Volume 1, Section 2) marked 'Option 1', 'Option 2' etc. for each individual option clearly outlining the price of the relative option is to be submitted.**
- 17.5 If the tenderer offers a discount, the discount must be absorbed in the rates of the Bill of Quantities/Financial Statement.
- 17.7 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, unless otherwise provided for in the Special Conditions.

18. Currencies of Tender and Payments

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

19. Period of Validity of Tenders

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

20. Tender Guarantee (Bid Bond)

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

21. Variant Solutions

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

22. Preparation and Signing of Tenders

- 22.1 All tenders must be submitted in one original, clearly marked "original", and one identical copy (including all documentation as in the original) signed in the same way as the original

and clearly marked “copy”. Tenders must comprise the documents specified in Clause 16 above.

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

- 22.2 The tenderer’s submission must be typed in, or handwritten in indelible ink and signed by a person or persons empowered by the power of attorney submitted in accordance with Form 4.2 of Volume 1, Section 4 of the tender document. Any pages on which entries or corrections to his submission have been made must be initialled by the person or persons signing the tender. All pages must be numbered consecutively by hand, machine or in any other way acceptable to the Malta Resources Authority.
- 22.3 The tender must contain no changes or alterations, other than those made in accordance with instructions issued by the Malta Resources 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 Malta Resources Authority.

D. SUBMISSION OF TENDERS

23. Sealing and Marking of Tenders

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

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

Malta Resources Authority,
Millennia,
Aldo Moro Road
Marsa MRS 9065
Malta.

Tenders submitted by any other means will not be considered.

- 23.2 Tenderers must seal the original and the copy of their tender as outlined in Clause 15.
- 23.3 If the outer envelope is not sealed and marked as required in Sub clause 14.1.3, the Malta Resources 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 Malta Resources 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 Malta Resources 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 Malta Resources 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 above deadline. 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 Malta Resources Authority, Millennia, Aldo Moro Road, Marsa, MRS 9065, Malta by a Contracts Committee appointed by the Authority for such purposes. They will draw up a 'Summary of Tenders Received' which will be published on the notice board at the Malta Resources Authority.
- 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 Malta Resources 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/Malta Resources 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 Malta Resources Authority may, 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 Malta Resources Authority shall, request rectifications in respect of incomplete/non-submitted information pertinent to the documentation as outlined in sub-Clause 16.1(b) and 16.1(c) of these Instructions to Tenderers. Such rectification/s must be submitted within two (2) working days from notification, and will be subject to a non-refundable administrative penalty of €50: failure to comply shall result in the tender offer not being considered any further. No rectification shall be allowed in respect of the documentation as outlined in sub-Clause 16.1(d), 16.1(e), and 16.1(f) of these Instructions to Tenderers. Only clarifications on the submitted information in respect of the latter may be eventually requested.

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

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

(i) Eligibility Criteria

- Tender Form (Volume 1, Section 2)

(ii) Selection Criteria

- Evidence of financial and economic standing (sub-Clause 6.1.1)
- Evidence of technical capacity (sub-Clause 6.1.2)

30.4 **Part 3: Technical Compliance**

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

Tenders who are deemed to be provisionally technically compliant through the evaluation of their technical offer (especially the specifications) shall be requested to submit samples (as per Form 4. of Volume 1 Section 4) and/or CVs and Declarations of Exclusivity and Availability (as per Form 4.9 of Volume 1 Section 4) so that the Evaluation Committee will corroborate the technical compliance of the offers received.

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.

31. Correction of Arithmetical Errors

31.1 Admissible tenders will be checked for arithmetical errors by the Evaluation Committee. Errors will be corrected as follows:

- (a) where there is a discrepancy between amounts in figures and in words, the amount in words will prevail;
- (b) where there is a discrepancy between a unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will prevail.

31.2 The amount stated in the tender will be adjusted by the Evaluation Committee in the event of error, and the tenderer will be bound by that adjusted amount. In this regard, the Evaluation Committee shall seek the prior approval of the General Contracts Committee to communicate the revised price to the tenderer. If the tenderer does not accept the adjustment, his tender will be rejected and his tender guarantee forfeited.

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

F. CONTRACT AWARD

32. Criteria for Award

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

33. Right of the Malta Resources Authority to accept or reject any Tender

- 33.1 The Malta Resources Authority reserves the right to accept or reject any tender and/or to cancel the whole tender procedure and reject all tenders. The Malta Resources 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 Malta Resources 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.

In no circumstances will the Malta Resources 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 Malta Resources Authority has been advised of the possibility of damages. The publication of a contract notice does not commit the Malta Resources 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 Malta Resources Authority will notify the successful tenderer, in writing, that his tender has been recommended for award, pending any appeal being lodged in terms of the Public Contracts Regulations.
- 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 Malta Resources Authority shall be published online on the Authority's website.

35. Contract Signing and Performance Guarantee

- 35.1 After the lapse of the appeals period, and pending that no objections have been received and/or upheld, the successful tenderer may be invited to clarify certain contractual questions raised therein. Such clarification will be confined to issues that had no direct bearing on the choice of the successful tender. The outcome of any such clarifications will be set out in a

Memorandum of Understanding, to be signed by both parties and incorporated into the contract.

- 35.2 Within 15 calendar days of receiving the contract (against acknowledgment of receipt) from the Malta Resources Authority, the successful tenderer will sign and date the contract and return it to the Malta Resources Authority with the performance guarantee and the Financial Identification Form (if applicable). On signing of the contract by the Malta Resources Authority, the successful tenderer will become the Contractor and the contract will enter into force.
- 35.3 Before the Contracting Authority signs the contract with the successful tenderer, the successful tenderer may be requested to provide the documentary proof or statements required to show that it does not fall into any of the exclusion situations listed in Clause 7 of the Tender Form (Volume 1, Section 2). The above mentioned documents must be submitted by every member of a Joint Venture/Consortium (if applicable).
- 35.4 If the selected tenderer fails to sign and return the contract, other required documentation, and any guarantees required within the prescribed 15 calendar days, the Malta Resources Authority may consider the acceptance of the tender to be cancelled without prejudice to the Malta Resources 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 Malta Resources Authority.

The tenderer whose tender has been evaluated as [second cheapest/second most economically advantageous] 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 Malta Resources Authority, and activities may not begin until the contract has been signed by the Malta Resources Authority and the successful tenderer.
- 35.6 Tender guarantees (bid bonds) provided by tenderers who have not been selected shall be released within 30 calendar days from the signing of the contract. The tender guarantee of the successful tenderer shall be released on the signing of the contract, and on submission of a valid performance guarantee.
- 35.7 The performance guarantee referred to in the General Conditions is set at 10% of the amount of the contract and must be presented in the form specified in Volume 2, Section 4, to the tender document the performance guarantee shall be released within 30 days of the signing of the Final Statement of Account (Final Bill), unless the Special Conditions provide otherwise.

36. Commencement of Services

- 36.1 Following the signing of the contract by both parties, the Project Manager will issue a written notice of commencement of the services in accordance with the General Conditions, as specified by the Special Conditions.
- 36.2 The Contractor must inform the Malta Resources 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 Malta Resources 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 Malta Resources 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 sub-contracting 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 Malta Resources 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 Malta Resources Authority/Contracting Authority without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in conformity with National and/or Community law.
- 38.2 The provisions of this contract are without prejudice to the obligations of the Malta Resources Authority in terms of the Freedom of Information Act (Cap. 496 of the Laws of Malta). The Malta Resources Authority, prior to disclosure of any information to a third party in relations to any provisions of this contract which have not yet been made public, shall consult the contractor in accordance with the provisions of the said Act, pertinent subsidiary legislation and the Code of Practice issued pursuant to the Act. Such consultation shall in no way prejudice the obligations of the Malta Resources 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)

Place and Date:

Publication reference:

Malta Resources Authority
 Millennia
 Aldo Moro Road
 Marsa MRS 9065
 Malta

Strategic Environmental Assessment (SEA) of a Proposal for a Water Policy in Malta

MRA/WAT/9/10

A TENDER SUBMITTED BY

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

* add/delete additional lines for partners as appropriate. Note that a 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)

B CONTACT PERSON (for this tender)

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

C TENDERER'S DECLARATION(S)

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

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

- 1 We have examined, and accept in full and in its entirety, the content of this tender document (including subsequent Clarifications Notes issued by the Malta Resources Authority) for invitation to tender No [MRA/WAT/9/10] of [...../...../.....]. We hereby accept the contents thereto in their entirety, without reservation or restriction. We also understand that any disagreement, contradiction, alteration or deviation shall lead to our tender offer not being considered any further.
- 2 We offer to provide, in accordance with the terms of the tender document and the conditions and time limits laid down, without reserve or restriction, the following services:

Strategic Environmental Assessment (SEA) of a Proposal for A Water Policy for Malta
- 3 The price of our tender (inclusive of duties, VAT, other taxes and any discounts) is:

[.....]
- 4 This tender is valid for a period of 150 days from the final date for submission of tenders.
- 5 If our tender is accepted, we undertake to provide a performance guarantee of 10% of the contract value as required by the General Conditions.
- 6 We are making this application in our own right and [as partner in the consortium led by < name of the leader / ourselves >] for this tender. 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 Malta Resources 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:

- (b) **General Information** ^(Note 2)
- Contact Details
 - Data on Joint Venture/Consortium
 - Power of Attorney
 - Statement on Conditions of Employment
 - Overview of tenderer's personnel

Selection Criteria ^(Note 2)

- (c) **Financial and Economic Standing** ^(Note 2)
- Financial Statement

- (d) **Technical Capacity** ^(Note 3)

- Experience as Contractor
- Key Experts/Personnel to be employed on contract
- Sub-Contracting

- (e) **Evaluation Criteria/Technical Specifications** ^(Note 3)

- Tenderer's Technical Offer
 - Organization & Methodology
 - Rationale
 - Strategy
 - Timetable of Activities

- (f) **Tender Form, and Financial Offer/Bill of Quantities** ^(Note 3)

Notes:

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

- 12 I acknowledge that the Malta Resources Authority shall request rectifications in respect of incomplete/non-submitted information pertinent to the documentation listed in Clause 11(a), 11(b), and 11(c) of this Tender Form. We understand that such rectification/s must be submitted within two (2) working days, and will be subject to a non-refundable administrative penalty of €50, and that failure to comply shall result in our offer not being considered any further.
- 13 We note that the Malta Resources 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 3 - TENDER GUARANTEE FORM

[On the headed notepaper of the financial institutions providing the guarantee]

Whereas the Chief Executive Officer, Malta Resources Authority, has invited tenders for
and whereas Messrs [Name of tenderer]
(hereinafter referred to as the Tenderer) is submitting such a tender in accordance with such invitation, we
..... [Name of Bank], hereby guarantee to pay you on your first demand in
writing a maximum sum of Euro (€.....) in case the
Tenderer withdraws his tender before the expiry date or in the case the Tenderer fails to provide the
Performance Bond, if called upon to do so in accordance with the Conditions of Contract.

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

This guarantee is valid for a period of one hundred and fifty (150) days from the closing date of submission of
tenders, and expires on the 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 at this office in writing
not later than the above-mentioned expiry date.

This document should be returned to us for cancellation or utilisation 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 for cancellation or not, and our liability hereunder
shall terminate.

Yours faithfully,

.....
Bank Manager

.....
Date

VOLUME 1 SECTION 4 - QUESTIONNAIRE

Notes to Tenders

1. All questions contained in the forms must be answered by the tenderer.
2. Additional sheets may be attached as necessary.
3. If a question does not apply to the tenderer, "not applicable" should be entered alongside with a brief explanation of why.
4. Every single page of each form must be numbered consecutively in the bottom right-hand corner.
5. Financial data and declarations presented by the tenderer must be given in Euro. Original bank statements may be also attached for reference.
6. Attached documentation/certificates must always be accompanied by a relevant translation in the language of the procedure.
7. Each partner in a joint venture/consortium must fill in and submit every form.
8. The person signing this questionnaire guarantees the truthfulness and accuracy of all the statements made.
9. The accuracy of the answers to the questionnaire, their completeness and the attached documentation will be taken into account in the tender evaluation. Please refer to Clause 1.1 of the Instructions to Tenderers.

Form 4.1 -Tenderer's Contact Details

Name of Tenderer/Joint Venture/Consortium	..........
Address	..........
Manufacturer	.....
Country of Origin	.....
VAT Registration Number (if applicable)	.....
Name of Contact Person	.....
I.D. / Passport Number	.....
Signature	.....
Date	.....

Form 4.2 - Power of Attorney

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 4.3 - Data on Joint Venture/Consortium (Where applicable)

4.4.1	Name	.....
4.4.2	Managing Board's Contact Details	Address: Telephone: Fax: Email:	
4.4.3	Agency in the state of the Contracting Authority, if any <i>(in the case of a Joint Venture/Consortium with a foreign lead partner)</i>	Address: Telephone: Fax: Email:	
4.4.4	Names of Partners	(i) (ii) (iii) (iv)	
4.4.5	Name of Lead Partner	.....
4.4.6	Agreement governing the formation of the Joint Venture/Consortium <i>(Enclose Joint Venture/ Consortium Agreement)</i>		
	Place of Signature:	Date of Signature:	
	
4.4.7	Proposed proportion of responsibilities between partners (in %) with indication of the type of the works to be performed by each* * 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:

Form 4.4 - Sub-Contracting

If the tenderer plans to sub-contract part of the works, he must provide the following details:

Service/s intended to be sub-contracted	Name and details of sub-contractors	Value of sub-contracting as percentage of the total cost	Experience in similar services (details to be specified)

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

Date:

Form 4.5 - Statement on Conditions of Employment

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

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

Signature:

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

Date:

Form 4.6 - Financial Statement

Please provide all of the information required by this form in Euro.

4.7.1 Basic capital

Narrative	€
Amount	
Currency	
Authorised	
Issued	

4.7.2 Annual value of construction work undertaken for each of the last three years, and projected for the next two years

Euro	Year -3 €	Year -2 €	Last year €	Current year €	Year +1 €	Year +2 €
At home						
Abroad						
Total						

4.7.3 Approximate value of works in hand (at home and abroad)

€

(..... Euro)

4.7.4 Name and address of banks (principal/others):

.....

4.7.5 Fill in the following table, extracting data from the Statements of Account and projections:

Euro	Year - 2	Year - 1	Last year	Current year	Year + 1	Year + 2
	€	€	€	€	€	€
1. Total Assets						
2. Total Liabilities						
Net Value (1-2)						
3. Liquid Assets						
4. Short-term Debts						
Working Capital (3-4)						
5. Pre-tax Profits						
6. Losses						
7. Turnover						
8. Access to Credit Facilities						

NOTE: The Evaluation Committee reserves the right to verify the information herein contained, in any way, whether directly or indirectly, including but not limited to requesting the bidders to furnish a full set of audited accounts (translated into the language of the tender procedure).

Signature:

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

Date:

I hereby declare that the information declared in this Financial Statement is correct.	
Name:	..... <i>(Independent Certified Auditor)</i>
Signature:	.....
Date:	.....

Form 4.7 - Overview of Tenderer's Personnel

	Description	Number
A	<i>Managerial</i>	
	<ul style="list-style-type: none"> • Director/s and Management 	
B	<i>Administrative</i>	
	<ul style="list-style-type: none"> • Administrative Staff 	
C	<i>Key Experts</i>	
	<ul style="list-style-type: none"> • Project Manager - SEA expert 	
	<ul style="list-style-type: none"> • Expert - Water 	
D	<i>Other Experts</i>	
	<ul style="list-style-type: none"> • Researchers / Professional staff • (please state area of expertise for each expert nominated) 	
	TOTAL	

Signature:

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

Date:

Form 4.8 - Experience as Contractor

List of contracts of similar nature and extent performed:

Description of Services	Total Value of Services	Period of Execution	Client*/ Contracting Authority*

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

Date:

Form 4.9 - Key Experts

The Evaluation Committee reserves the right to request the tenderers to substantiate their claims in respect to the staff proposed by requesting CVs of Key Experts during the evaluation stage. Key Experts shall also be requested to submit a filled-in Statement of Exclusivity and Availability (specimen as per Form 4.9.1) during the evaluation stage.

Name of Expert	Proposed Position	Nationality	Age	Educational Background	Specialist Area of Knowledge	Years of Experience	Languages and Degree of Fluency (VG; G; W)

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

Date:

Form 4.9.1 - Statement on Exclusivity and Availability

TO BE COMPLETED BY EACH INDIVIDUAL KEY EXPERT IF REQUIRED

PUBLICATION REF: _____

I, the undersigned, hereby declare that I agree to participate exclusively with the tenderer
 [name of *tenderer*]

in the above-mentioned service tender procedure. I further declare that I am able and willing to work for the period(s) foreseen for the position for which my CV has been included in the event that this tender is successful, namely:

From	To
..... < start of period 1 >	..... < end of period 1 >
..... < start of period 2 >	..... < end of period 2 >
< etc >	< etc >

I confirm that I am not engaged in another project in a position for which my services are required during the above periods.

By making this declaration, I understand that I am not allowed to present myself as a candidate to any other tenderer submitting a tender to this tender procedure. I am fully aware that if I do so, I will be excluded from this tender procedure, the tenders may be rejected, and I may also be subject to exclusion from other tender procedures and contracts.

Furthermore, should this tender be successful, I am fully aware that if I am not available at the expected start date of my services for reasons other than ill-health or *force majeure*, I may be subject to exclusion from other tender procedures and contracts and that the notification of award of contract to the tenderer may be rendered null and void.

Name of Key Expert:

Signature:

Date:

Form 4.10 - Literature

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

Item	Description	Reference in Technical Specifications
1.1		
1.2		
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:

Form 4.11 - Further Information

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

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 written or oral instruction or order issued by the Project Manager to the Contractor regarding the execution of the services.

Beneficiary Country: The Maltese Islands.

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

Budget Breakdown: In a fee-based contract, the schedule which breaks down the contract value, stating out the fee rates and the provision for incidental expenses.

Cash Flow Forecast: The Contractor's estimate of the cash flows arising directly from the execution of a fee-based contract.

Central Government Authority: means the Department of Contracts.

Commission: The European Commission.

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 sub-contractors and employees of the candidate, tenderer or supplier.

Contract: The signed agreement entered into by the parties for the performance of the services, including all attachments thereto and all documents incorporated therein.

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

Contracting Authority: means the final beneficiary of the contract.

Contractor: The party which contracts to perform the services.

Day: Calendar day.

Drawings: Drawings provided by the Contracting Authority, and/or drawings provided by the Contractor and approved by the Project Manager, for the carrying out of the services.

EC: The European Community.

EU: The European Union.

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

Fee-Based Contract: A contract under which the services are provided on the basis of fixed fee rates for each day/hour worked by experts/service provider.

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.

Global Price Contract: A contract under which the services are performed for an all-inclusive fixed price.

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 Project Manager which modifies the works.

Month: Calendar month.

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: The project in relation to which the services are to be provided under the contract.

Project Manager: The natural or legal person responsible for monitoring the implementation of the contract on behalf of the Contracting Authority.

Public Service: Government Ministries and Departments.

Services: Activities to be performed by the Contractor under the contract such as technical assistance, studies, training and designs.

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.

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.

Terms of Reference: The document in Volume 3, Section 1, drawn up by the Contracting Authority giving the definition of its requirements and/or the objectives in respect of the provision of services, specifying, where relevant, the methods and resources to be used by the Contractor and/or the results to be achieved by it.

Time Limits: Those periods in the contract which shall begin to run from the day following the act or event which serves as the starting point for those periods. Should the last day of the period fall upon a non-working day, the period shall expire at the end of the first working day following the last day of the period.

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

VOLUME 2

VOLUME 2 SECTION 1 - DRAFT CONTRACT FORM

Financed by: [Specify Source of Financing]

Project: [Title and Number]

Contract Number: [Contract Number]

This contract is concluded between:

Malta Resources Authority
Millennia
Aldo Moro Road
Marsa MRS 9065

(hereinafter called “The Malta Resources 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 Malta Resources Authority is desirous that certain services should be executed by the Contractor, viz.:

Strategic Environmental Assessment (SEA) of a Proposal for a Water Policy for Malta

and has accepted a tender by the Contractor for the execution and completion of such services 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 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 Terms of Reference,
 - (e) the Contractor’s technical offer (Organization & Methodology) including any clarifications
 - (f) the Financial Offer (after arithmetical corrections)/breakdown,
 - (g) the Tender Form,
 - (h) any other documents forming part of the contract.

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

3. In consideration of the payments to be made by the Contracting Authority to the Contractor as hereinafter mentioned, the Contractor undertakes to execute and complete the works and remedy defects therein in full compliance with the provisions of the contract.

4. 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 (*including* VAT/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).
5. The Contractor hereby agrees to submit a performance guarantee amounting to €..... equivalent to 10% of the contract value together with the signed contract.
6. 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 Malta Resources Authority and one for the Contractor.

Malta Resources 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

It is hereby construed that the tenderers 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.

A. PRELIMINARY PROVISIONS

Article 1 Definitions and conventions

- 1.1 If this contract is signed in more than one language, the English version prevails in the event of inconsistencies between the different language versions.
- 1.2 The headings and titles in these General Conditions shall not be taken as part thereof or be taken into consideration in the interpretation of the Contract.
- 1.3 The definitions outlined in Volume 1, Section 5 apply to the contract.
- 1.4 Where the context so permits words importing the singular shall be deemed to include the plural and vice versa and words importing the masculine shall be deemed to include the feminine and vice versa.
- 1.5 The word “country” shall be deemed to include State or Territory.
- 1.6 Words importing persons or parties shall include firms and companies and any organization having legal capacity.

Article 2 Notices and written communications

- 2.1 Whenever there is a deadline for the receipt of a written communication, the sender should ask for an acknowledgement of receipt of its communication. In any event, the sender shall take all the necessary measures to ensure timely receipt of the communication
- 2.2 Any notice, consent, approval, certificate or decision by any person required under the contract shall be in writing, unless otherwise specified, and shall not be unreasonably withheld or delayed.
- 2.3 Any oral instructions or orders shall take effect at the time of transmission and shall be confirmed subsequently in writing.

Article 3 Assignment

- 3.1 An assignment is any agreement by which the Contractor transfers its contract or part thereof to a third party.
- 3.2 The Contractor shall not, without the prior written consent of the Contracting Authority, assign the contract or any part thereof, or any benefit or interest thereunder.

- 3.3 The approval of an assignment by the Contracting Authority shall not relieve the Contractor of its obligations for the part of the contract already performed or the part not assigned.
- 3.4 Assignees must satisfy the eligibility criteria applicable to the award of the contract.

Article 4 Sub-contracting

- 4.1 Any agreement by which the Contractor entrusts performance of a part of the services to a third party is considered to be a sub-contract.
- 4.2 The Contractor must seek the prior written authorisation of the Contracting Authority before entering into a sub-contract. This authorization will be based on the services to be subcontracted and the identity of the intended subcontractor. The Contracting Authority shall, with due regard to the provisions of Article 2.2, within 30 days of receipt of the notification, notify the Contractor of its decision, stating reasons, should it withhold such authorisation.
- 4.3 No sub-contract can create contractual relations between any sub-contractor and the Contracting Authority.
- 4.4 The Contractor shall be responsible for the acts, defaults and negligence of its sub-contractors and their experts, agents or employees, as if they were the acts, defaults or negligence of the Contractor, its experts, agents or employees. The approval by the Contracting Authority of the sub-contracting of any part of the contract or of the engagement by the Contractor of subcontractors to perform any part of the services shall not relieve the Contractor of any of its obligations under the contract.
- 4.5 If a sub-contractor is found by the Contracting Authority or the Project Manager to be incompetent in discharging its duties, the Contracting Authority or the Project Manager may request the Contractor forthwith, either to provide a sub-contractor with qualifications and experience acceptable to the Contracting Authority as a replacement, or to resume the performance of the services itself.
- 4.6 Sub-contractors must satisfy the eligibility criteria applicable to the award of the contract.
- 4.7 Those services entrusted to a sub-contractor by the Contractor cannot be entrusted to third parties by the sub-contractor.
- 4.8 Any change of sub-contractor without the prior written consent of the Contracting Authority shall be considered to be a breach of contract.

B. OBLIGATIONS OF THE CONTRACTING AUTHORITY

Article 5 Supply of information

- 5.1 The Contracting Authority shall supply the Contractor promptly with any information and/or documentation at its disposal which may be relevant to the performance of the contract. Such documents shall be returned to the Contracting Authority at the end of the period of execution of the contract.

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

Article 6 Assistance with local regulations

- 6.1 The Contractor may request the assistance of the Contracting Authority of the beneficiary country to obtain copies of laws, regulations, and information on local customs, orders or bylaws of the country in which the services are to be performed, which may affect the Contractor in the performance of its obligations under the contract. The Contracting Authority may charge the Contractor for such assistance, which would be provided at the Contractor's own expense.
- 6.2 Subject to the provisions of the laws and regulations on foreign labour in the country in which the services are to be performed, the Contracting Authority of the beneficiary country shall make every effort to facilitate the procurement by the Contractor of all required visas and permits, including work and residence permits, for the personnel whose services the Contractor and the Contracting Authority consider necessary as well as residence permits for their families.
- 6.3 The Contracting Authority shall issue to its employees, agents and representatives all such instructions as may be necessary or appropriate to facilitate the prompt and effective performance of the services.

C. OBLIGATIONS OF THE CONTRACTOR

Article 7 General obligations

- 7.1 The Contractor shall respect and abide by all laws and regulations in force in the beneficiary country and shall ensure that its personnel, their dependants, and its local employees also respect and abide by all such laws and regulations. The Contractor shall indemnify the Contracting Authority against any claims and proceedings arising from any infringement by the Contractor, its employees and their dependants of such laws and regulations. Without prejudice to the above, the Contractor shall be bound to conform and comply with Chapter 452 of The Laws of Malta (Employment and Industrial Relations Act, 2002 - Act No. XXII of 2002) and to all regulations/legal notices that form part of this Act.
- 7.2 The Contractor shall perform the services under the contract with due care, efficiency and diligence, in accordance with the best professional practice.
- 7.3 The Contractor shall comply with administrative orders given by the Project Manager. Where the Contractor considers that the requirements of an administrative order go beyond the authority of the Project Manager or of the scope of the contract, it shall, on pain of being time-barred, notify the Project Manager, explaining its opinion, within 30 days after receipt thereof. Execution of the administrative order shall not be suspended because of this notice.
- 7.4 The Contractor shall treat all documents and information received in connection with the contract as private and confidential, and shall not, save in so far as may be necessary for the purposes of the

performance thereof, publish or disclose any particulars of the contract without the prior consent in writing of the Contracting Authority or the Project Manager after consultation with the Contracting Authority. If any disagreement arises as to the necessity for any publication or disclosure for the purpose of the contract, the decision of the Contracting Authority shall be final.

- 7.5 If the Contractor is a consortium of two or more persons, all such persons shall be jointly and severally bound to fulfill the terms of the contract. The person designated by the consortium to act on its behalf for the purposes of this contract shall have the authority to bind the consortium.
- 7.6 Any alteration of the composition of the consortium without the prior written consent of the Contracting Authority shall be considered to be a breach of contract.
- 7.7 Unless otherwise requested or agreed by the Contracting Authority, the Contractor shall take the necessary steps to ensure that the financial contribution of the EU is given adequate publicity. These steps must follow the rules applicable to the visibility of external actions as defined and published by the EC.
- 7.8 The Contractor shall, within 15 calendar days of receipt of the contract, sign and date the contract and return it with a guarantee for the full and proper performance of the contract. The amount of the guarantee shall be specified in the Special Conditions. It shall not exceed 10% of the amount of the contract price, including any amounts stipulated in addenda to the contract.

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

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

The performance guarantee shall be in the format given in Volume 2, Section 4 and must be provided in the form of a bank guarantee.

The performance guarantee shall be denominated in the currency in which the contract is payable. No payments shall be made in favour of the Contractor prior to the provision of the guarantee. The guarantee shall continue to remain valid until the contract has been fully and properly performed.

During the performance of the contract, if the natural or legal person providing the guarantee is not able to abide by his commitments, the guarantee shall cease to be valid. The Contracting Authority shall give formal notice to the Contractor to provide a new guarantee on the same terms as the previous one. Should the Contractor fail to provide a new guarantee, the Contracting Authority may terminate the contract. Before so doing, the Contracting Authority shall send a registered letter with acknowledgement of receipt, which shall set a new deadline of no less than 15 days from the day of delivery of the letter.

The Contracting Authority shall demand payment from the guarantee of all sums for which the guarantor is liable under the guarantee due to the Contractor's default under the contract, in accordance with the terms of the guarantee and up to the value thereof. The guarantor shall, without delay, pay those sums upon demand from the Contracting Authority and may not raise any objection for any reason whatsoever. Before making any claim under the performance guarantee, the

Contracting Authority shall notify the Contractor stating the nature of the default in respect of which the claim is to be made.

Article 8 Code of conduct

- 8.1 The Contractor shall at all times act loyally and impartially and as a faithful adviser to the Contracting Authority in accordance with the rules and/or code of conduct of its profession as well as with appropriate discretion. It shall, in particular, refrain from making any public statements concerning the project or the services without the prior approval of the Contracting Authority, and from engaging in any activity which conflicts with its obligations towards the Contracting Authority under the contract. It shall not commit the Contracting Authority in any way whatsoever without its prior written consent, and shall, where appropriate, make this obligation clear to third parties.
- 8.2 For the period of execution of the contract, the Contractor and its personnel shall respect human rights and undertake not to offend the political, cultural and religious practices prevailing in the beneficiary country.
- 8.3 If the Contractor or any of its sub-contractors, personnel, agents or servants offers to give or agrees to offer or to give or gives to any person, any bribe, gift, gratuity or commission as an inducement or reward for doing or forbearing to do any act in relation to the contract or any other contract with the Contracting Authority, or for showing favor or disfavor to any person in relation to the contract or any other contract with the Contracting Authority, then the Contracting Authority may terminate the contract, without prejudice to any accrued rights of the Contractor under the contract.
- 8.4 The payments to the Contractor under the contract shall constitute the only income or benefit it may derive in connection with the contract and neither it nor its personnel shall accept any commission, discount, allowance, indirect payment or other consideration in connection with, or in relation to, or in discharge of, its obligations under the contract.
- 8.5 The Contractor shall not have the benefit, whether directly or indirectly, of any royalty, gratuity or commission in respect of any patented or protected article or process used in or for the purposes of the contract or the project, without the prior written approval of the Contracting Authority.
- 8.6 The Contractor and its staff shall maintain professional secrecy, for the duration of the contract and after completion thereof. In this connection, except with the prior written consent of the Contracting Authority, neither the Contractor nor the personnel employed or engaged by it shall at any time communicate to any person or entity any confidential information disclosed to them or discovered by them, or make public any information as to any other contractor, contractor or supplier with whom the Contractor is associated or affiliated shall be disqualified from the execution of works, supplies or other services for the project in any capacity, including tendering for any part recommendations formulated in the course of or as a result of the services. Furthermore, they shall not make any use prejudicial to the Contracting Authority, of information supplied to them and of the results of studies, tests and research carried out in the course and for the purpose of performing the contract.
- 8.7 The execution of the contract shall not give rise to unusual commercial expenses. If such unusual commercial expenses emerge, the contract will be terminated. Unusual commercial expenses are

commissions not mentioned in the contract or not stemming from a properly concluded contract referring to the 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 commission paid to a company which has every appearance of being a front company.

- 8.8 The Contractor shall supply to the Contracting Authority on request supporting evidence regarding the conditions in which the contract is being executed. The Contracting Authority may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in case of suspected unusual commercial expenses.

Article 9 Conflict of interest

- 9.1 The Contractor shall take all necessary measures to prevent or end any situation that could compromise the impartial and objective performance of the Contract. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which could arise during performance of the Contract must be notified in writing to the Contracting Authority without delay.
- 9.2 The Contracting Authority reserves the right to verify that such measures are adequate and may require additional measures to be taken if necessary. The Contractor shall ensure that its staff, including its management, are not placed in a situation which could give rise to conflict of interests. Without prejudice to Article 7, the Contractor shall replace, immediately and without compensation from the Contracting Authority, any member of its staff exposed to such a situation.
- 9.3 The Contractor shall refrain from any contact which would compromise its independence or that of its personnel. If the Contractor fails to maintain such independence, the Contracting Authority may, without prejudice to compensation for any damage which it may have suffered on this account, terminate the contract forthwith, without giving formal notice thereof.
- 9.4 The Contractor shall after the conclusion or termination of the contract, limit its role in connection with the project to the provision of the services. Except with the written permission of the Contracting Authority, the Contractor and any other contractor, contractor or supplier with whom the Contractor is associated or affiliated shall be disqualified from the execution of works, supplies or other services for the project in any capacity, including tendering for any part of the project.
- 9.5 Civil servants and other agents of the public service of the beneficiary country, regardless of their administrative situation, shall not be recruited as experts in contracts in the beneficiary country.
- 9.6 The Contractor and anyone working under its authority or control in the performance of the contract or on any other activity shall be excluded from access to EC financing available under the same project.

Article 10 Administrative and financial penalties

- 10.1 Without prejudice to the application of penalties laid down in the contract, if the Contractor has been guilty of making false declarations or has been found to have seriously failed to meet its contractual obligations in an earlier procurement procedure, it shall be excluded from the award of

contracts for a maximum of two years from the time when the infringement is established, to be confirmed after an adversarial procedure with the Contractor. The Contractor may justify its arguments against the penalty within 30 days of notification of it by recorded delivery or equivalent. In the absence of a reaction for its part or of the written withdrawal of the penalty by the Contracting Authority within 30 days of the above-mentioned arguments, the decision imposing the penalty will become binding. The period of exclusion may be extended to three years in the event of a repeat offence within five years of the first infringement.

- 10.2 Contractors who have been found to have seriously failed to meet their contractual obligations shall also be subject to financial penalties representing 10% of the total value of the Contract. This rate may be increased to 20% in the event of a repeat offence within five years of the first infringement.

Article 11 Specifications and designs

- 11.1 The Contractor shall prepare all specifications and designs using accepted and generally recognised systems acceptable to the Contracting Authority and taking into account the latest design criteria.
- 11.2 The Contractor shall ensure that the specifications and designs and all documentation relating to procurement of goods and services for the project are prepared on an impartial basis so as to promote competitive tendering.

Article 12 Indemnification

- 12.1 At its own expense, the Contractor shall indemnify, protect and defend, the Contracting Authority, its agents and employees, from and against all actions, claims, losses or damage arising from any act or omission by the Contractor in the performance of the services, including any violation of any legal provisions, or rights of third parties, in respect of patents, trade marks and other forms of intellectual property such as copyrights.
- 12.2 At its own expense, the Contractor shall indemnify, protect and defend, the Contracting Authority, its agents and employees, from and against all actions, claims, losses or damages arising out of the Contractor's performance of the contract provided that:
- a) the Contractor is notified of such actions, claims, losses or damages not later than 30 days after the Contracting Authority becomes aware of them;
 - b) the ceiling on the Contractor's liability to the Contracting Authority shall be limited to an amount equal to the contract value, and such ceiling shall not apply to any losses or damages caused to third parties by the Contractor or by the Contractor's willful misconduct;
 - c) the Contractor's liability shall be limited to actions, claims, losses or damages directly caused by such failure to perform its obligations under the contract and shall not include liability arising from unforeseeable occurrences incidental or indirectly consequential to such failure.
- 12.3 At its own expense, the Contractor shall, upon request of the Contracting Authority, remedy any defect in the performance of the services in the event of the Contractor's failure to perform its obligations under the contract.

- 12.4 The Contractor shall have no liability whatsoever for actions, claims, losses or damages occasioned by:
- a) the Contracting Authority omitting to act on any recommendation, or overriding any act, decision or recommendation, of the Contractor, or requiring the Contractor to implement a decision or recommendation with which the Contractor disagrees or on which it expresses a serious reservation; or
 - b) the improper execution of the Contractor's instructions by agents, employees or independent contractors of the Contracting Authority.
- 12.5 The Contractor shall remain responsible for any breach of its obligations under the contract for such period after the services have been performed as may be determined by the law governing the contract.

Article 13 Medical, Insurance and Security arrangements

- 13.1 The Contracting Authority may request the Contractor and/or its personnel performing the services to undergo a medical examination by a qualified medical practitioner before leaving their usual place of residence and shall as soon as is practicable furnish the Contracting Authority with the medical report resulting there from.
- 13.2 For the period of execution of the contract, the Contractor shall obtain medical insurance for itself and other persons employed or contracted by it under the contract. The Contracting Authority shall be under no liability in respect of the medical expenses of the Contractor.
- 13.3 Within 20 days of signing the contract, the Contractor shall take out and maintain a full indemnity insurance policy for a sum up to the higher of the maximum amount foreseen by the legislation of the country of the Contracting Authority and the amount foreseen by the legislation of the country in which the Contractor has its headquarters and covering, during the period of execution of the contract, the following aspects:
- a) the Contractor's liability in respect of sickness or industrial accident affecting its employees, including the cost of repatriation on health grounds;
 - b) loss of, or damage to, the Contracting Authority's equipment used to perform the contract;
 - c) civil liability in the event of accidents caused to third parties or to the Contracting Authority and any employee of that Authority arising out of the performance of the contract.
 - d) accidental death or permanent disability resulting from bodily injury incurred in connection with the contract; and
- 13.4 The Contractor shall also insure the personal effects of its employees, experts and their families located in the beneficiary country against loss or damage.
- 13.5 The Contractor shall furnish proof of the insurance policy and of regular payment of premiums without delay whenever required to do so by the Contracting Authority or the Project Manager.
- 13.6 The Contractor shall put in place security measures for its employees, experts and their families located in the beneficiary country commensurate with the physical danger facing them.

- 13.7 The Contractor will also be responsible for monitoring the level of physical risk to which its employees, experts and their families located in the beneficiary country are exposed and for keeping the Contracting Authority informed of the situation. In the event that the Contracting Authority or the Contractor shall become aware of an imminent threat of danger to the life or health of any of its employees, experts or their families, the Contractor may take immediate action to remove the individuals concerned to safety. If the Contractor takes such action, this must be communicated immediately to the Project Manager and may lead to suspension of the contract in accordance with Article 35.
- 13.8 Without prejudice to the above, the Contractor shall be bound to conform and comply with Chapter 424 of The Laws of Malta (Occupational Health and Safety Authority Act 2000) and to all regulations/legal notices that form part of this Act, as well as any other national legislation, regulations, standards, and/or codes of practice, in effect during the execution of the contract, regarding health and safety issues as they apply for the Contractor's particular operating situation and nature of work activities.

Article 14 Intellectual and industrial property rights

- 14.1 All reports and data such as maps, diagrams, drawings, specifications, plans, statistics, calculations, databases, software and supporting records or materials acquired, compiled or prepared by the Contractor in the performance of the contract shall be the absolute property of the Contracting Authority. The Contractor shall, upon completion of the contract, deliver all such documents and data to the Contracting Authority. The Contractor may not retain copies of such documents and data and shall not use them for purposes unrelated to the contract without the prior written consent of the Contracting Authority.
- 14.2 The Contractor shall not publish articles relating to the services or refer to them when carrying out any services for others, or divulge information obtained from the Contracting Authority, without the prior written consent of the Contracting Authority.
- 14.3 Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be the absolute property of the Contracting Authority, which may use, publish, assign or transfer them as it deems fit, without geographical or other limitation, except where intellectual or industrial property rights already exist.

C. NATURE OF THE SERVICES

Article 15 The scope of the services

- 15.1 The scope of the services is specified in Volume 3, Section 1 (Terms of Reference) and Volume 3, Section 2 (Organization & Methodology).
- 15.2 Where the contract is for an advisory function for the benefit of the Contracting Authority and/or Project Manager in respect of all the technical aspects of the project which may arise out of its execution, the Contractor shall not have decision-making responsibility.

- 15.3 Where the contract is for management of the execution of the project, the Contractor shall assume all the duties of management inherent in supervising the execution of a project, subject to the Project Manager's authority.
- 15.4 If the Contractor is required to prepare a tender dossier, the dossier shall contain all documents necessary for consulting suitable contractors, manufacturers and suppliers, and for preparing tender procedures with a view to carrying out the works or providing the supplies or services covered by an invitation to tender. The Contracting Authority shall provide the Contractor with the information necessary for drawing up the administrative part of the tender dossier.

Article 16 Personnel and equipment

- 16.1 The Contractor shall give written notification to the Contracting Authority including the CVs of all personnel which the Contractor intends to use for the implementation of the contract, other than the key experts included in Volume 1, Section 4.10. Volume 3, Section 1 (Terms of Reference) and Volume 3, Section 2 (Organization & Methodology) shall specify the minimum level of training, qualifications and experience of the personnel and, where appropriate, the specialization required. The Contracting Authority may oppose the Contractor's choice of personnel on the basis of the contract.
- 16.2 All those working on the contract shall commence their duties on the date or within the period laid down in Volume 3, Section 1 (Terms of Reference) and Volume 3, Section 2 (Organization & Methodology), or, failing this, on the date or within the periods notified to the Contractor by the Contracting Authority or the Project Manager as specified in Article 19 of the Special Conditions.
- 16.3 Save as otherwise provided in the Special Conditions, those working on the contract shall reside close to their place of work. Where part of the services is to be performed outside the beneficiary country, the Contractor shall keep the Project Manager informed of the names and qualifications of staff assigned to that part of the services.
- 16.4 The Contractor shall:
- a) Forward to the Project Manager within 30 days of the signature of the contract by both parties, the timetable proposed for placement of the staff;
 - b) Inform the Project Manager of the date of arrival and departure of each member of staff;
 - c) Submit to the Project Manager for his written approval a timely request for the appointment of any non-key experts.
- 16.5 The Contractor shall adopt all measures necessary to provide and continue to provide its staff with the equipment and backup required to enable them to carry out their specified duties efficiently.

Article 17 Replacement of personnel

- 17.1 The Contractor shall not make changes in the personnel agreed under the terms of the contract without notifying the Contracting Authority, which may oppose such a change on the basis of the contract.
- 17.2 The Contractor must on its own initiative propose a replacement in the following cases:

- a) In the event of death, in the event of illness or in the event of accident of a member of staff.
 - b) If it becomes necessary to replace a member of staff for any other reasons beyond the Contractor's control (e.g. resignation, etc.).
- 17.3 Moreover, in the course of performance, and on the basis of a written and justified request, the Contracting Authority can ask for a replacement if it considers that a member of staff is inefficient or does not perform its duties under the contract.
- 17.4 Where a member of staff must be replaced, the replacement must possess at least equivalent qualifications and experience, and the remuneration to be paid to the replacement cannot exceed that received by the member of staff who has been replaced. Where the Contractor is unable to provide a replacement with equivalent qualifications and/or experience, the Contracting Authority may either decide to terminate the contract, if the proper performance of it is jeopardized, or, if it considers that this is not the case, accept the replacement, provided that the fees of the latter are renegotiated to reflect the appropriate remuneration level.
- 17.5 Additional costs incurred by the replacement of staff are the responsibility of the Contractor. Where the expert is not replaced immediately and it is some time before the new expert takes up its functions, the Contracting Authority may ask the Contractor to assign to the project a temporary expert pending the arrival of the new expert, or to take other measures to compensate for the temporary absence of the missing expert. Whatever the case may be, the Contracting Authority makes no payment for the period of the expert's or his/her replacement's absence.

Article 18 Trainees

- 18.1 If required in the terms of reference, the Contractor shall provide training for the period of execution of the contract for trainees assigned to it by the Contracting Authority under the terms of the contract.
- 18.2 Instruction by the Contractor of such trainees shall not confer on them the status of employees of the Contractor. However, they must comply with the Contractor's instructions, and with the provisions of Article 8, as if they were employees of the Contractor. The Contractor may on reasoned request in writing obtain the replacement of any trainee whose work or conduct is unsatisfactory.
- 18.3 Unless otherwise provided in the contract, remuneration for trainees and travel, accommodation and all other expenses incurred by the trainees, shall be borne by the Contracting Authority.
- 18.4 The Contractor shall report at quarterly intervals to the Contracting Authority on the training assignment. Immediately prior to the end of the period of execution of the contract, the Contractor shall draw up a report on the result of the training and an assessment of the qualifications obtained by the trainees with a view to their future employment. The form of such reports and the procedure for presenting them shall be as laid down in the terms of reference.

D. EXECUTION OF THE CONTRACT

Article 19 Delays in execution

- 19.1 If the Contractor does not perform the services within the period of execution specified in the contract, the Contracting Authority shall, without formal notice and without prejudice to its other remedies under the contract, be entitled to liquidated damages for every day, or part thereof, which shall elapse between the end of the period of execution specified in the contract and the actual end of the period of execution.
- 19.2 The daily rate for liquidated damages is calculated by dividing the contract value by the number of days of the period of execution.
- 19.3 If these liquidated damages exceed more than 15% of the contract value, the Contracting Authority may, after giving notice to the Contractor:
- a) terminate the contract; and
 - b) complete the services at the Contractor's own expense.
- 19.4 Besides the penalties for delay envisaged in these conditions and without prejudice to all his other liabilities arising out of the contract, the contractor shall also become liable to a penalty if the rate of progress of the work throughout the contract period is not satisfactory. The contractor shall be considered to in default if he fails to carry out every month at least 70% of the estimated monthly average progress. For the purpose of assessing such average progress the value of the contract shall be divided by the number of months stipulated in the contract period. Within each month the contractor should complete works whose value is equivalent to the average progress obtained as above. However, in the case of contracts having a completion period of 6 or more months, no penalty shall be imposed in respect of the first month from the date of allocation of the contract. Should the contractor's progress fall below the minimum percentage progress, he will become liable to a penalty equivalent to 2% of the value of the contract in respect of every month during which progress is below standard. If the contractor completes the whole contract within the stipulated period, the Government may consider the refund of any penalties the contractor may have incurred for slow monthly progress.
- 19.5 Without prejudice to the above the Contractor may request an extension to the period of execution if his performance of the contract is delayed, or expected to be delayed, for any of the following reasons:
- a) extra or additional services ordered by the Contracting Authority;
 - b) exceptional weather conditions in the country of the Contracting Authority which may affect installation or erection of the supplies;
 - c) physical obstructions or conditions which may affect execution of the services, which could not reasonably have been foreseen by a competent contractor;
 - d) administrative orders affecting the date of completion other than those arising from the Contractor's default;

- e) failure of the Contracting Authority to fulfil its obligations under the contract;
- f) any suspension of the execution of the services which is not due to the Contractor's default;
- g) force majeure;
- h) any other causes referred to in these General Conditions which are not due to the Contractor's default.

19.6 Within 15 days of realising that a delay might occur, the Contractor shall notify the Project Manager of his intention to make a request for extension of the period of performance to which he considers himself entitled and, save where otherwise agreed between the Contractor and the Project Manager, within 30 days provide the Project Manager with comprehensive details so that the request can be examined.

19.7 Within 30 days the Project Manager shall, by written notice to the Contractor after due consultation with the Contracting Authority and where appropriate, the Contractor and after having obtained written approval from the Contracting Authority, grant such extension of the period of performance as may be justified, either prospectively or retrospectively, or inform the Contractor that he is not entitled to an extension.

Article 20 Amendment of the contract

20.1 Any amendment of the contract must be set out in writing in an addendum, to be concluded on the same terms as the original contract. If the request for an amendment comes from the Contractor, the latter must submit such a request to the Contracting Authority at least 30 days before the amendment is intended to enter into force, except in cases which are duly substantiated by the Contractor and accepted by the Contracting Authority. Addenda are to be submitted to the Contracting Authority for approval and signing.

20.2 However, where the amendment does not affect the basic purpose of the contract and, for a fee-based contract, the financial impact is limited to a transfer within the Fees involving a variation of less than 15% of the original amount for the relevant line in the Budget breakdown in Volume 4, the Project Manager shall have the power to order any variation to any part of the services necessary for the proper execution of the contract, without changing the object or scope of the contract. Such variations may include additions, omissions, substitutions, changes in quality, quantity, specified sequence, method or timing of performance of the services.

20.3 Prior to any administrative order for variation, the Project Manager shall notify the Contractor of the nature and form of such variation. As soon as possible, after receiving such notice, the Contractor shall submit to the Project Manager a written proposal containing:

- a) a description of the service to be performed or the measures to be taken and a programme for execution; and
- b) any necessary modifications to the programme of performance or to any of the Contractor's obligations under the contract; and

- c) For a fee-based contract, any adjustment to the contract value in accordance with the following principles:
- (i) where the task is of similar character and executed under similar conditions to an item priced in the budget breakdown the equivalent numbers of working days shall be valued at the fee rates contained therein;
 - (ii) where the task is not of a similar character or is not executed under similar conditions, the fee rates in the contract shall be applied to the estimated numbers of working days so far as is reasonable, failing which, a fair estimation shall be made by the Project Manager;
 - (iii) where a variation is necessitated by a default or breach of contract by the Contractor, any additional cost attributable to such variation shall be borne by the Contractor.

- 20.4 Following the receipt of the Contractor's proposal, the Project Manager shall decide as soon as possible whether or not the variation shall be carried out. If the Project Manager decides that the variation shall be carried out he shall issue the administrative order stating that the variation shall be carried out, either prospectively or retrospectively, under the conditions given in the Contractor's proposal or as modified by the Project Manager in accordance with Article 20.4.
- 20.5 Without prejudice to the above provisions, in all cases where variation orders individually or in their totality exceed by more than five per cent the awarded contract value, the prior approval of the Director of Contracts is to be sought before a commitment is made by the contracting authority with the contractor.
- 20.6 On receipt of the administrative order requesting the variation, the Contractor shall proceed to carry out the variation and be bound by these General Conditions in so doing as if such variation were stated in the contract.
- 20.7 The Contracting Authority shall give written notification to the Contractor of the name and address of the Project Manager. The Contractor shall give written notification to the Contracting Authority of the name and address of its contact, bank account and auditor for the contract. The Contractor must use the form annexed to these conditions for notification or modification of its bank account. The Contracting Authority shall have the right to oppose the Contractor's choice of bank account or auditor.
- 20.8 All payments made by the Contracting Authority into the bank account specified in the contract will have liberating effect.
- 20.9 Any change to the contract which has not been made in the form of an administrative order or an addendum or in accordance with Article 20.1 shall be considered null and void.

Article 21 Working hours

- 21.1 The days and hours of work of the Contractor or the Contractor's personnel in the beneficiary country shall be fixed on the basis of the laws, regulations and customs of the beneficiary country and the requirements of the services.

Article 22 Information

- 22.1 The Contractor shall furnish the Project Manager or any person authorized by the Central Government Authority, the Contracting Authority, the European Commission or the European Court of Auditors with such information relating to the services and the project as they may at any time request.

Article 23 Verification and checks

- 23.1 The Contractor will allow all auditing bodies identified by the Contracting Authority to verify, by examining the documents or by means of on-the-spot checks, the implementation of the project and conduct a full audit, if necessary, on the basis of supporting documents for the accounts, accounting documents and any other document relevant to the financing of the project. These inspections may take place up to 7 years after the final payment.
- 23.2 Furthermore, the Contractor will allow the auditing bodies to carry out checks and verification on the spot in accordance with the procedures set out in respective legislation.
- 23.3 To this end, the Contractor undertakes to give appropriate access to staff or agents of the auditing bodies to the sites and locations at which the Contract is carried out, including its information systems, as well as all documents and databases concerning the technical and financial management of the project and to take all steps to facilitate their work. Access given to agents of the auditing bodies shall be on the basis of confidentiality with respect to third parties, without prejudice to the obligations of public law to which they are subject. Documents must be easily accessible and filed so as to facilitate their examination and the Consultant must inform the Contracting Authority of their precise location.
- 23.4 The Contractor guarantees that the rights of the auditing bodies to carry out audits, checks and verification will be equally applicable, under the same conditions and according to the same rules as those set out in this Article, to any sub-contractor or any other party.

Article 24 Interim and final progress reports

- 24.1 The Contractor must prepare progress reports during the period of execution of the contract. For a fee-based contract, these progress reports must be accompanied by a financial report. The format of such reports is as specified by a template in Volume 2, Section 6, if any, or, in the absence of a template, as notified to the Contractor by the Project Manager during the period of execution of the Contract.
- 24.2 All invoices (not including the request for the pre-financing payment) must be accompanied by a progress report and the final invoice must be accompanied by a final progress report. All invoices for a fee-based contract must also be accompanied by a financial report.
- 24.3 Immediately prior to the end of the period of execution of the contract, the Contractor shall draw up a final progress report together which must include, if appropriate, a critical study of any major problems which may have arisen during the performance of the contract.

- 24.4 This final progress report shall be forwarded to the Project Manager not later than 60 days after the end of the period of execution defined in Article 19 of the Special Conditions. Such report shall not bind the Contracting Authority.
- 24.5 Where the contract is performed in phases, the execution of each phase shall give rise to the preparation of a final progress report by the Contractor.
- 24.6 Interim and final progress reports are covered by the provisions of Article 14.

Article 25 Approval of reports and documents

- 25.1 The approval by the Contracting Authority of reports and documents drawn up and forwarded by the Contractor shall certify that they comply with the terms of the contract.
- 25.2 The Contracting Authority shall, within 45 days of receipt, notify the Contractor of its decision concerning the documents or reports received by it, giving reasons should it reject the reports or documents, or request amendments. For the final progress report, the time limit is extended to 60 days. If the Contracting Authority does not give any comments on the documents or reports within the time limit, the Contractor may request written acceptance of them. The documents or reports shall be deemed to have been approved by the Contracting Authority if it does not expressly inform the Contractor of any comments within 45 days of the receipt of this written request.
- 25.3 Where a report or document is approved by the Contracting Authority subject to amendments to be made by the Contractor, the Contracting Authority shall, prescribe a period for making the amendments requested.
- 25.4 Where the final progress report of a global price contract is not approved, the dispute settlement procedure is automatically invoked.
- 25.5 Where the contract is performed in phases, the execution of each phase shall be subject to the approval, by the Contracting Authority, of the preceding phase except where the phases are carried out concurrently.

E. PAYMENTS & DEBT RECOVERY

Article 26 Payments and interest on late payment

- 26.1 Payments will be made in accordance with one of the two options below, as identified in Article 26.1 of the Special Conditions.

Option 1: Fee-based contract

The Contracting Authority will make payments to the Contractor in the following manner: - a pre-financing payment of 60% of the contract value, within 45 days of receipt by the Contracting Authority of the Contract signed by both parties, of a request for the pre-financing payment and of a financial guarantee, as defined in Article 27; - six-monthly interim payments, if any, as indicated in Article 26.1 of the Special Conditions, within 45 days of the approval by the Contracting Authority in accordance with Article 25 of the interim progress report which accompanies an invoice setting out the services actually performed, until the sum of the pre-financing payment and any interim

payments is 90% of the maximum contract value stated in Article 26 of the Special Conditions; - the balance of the final certified value of the contract, subject to the maximum contract value stated in Article 26 of the Special Conditions, after deduction of the amounts already paid, within 45 days of the approval by the Contracting Authority in accordance with Article 25 and Article 28 of the final progress report and audit certificate which accompany the final invoice setting out the services actually carried out.

Option 2: Global price contract

The Contracting Authority will make payments to the Contractor in the following manner: a pre-financing payment of 60% of the contract value stated in the Special Conditions within 30 days of receipt by the Contracting Authority of the Contract signed by both parties, of a request for the pre-financing payment and of a financial guarantee, as defined in Article 27; - the balance of the contract value stated the Special Conditions within 30 days of the approval by the Contracting Authority in accordance with Article 27 of the final progress report which accompanies the final invoice.

- 26.2 The payment deadline of 30 calendar days referred to in Article 26.1 shall expire on the date on which the Contracting Authority's account is debited. Without prejudice to Article 34.3, the Contracting Authority may halt the countdown towards this deadline for any part of the invoiced amount disputed by the Project Manager by notifying the Contractor that that part of the invoice is inadmissible, either because the amount in question is not due or because the relevant report cannot be approved and the Contracting Authority thinks it necessary to conduct further checks. In such cases, the Contracting Authority must not unreasonably withhold any undisputed part of the invoiced amount but may request clarification, alteration or additional information, which must be produced within 30 days of the request. The countdown towards the deadline will resume on the date on which a correctly formulated invoice is received by the Contracting Authority.
- 26.3 Once the deadline referred to above has expired, the Contractor may, within two months of late payment, claim late-payment interest: - at the rediscount rate applied by the central bank of the beneficiary country on the first day of the month in which the deadline expired, plus seven percentage points. The late-payment interest shall apply to the time which elapses between the date of the payment deadline (exclusive), and the date on which the Contracting Authority's account is debited (inclusive).
- 26.4 Payments due from the Contracting Authority shall be made into the bank account notified by the Contractor in accordance with Article 20.7.
- 26.5 The Contracting Authority will make payments in Euro or in the national currency, in accordance with Article 26.5 of the Special Conditions.
- 26.6 Payment of the final balance shall be subject to performance by the Contractor of all its obligations relating to the execution of all phases or parts of the services and to the approval by the Contracting Authority of the final phase or part of the services. Final payment shall be made only after the final progress report and a final statement, identified as such, shall have been submitted by the Contractor and approved as satisfactory by the Contracting Authority.

- 26.7 If any of the following events occurs and persists, the Contracting Authority may, by written notice to the Contractor, suspend in whole or in part, payments due to the Contractor under the Contract:
- a) the Contractor defaults in the execution of the contract;
 - b) any other condition for which the Contractor is responsible under the contract and which, in the opinion of the Contracting Authority, interferes, or threatens to interfere, with the successful completion of the project or the contract.
- 26.8 The payment obligations of the Treasury/Ministry of Finance under this Contract shall cease at most 18 months after the end of the period of execution of the tasks, unless the Contract is terminated in accordance with Article 34.1 of the General Conditions.

Article 27 Financial guarantee

- 27.1 If the pre-financing payment stated in Article 26.1 of the Special Conditions exceeds EUR150,000, the Contractor must provide a financial guarantee for the full amount of the pre-financing payment. This financial guarantee must remain valid until it is released by the Contracting Authority in accordance with Article 27.5 or Article 27.6, as appropriate.
- 27.2 The financial guarantee shall be provided as required in the Special Conditions, and must be provided on the letterhead of the financial institution using the template provided in Volume 2, Section 5.
- 27.3 Should the financial guarantee cease to be valid and the Contractor fail to re-validate it, the Contracting Authority may make deductions from future payments due to the Contractor under the Contract up to the total of the payments already made, or terminate the Contract if in the opinion of the Contracting Authority such deduction is impracticable.
- 27.4 If the contract is terminated for any reason whatsoever, the financial guarantee may be invoked forthwith in order to repay any balance still owed to the Contracting Authority by the Contractor, and the guarantor shall not delay payment or raise objection for any reason whatever.
- 27.5 For fee-based contracts, the financial guarantee must remain in force until the final certified value established in the audit certificate referred to in Article 30 has been accepted by the Contracting Authority. If the final certified value is greater than the total of the payments already made to the Contractor by the Contracting Authority under the Contract, the financial guarantee must be released within 45 days of the acceptance of the final audit certificate by the Contracting Authority. If not, the financial guarantee may be reduced to cover the difference between the final certified value and the total of the payments already made to the Contractor by the Contracting Authority under the Contract and the financial guarantee must be released within 45 days of repayment of the difference by the Contractor.
- 27.6 For global price contracts, the financial guarantee must remain in force until the submission by the Contractor and approval by the Contracting Authority of the first interim report.

Article 28 Audit certificate

- 28.1 No audit certificate is required for global price contracts.

- 28.2 Before the final payment is made for a fee-based contract, an independent and impartial auditor who is a member of an internationally recognized supervisory body for statutory auditing, notified by the Contractor in accordance with Article 20.7, must examine the invoices sent by the Contractor to the Contracting Authority.
- 28.3 The auditor must satisfy himself that relevant, reliable and sufficient evidence exists that the experts employed by the Contractor for this contract have actually been working on the contract (as corroborated by independent, third-party evidence, where available) for the number of days/hours claimed in the Contractor's invoices and in the financial reports submitted with the interim progress reports;
- 28.4 On the basis of his examination, the auditor must certify the final value of the contract using the audit certificate template in Volume 2, Section 6. The final payment, if any, is the difference between this final certified value and the total amounts already paid, subject to the maximum contract value stated in the contract.

Article 29 Recovery of debts from the Contractor

- 29.1 The Contractor shall repay any amounts paid in excess of the final certified value due to the Contracting Authority within 45 days of receiving a request to do so.
- 29.2 Any amount which the Contracting Authority has paid, or caused to be paid, in excess of the Contractor's entitlement under the contract, shall be repaid by the Contractor to the Contracting Authority within 45 days after receipt by the Contractor of a request for repayment.
- 29.3 Should the Contractor fail to make repayment within the above deadline, the Contracting Authority may increase the amounts due by adding interest at the rediscount rate applied by the central bank of the beneficiary country, on the first day of the month in which the deadline expired, plus seven percentage points. The late-payment interest shall apply to the time which elapses between the date of the payment deadline (exclusive), and the date on which the Contractor's account is debited (inclusive). Any partial payments shall cover the interest thus established.
- 29.4 Should the Contractor fail to repay the original balance within the above deadline and any interest added in accordance with Article 29.3, the Contracting Authority may call upon the financial guarantee referred to in Article 27, if any.
- 29.5 Amounts to be repaid to the Contracting Authority may be offset against amounts of any kind due to the Contractor. This shall not affect the right of the Contractor and the Contracting Authority to agree on repayment by installments.
- 29.6 Bank charges arising from the repayment of amounts due to the Contracting Authority shall be borne entirely by the Contractor.

Article 30 Revision of prices

- 30.1 Subject to the provisions of Article 20 of the General Conditions, the global price of a global price contract and the fee rates of a fee-based contract shall not be revised.

Article 31 Payment to third parties

- 31.1 All orders for payments to third parties may be carried out only after an assignment made in accordance with Article 3.
- 31.2 Notification of beneficiaries of assignment shall be the sole responsibility of the Contractor.
- 31.3 In the event of a legally binding attachment of the property of the Contractor affecting payments due to it under the contract and without prejudice to the time limit laid down in Article 26, the Contracting Authority shall have 60 days, starting from the day when it receives notification of the definitive lifting of the obstacle to payment, to resume payments to the Contractor.

F. BREACH OF CONTRACT AND TERMINATION

Article 32 Breach of contract

- 32.1 Either party commits a breach of contract where it fails to discharge any of its obligations under the contract.
- 32.2 Where a breach of contract occurs, the party injured by the breach shall be entitled to the following remedies:
- a) damages; and/or
 - b) termination of the contract.
- 32.3 Damages may be:
- a) general damages; or
 - b) liquidated damages.
- 32.4 In any case where the Contracting Authority is entitled to damages, it may deduct such damages from any sums due to the Contractor or call on the appropriate guarantee.
- 32.5 The Contracting Authority shall be entitled to compensation for any damage which comes to light after the contract is completed in accordance with the law governing the contract.

Article 33 Suspension

- 33.1 The Contracting Authority is entitled to suspend the performance of the services or any part thereof for such time and in such manner as it may consider necessary.
- 33.2 If the period of suspension exceeds 90 days and the suspension is not due to the Contractor's default, the Contractor may, by notice to the Project Manager, request permission to resume execution of the services within 30 days or terminate the contract.
- 33.3 Where the award procedure or execution of the contract is vitiated by substantial errors or irregularities or by fraud, the Contracting Authority shall suspend execution of the contract.
- 33.4 Where such errors, irregularities or fraud are attributable to the Contractor, the Contracting Authority may in addition refuse to make payments or may recover amounts already paid, in proportion to the seriousness of the errors, irregularities or fraud.

33.5 The suspension of the Contract is intended to allow the Contracting Authority to verify whether presumed substantial errors or irregularities or fraud have actually occurred. If they are not confirmed, execution of the contract shall resume as soon as possible.

Article 34 Termination by the Contracting Authority

34.1 This contract shall terminate automatically if it has not given rise to any payment within a period of three years after its signature by both parties.

34.2 Termination shall be without prejudice to any other rights or powers under the contract of the Contracting Authority and the Contractor.

34.3 In addition to the grounds for termination defined in these General Conditions, the Contracting Authority may terminate the contract after giving 7 days' notice to the Contractor in any of the following cases:

- a) the Contractor fails substantially to carry out its obligations under the contract;
- b) the Contractor fails to comply within a reasonable time with the notice given by the Project Manager requiring it to make good the neglect or failure to perform its obligations under the contract which seriously affects the proper and timely execution of the services;
- c) the Contractor refuses or neglects to carry out administrative orders given by the Project Manager;
- d) the Contractor assigns the contract or subcontracts without the authorization of the Contracting Authority;
- e) the Contractor becomes bankrupt or is being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- f) the Contractor has been convicted of an offence concerning its professional conduct by a judgment which has the force of *res judicata*;
- g) the Contractor has been guilty of grave professional misconduct proven by any means which the Contracting Authority can justify;
- h) the Contractor has been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organization or any other illegal activity detrimental to the financial interests of the EC;
- i) following another procurement procedure or grant award procedure financed by the EC budget, the Contractor has been declared to be in serious breach of contract for failure to comply with its contractual obligations.
- j) any organisational modification occurs involving a change in the legal personality, nature or control of the Contractor, unless such modification is recorded in an addendum to the contract;
- k) any other legal disability hindering performance of the contract occurs;

- l) the Contractor fails to provide the required guarantees or insurance, or the person providing the underlying guarantee or insurance is not able to abide by its commitments.
- 34.4 The Contracting Authority may, thereafter, complete the services itself, or conclude any other contract with a third party, at the Contractor's own expense. The Contractor's liability for delay in completion shall immediately cease when the Contracting Authority terminates the Contracts without prejudice to any liability thereunder that may have already been incurred.
- 34.5 Upon termination of the contract or when it has received notice thereof, the Contractor shall take immediate steps to bring the services to a close in a prompt and orderly manner and in such a way as to keep costs to a minimum.
- 34.6 The Project Manager shall, as soon as is possible after termination, certify the value of the services and all sums due to the Contractor as at the date of termination.
- 34.7 The Contracting Authority shall not be obliged to make any further payments to the Contractor until the services are completed, whereupon the Contracting Authority shall be entitled to recover from the Contractor the extra costs, if any, of completing the services, or shall pay any balance due to the Contractor.
- 34.8 If the Contracting Authority terminates the contract, the Contracting Authority shall be entitled to recover from the Contractor any loss it has suffered up to the maximum amount stated in the contract. If no maximum amount is stated, the Contracting Authority shall, without prejudice to its other remedies under the contract, be entitled to recover that part of the contract value which is attributable to that part of the services which has not, by reason of the Contractor's failure, been satisfactorily completed.
- 34.9 The Contractor shall not be entitled to claim, in addition to sums owing to it for work already performed, compensation for any loss or injury suffered.

Article 35 Termination by the Contractor

- 35.1 The Contractor may, after giving 14 days notice to the the Contracting Authority, terminate the contract if the Contracting Authority:
- a) fails to pay the Contractor the amounts due under any certificate of the Project Manager after the expiry of the time limit stated in Article 26; or
 - b) consistently fails to meet its obligations after repeated reminders; or
 - c) suspends the progress of the services or any part thereof for more than 90 days for reasons not specified in the contract, or not due to the Contractor's default.
- 35.2 Such termination shall be without prejudice to any other rights of the Contracting Authority or the Contractor acquired under the contract.
- 35.3 In the event of such termination, the Contracting Authority shall pay the Contractor for any loss or injury the Contractor may have suffered. Such additional payment may not be such that the total payments exceed the amount specified in Article 3 of the Special Conditions.

Article 36 Force majeure

- 36.1 Neither party shall be considered to be in breach of its obligations under the contract if the performance of such obligations is prevented by any circumstances of force majeure which arise after the date of signature of the contract by both parties.
- 36.2 The term "force majeure", as used herein shall mean acts of God, strikes, lock-outs or other industrial disturbances, acts of the public enemy, wars, whether declared or not, blockades, insurrection, riots, epidemics, landslides, earthquakes, storms, lightning, floods, washouts, civil disturbances, explosions, and any other similar unforeseeable events, beyond the control of either party and which by the exercise of due diligence neither party is able to overcome.
- 36.3 A party affected by an event of force majeure shall take all reasonable measures to remove such party's inability to fulfill its obligations hereunder with a minimum of delay.
- 36.4 Notwithstanding the provisions of Article 33, the Contractor shall not be liable for liquidated damages or termination for default if, and to the extent that, its delay in performance or other failure to perform its obligations under the contract is the result of an event of force majeure. The Contracting Authority shall similarly not be liable, notwithstanding the provisions of Article 26 and Article 35, to payment of interest on delayed payments, for non-performance or for termination by the Contractor for default, if, and to the extent that, the Contracting Authority's delay or other failure to perform its obligations is the result of force majeure.
- 36.5 If either party considers that any circumstances of force majeure have occurred which may affect performance of its obligations it shall notify the other party immediately giving details of the nature, the probable duration and likely effect of the circumstances. Unless otherwise directed by the Project Manager in writing, the Contractor shall continue to perform its obligations under the contract as far as is reasonably practicable, and shall seek all reasonable alternative means for performance of its obligations which are not prevented by the force majeure event. The Contractor shall not put into effect such alternative means unless directed so to do by the Project Manager.
- 36.6 For a fee-based contract, if the Contractor incurs additional costs in complying with the Project Manager's directions or using alternative means under Article 36.5 the amount thereof shall be certified by the Project Manager subject to the maximum contract value.
- 36.7 If circumstances of force majeure have occurred and persist for a period of 180 days then, notwithstanding any extension of the period of execution that the Contractor may by reason thereof have been granted, either party shall be entitled to serve upon the other 30 days' notice to terminate the contract. If at the expiry of the period of 30 days the situation of force majeure persists, the contract shall be terminated and, in consequence thereof, the parties shall be released from further performance of the contract.

Article 37 Decease

- 37.1 If the Contractor is a natural person, the contract shall be automatically terminated if that person dies. However, the Contracting Authority shall examine any proposal made by his heirs or beneficiaries if they have notified their wish to continue the contract within 15 days of the date of

decease. The decision of the Contracting Authority shall be notified to those concerned within 30 days of receipt of such a proposal.

- 37.2 If the Contractor is a group of natural persons and one or more of them die, a report shall be agreed between the parties on the progress of the services and the Contracting Authority shall decide whether to terminate or continue the contract in accordance with the undertaking given within 15 days of the date of decease by the survivors and by the heirs or beneficiaries, as the case may be. The decision of the Contracting Authority shall be notified to those concerned within 30 days of receipt of such a proposal.
- 37.3 Such persons shall be jointly and severally liable for the proper performance of the contract to the same extent as the Contractor. Continuation of the contract shall be subject to the rules relating to establishment of any guarantee provided for in the contract.

G. SETTLEMENT OF DISPUTES

Article 38 Settlement of disputes

- 38.1 The Contracting Authority and the Contractor shall make every effort to settle amicably any dispute relating to the contract which may arise between them, or between the Project Manager and the Contractor.
- 38.2 Once a dispute has arisen, the parties to this contract shall notify each other in writing of their positions on the dispute as well as of any solution which they envisage possible. If either of the parties to this contract deems it useful, the parties shall meet and try to settle the dispute. Each party shall respond to a request for amicable settlement within 30 days of such request. The period to reach an amicable settlement shall be 120 days from the date of the request. Should the attempt to reach an amicable settlement be unsuccessful or should a party not respond in time to any requests for settlement, each party shall be free to proceed to the next stage in reaching a settlement by notifying the other party.
- 38.3 In the absence of an amicable settlement, any dispute between the Parties that may arise during the performance of this contract and that has not been possible to settle otherwise between the Parties shall be submitted to the arbitration of the Malta Arbitration Centre in accordance with the Arbitration Act (Chapter 387) of the Laws of Malta.

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

VOLUME 2 SECTION 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.

Article 2: Notices and Written Communications

2.2 All notices and written communications shall be submitted to:

The Chief Executive Officer
Malta Resources Authority
Millennia
Also Moro Road
Marsa MRS 9065
Malta

Article 7: Obligations of the Contractor

7.9

The Contractor is responsible for obtaining, procuring, collating and gathering any data, reports, documentation or any other information necessary in connection with this contract.

Article 14: Intellectual and Industrial Property Rights

14.1 The following reports shall be submitted by the Contractor in accordance with the tender requirements:

1. Inception report including detailed and definite workplan
2. Draft Scoping Report
3. Revised scoping report following consultation process
4. Draft Environmental Report
5. Revised Environmental Report (1st revision) following first round of consultations
6. Revised Environmental Report (2nd revision) and Revisions to Water Policy following second round of consultations
7. Finalised Environmental Report, Final Water Policy and Finalised Explanatory report (inclusive of other documentation to address issues raised by SEA Competent Authority in its Opinion report to the Minister)

Article 15: Scope of the Services

15.1 The scope of the services is defined in Volume 3 (Terms of Reference)

Article 26: Payments and Interest on Late Payment

26.1

The payments will be made according to the following schedule, subject to the provisions of Articles 28 to 33 of the General Conditions:

Month	Following approval by the Authority and SEA Competent Authority (as applicable) of the following deliverables	Percentage (%) of Global Price
1	Inception report and detailed workplan	5
2	Draft Scoping Report and Revised Scoping report	5
3	Draft Environmental Report	10
4	Revised Environmental Report (1 st revision)	20
5	Revised Environmental Report (2 nd Revision)	20
6	Finalised Environmental Report Final Water Policy Finalised Explanatory Report (inclusive of other documentation required to address issues raised by SEA Competent Authority)	40
TOTAL		100

26.5 Payments shall be made in Euro (€).

Article 27: Financial Guarantee

27.2 No pre financing is permitted.

VOLUME 2 SECTION 4 - SPECIMEN PERFORMANCE GUARANTEE

(LETTERHEAD OF THE REGISTERED FINANCIAL INSTITUTION PROVIDING THE GUARANTEE)

Malta Resources Authority
Millennia
Aldo Moro Road
Marsa
MRS 9065
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 Chief Executive Officer, Malta Resources Authority, and [Name and Address of Contractor] hereinafter referred to as "the Contractor" as per the latter's tender and your acceptance under MRA/WAT/9/10, whereby the contractor undertook the Strategic Environmental Assessment (SEA) for a Proposal for a Water Policy for Malta in accordance with Article 13 of the Special Conditions the services as mentioned, enumerated or referred to in the Specification and/or Bills of Quantities forming part of the contract documents, we hereby guarantee to pay you on demand a maximum sum of € [amount in works and numbers] in case the obligations of the above-mentioned contract are not duly performed by the Contractor.

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

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

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

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

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

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

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

Yours Faithfully,

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

VOLUME 3 SECTION 1 - CONTRACTING AUTHORITY'S REQUIREMENTS (TERMS OF REFERENCE)

Terms of Reference

1. Background Information

1.1 - Beneficiary Country

Malta

1.2 - Central Government Authority

Department of Contracts

1.3 - Contracting Authority

Malta Resources Authority

1.4 - Relevant Country Background

The Maltese archipelago consists of Malta, Gozo and Comino and a number of uninhabited islets. The total area is 316 km² and the population is approximately 400,000. The economy of Malta is highly dependant upon the tourism and manufacturing industries. The manufacturing industry is characterised by a significant proportion of micro enterprises consisting around 94 % of the total number of firms in these two sectors.

Water in the Maltese islands is a scarce resource. This is attributed to the local hydro-climatological conditions including the low rainfall, relatively long dry season, small surface area, the irregular and inadequate topographic relief and the characteristics of the aquifers.

Historically Malta has had a lack of natural water resources in relation to needs. Furthermore due to high urbanisation and population density (> 1,100 inhabitants / km²) there is intense competition for water resources.

Water to meet the needs of the population is obtained from two main sources: groundwater and desalination. There are no natural surface water resources. Groundwater contributes approximately 45% of the water supplied into the public distribution system and this is abstracted through an intricate network of sea level galleries, boreholes and springs. Due to the lack of other natural resources, there are intense pressures on groundwater resources from various sectors including agriculture and industry. The remaining % of the public supply is obtained from seawater desalination using reverse osmosis technology. Desalination facilities were introduced in response to water scarcities but it is recognised that this was accomplished at a high cost, given that desalination is expensive and energy intensive.

1.5 - Current State of Affairs in the Relevant Sector

In 2006, the Malta Resources Authority in collaboration with the Food and Agriculture Organisation of the United Nations published a comprehensive review of water resources "Malta Water Resources Review"

In addition Government in 2010 is preparing a water policy document. This policy document is intended to present Government's framework of action in the water sector and the priority areas which need to be addressed for the sustainable management of water resources in Malta. It is intended to outline the key objectives and policy statements for this sector for a five year period

2010- 2015.

The proposed draft key objectives of the Proposal for a Water Policy for Malta are:

1. Supply of good quality water to meet the needs of the population.
2. Sustainable use and management of the nation's water resources.
3. Protection of the water resources and the aquatic environment from pollution.
4. Fair and transparent regulation of the water industry.
5. Mitigating against the effects of floods.
6. Adaptation to climate change.

1.6 - Related Programmes and Donor Activities

The draft Proposal for a Water Policy is linked to other policy documents, plans and programmes which the Government has published or is in the process of preparing. Of particular significance are:

- (i) A river basin management plan¹ which is required to be developed according to the EU Water Framework Directive; (Annex VII of the Water Framework Directive establishes the information to be submitted in the river basin management plan).
- (ii) the State of the Environment Reports published by MEPA;
- (iii) the National Strategy for Policy and Abatement Measures Relating to the Reduction of Greenhouse Gas Emissions.

2. Contract Objectives and Expected Results

2.1 - Overall Objectives

The overall objectives of the project (i.e. development of an SEA for a Water Policy for Malta) of which this contract will be a part are as follows:

- (i) Development of a strategic environmental assessment in accordance with the requirements of the Strategic Environmental Assessment Regulations, 2005 (Legal Notice 418 of 2005);
- (i) Input and Revision to the Proposal for a Water Policy for Malta based on the findings of the strategic environmental assessment.

2.2 - Specific Objectives

The objectives of this contract are as follows:

- (i) to provide for a high level of protection of the environment, including health, and to contribute to the integration of environmental and health considerations into the preparation and adoption of the Water Policy for Malta with a view to promoting sustainable development,

¹ In Malta the river basin management planned is termed water catchment management plan

- (ii) to ensure that an environmental assessment is carried out on the Water Policy for Malta in which the likely significant effects on the environment of implementing the National Water Policy, and reasonable alternatives taking into account the objectives and the geographical scope of the Policy, are identified, described and evaluated.

2.3 - Results to be achieved by the Consultant

The Consultant shall provide the following:

1. A Scoping Report prepared and submitted in accordance with Schedule 3 of Legal Notice 418 of 2005,
2. A Revision to the Scoping Report following comments received during a consultation process and the consultation process and revision to the Scoping Report shall be carried out and submitted in accordance with Regulation 16 of Legal Notice 418 of 2005,
3. A draft Environmental Report which shall be prepared and submitted in accordance with Regulations 8 and 17 and Schedule 1 of Legal Notice 418 of 2005 ,
4. Co-ordination and execution of a consultation process on the draft Environmental Report in accordance with the requirements of Legal Notice 418 of 2005. The Consultant shall also prepare responses and feedback to comments received during the consultation process as may be necessary.
5. A first revision to the Draft Environmental Report following the consultation process. This revision shall be carried out and submitted in accordance with the requirements of Regulation 20 of Legal Notice 418 of 2005.
6. Co-ordination and execution of a wider public consultation on the Draft Environmental Report (1st Revision) and the Proposal for a Water Policy in accordance with the requirements of Regulation 20 (3) of Legal Notice 418 of 2005.
7. A second revision to the Draft Environmental Report and a revision to the Proposal for a Water Policy, as necessary, following a public-wide consultation process. These revisions to the Environmental Report and Water Policy shall be carried out, prepared and submitted in accordance with the requirements of Legal Notice 418 of 2005.
8. An explanatory report which shall be prepared and submitted in accordance with the requirements in Regulation 21 (2) of Legal Notice 418 of 2005 .
9. A Final Environmental Report and a Final Explanatory Report together with any additional amendments to the Reports and to the Water Policy as may be necessary to address any issues that may be identified by the SEA Competent Authority in its Opinion Report to the Minister as provided in Regulation 22 (1) (a) of Legal Notice 418 of 2005.

3. Assumptions and Risks

3.1 - Assumptions Underlying the Project Intervention

The Malta Resources Authority, acting on behalf of the Government, intends to engage consultants to assist it in formulating and developing this Strategic Environmental Assessment and in amending the draft Proposal for the Water Policy as may be necessary.

The main preconditions required for implementation of the proposed project are related to its financing and the issue and adjudication of tenders for consultancies and technical assistance.

In the course of the SEA it is assumed that consultants will:

- (i) adopt high level of professionalism and best practice in the execution of his role and responsibilities for the timely completion of the contract;
- (ii) adhere to guidance or other policy documents as applicable and/or as may be indicated by the relevant authorities and/or the Project Manager in Malta in the course of the SEA;
- (iii) ensure that the SEA process is carried out in accordance with the provisions of the Strategic Environmental Assessment Regulations (Legal Notice 418 of /2005).

It is further assumed that there will be:

1. institutional and management commitment from governmental, statutory bodies and other agencies to development of the measures and actions outlined in the Water Policy;
2. Availability of adequate staffing levels and resources.

3.2 - Risks

The main risks that may be envisaged in connection with the contract implementation are:

- (i) Delays arising from the need for exploratory negotiations and discussions with the competent authorities and stakeholders and the public throughout the contract and during the consultation processes. Although a maximum period of consultation (time limits that are established for such Consultation by the SEA Competent Authority) may be indicated in the Strategic Environmental Assessment Regulations (L.N. 418 of 2005), the period required for such consultations and discussions cannot be always determined with a high degree of accuracy;
- (ii) The occurrence of force *majeure*.

3.2.1 Political Risks

Government is committed towards implementation of European Union directives including the SEA Directive and the Water Framework Directive.

No known political risks are therefore envisaged.

3.2.2 Financial Risks

Apart from the precondition for adequate funding and assistance for the development of the strategy, no other major financial risks are envisaged.

3.2.3 Socio-Economic and Environmental Risks

The project is expected to contribute positively towards social, economic and environmental well-being through highlighting environmental effects of any measures and actions proposed in the Water Policy for Malta and any mitigating measures necessary to limit such impacts.

No known socio-economic or environmental risks are therefore envisaged.

4. Scope of the Work

4.1 - General

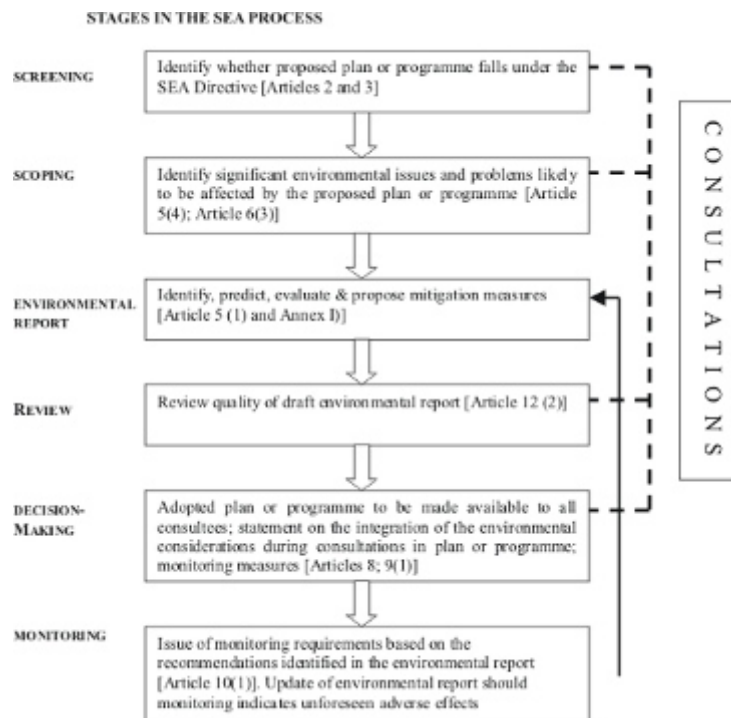
4.1.1 Project Description

The tender calls for development of such a Strategic Environmental Assessment of the Proposal for a Water Policy in line with the requirements of the Strategic Environmental Assessment Regulations, 2005.

The Strategic Environmental Assessment shall consist in an evaluation of the likely significant environmental effects, including health. This would comprise the determination of the scope of an environmental report and its preparation, the carrying out of public participation and consultations, and the taking into account of the environmental report and the results of the public participation and consultations in decision-making, and the provision of information on the decision in accordance with the Strategic Environmental Assessment Regulations, 2005.

The main stages of the SEA process are:

- Phase 1: Screening : Verification on the requirements of a SEA
- Phase 2: Scoping : Draft Scoping Report (setting the terms of reference, scope and level of detail of the SEA), consultation with authorities with environmental responsibilities on draft scoping report and amendments to draft scoping report
- Phase 3: Draft Environmental Report and consultations on the Draft Environmental Report
- Phase 4: Review of the Environmental Report and Water Policy and Explanatory Report
- Phase 5: Adoption of the Water Policy
- Phase 6: Monitoring the significant effects on the environment of implementing the policy



Source: MEPA www.mepa.org.mt

4.1.2 *Geographical Area to be covered*

Malta

4.1.3 *Target Groups*

The main target groups for the SEA are expected to include:

- Ministry for Resources and Rural Affairs as the main proponent of the Water Policy
- Key Ministries, government entities and regulatory authorities responsible for implementation of the Water Policy including but not necessarily limited to:

Ministries:

- Office of the Prime Minister
- Ministry for Finance, Economy and Investment,
- Ministry for Resources and Rural Affairs,
- Ministry for Health, the Elderly and Community Care
- Ministry for Infrastructure, Transport, and Communications,
- Ministry for Gozo,
- Ministry for Education, Employment and the Family

Regulatory Entities:

- Malta Resources Authority
- Malta Environment and Planning Authority
- Transport Malta
- Malta Standards Authority
- Malta Tourism Authority
- National Statistics Office

Government departments and agencies:

- Department of Agriculture
- Public Health Regulation Division,
- Public Services Division,
- Consumer and Competition Division
- Water Services Corporation
- WasteServ Ltd
- Malta Enterprise
- Building Industry Consultative Committee
- Consumer Affairs Council
- Malta Council for Science and Technology

4.2 - *Specific Activities*

The activities and tasks associated with the services required in this contract have been grouped into a number of workpackages as follows:

4.2.1 Work package 1: - Inception Report and Detailed Work Plan

All prospective tenderers shall submit an outline work plan showing how they plan to set out the completion of the respective reports and their reviews in relation to the periods of consultation.

Upon award of the contract, the Consultant shall be required to elaborate and discuss the details with the outline work plan submitted in the tender offer with the Project Manager, within **2 weeks** of the signing of the contract.

The Consultant shall submit an inception report addressing any issues or clarifications raised by the Project Manager in the first meeting. This report must be delivered within **4 weeks** of the signing of the contract. As a minimum, the inception report shall include a definite and detailed work plan for the SEA.

The outline work plan shall respect the deadlines set out in the boxes below. The purpose of the outline plan is to provide information to the Project Manager on the manner in which the tenderer intends to co-ordinate and fulfill the contract and the activities, tasks and responsibilities identified in the tender document.

The specific details of the work plan proposed by the tenderer must respect the framework of the outline plan and also the periods stipulated below for each task. Details will be discussed with the Project Manager (and amended as necessary).

- **Outline plan of work - to be submitted with the bid for this contract.**
- **Furnish and discuss the further details of the outline plan - within 2 weeks of contract signature**
- **Inception Report including a definite and detailed work plan - to be delivered within 4 weeks from contract signature.**

4.2.2 Workpackage 2: Scoping, Consultations on and Revisions to Scoping Report

The Consultant shall prepare a Draft Scoping Report and make it available to all stakeholders and the general public for consultation.

The Scoping Report shall contain the items listed in Schedule 3 of the Strategic Environmental Assessment Regulations 2005 (Legal Notice 418 of 2005).

The Scoping Report and the consultation process undertaken shall be carried out in accordance with the requirements of the Strategic Environmental Assessment Regulations 2005 (Legal Notice 418 of 2005).

Upon completion of the consultation process, and as may be established by the Authority in consultation with the Competent Authority for SEA in Malta, the Consultant shall review and revise the Draft Scoping Report taking into account the submissions received in the course of the consultation process and other requirements that may be indicated by the Authority. The revision of the scoping report shall be in accordance with Regulation 16 the Strategic Environmental Assessment Regulations 2005 (Legal Notice 418 of 2005).

The Consultant shall on the basis of these submissions and comments, submit the Revised Scoping Report to the Authority within **4 weeks** from the end of the consultation period as established by the SEA Competent Authority.

Following approval of the revised scoping report by the Authority, the Consultant shall make this report available to consultees in accordance with the requirements of LN 418 of 2005.

The Consultant shall be required to undertake, but not necessarily be limited to, the following tasks to fulfill the requirements of scoping and submission of deliverables indicated in this workpackage:

1. Conduct an overview of environmental conditions, as relevant to the scope and domain of the Proposal for a Water Policy, taking into account the State of the Environment Reports (SOER 2007), State of the Environment Indicators, 2007 and any other related environment documentation and information;
2. Identify the relevant environmental objectives and parameters for evaluating the priority issues being addressed by the Water Policy, and for assessing the suitability of the options being proposed by the Water Policy on account of the specific environmental conditions, where such interventions are being proposed;

3. Identify the more generic environmental concerns that the Water Policy is addressing.
4. Identify any other generic concerns that the Water Policy proposal can raise; as well as identify regulations, legal acts and EU Directives relevant to the execution of these proposals, and the regulatory frameworks and instruments that will have a bearing on the operation of the projects, measures and activities proposed in the Water Policy; and to set these out as an important aspect of the SEA.
5. Propose indicators (or identify specific questions regarding all the above matters) that will guide analyses within the SEA process, and that will provide a basis for assessing the degree to which the SEA has addressed the foregoing issues.
6. Coordinate the necessary activities for the scoping exercise, consultation with the Competent Authority for SEA, MEPA, and identified stakeholders (as defined by LN 418 of 2005) including, but not limited to, the target groups (as identified in section 4.1.3 of these Terms of Reference) and the general public.
7. Review and make the reports available to the public as stipulated in Legal Notice 418 of 2005.
8. Collect and obtain such information necessary to include items listed in Schedule 3 of the Strategic Environmental Assessment Regulations 2005 (Legal Notice 418 of 2005) in the Scoping Reports.

It shall be the responsibility of the Consultant to:

- (i) obtain, collect and collate all relevant information and data necessary for compilation of the Scoping Reports;
- (ii) liaise with the SEA Competent Authority and other stakeholders during this consultation;
- (iii) carry out consultations and obtain any comments from:
 1. the target groups,
 2. the SEA Competent Authority,
 3. all stakeholders and the general public

expediently and to make all clarifications necessary to enable him to complete the Revised Scoping Report within the timeframes established.

- **Draft Scoping Report - shall be delivered within 8 weeks of the contract signature.**
- **Draft Scoping Report shall be revised and the Revised Scoping Report shall be submitted within 4 weeks from the date of the end of the consultation period established by the SEA Competent Authority and the receipt of comments from the Authority and the SEA Competent Authority.**

4.2.3 Workpackage 3: Draft Environmental Report, Consultations and Revisions to Environmental Reports and Other Documentation

Following approval of the Revised Scoping Report by the Authority and the SEA Competent Authority, the Consultant shall be directed to commence work on Workpackage 3.

The consultant shall submit a Draft Environmental Report on the basis of the Revised Scoping Report that shall include the information requirements of Schedule 1 of the Strategic Environmental Assessment Regulations, 2008 (Legal Notice 418 of 2005). The Draft Environmental Report shall

include the information that may reasonably be required taking into account current knowledge and methods of assessment, the contents and level of detail in the Water Policy, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.

This Draft Environmental Report shall be completed and submitted to the Authority within **8 weeks** from the date of approval of the Revised Scoping Report.

Following an initial review of the Draft Environmental Report by the Authority, the Consultant shall subject to the approval of the Authority, submit this report to the SEA Competent Authority and to identified stakeholders (including target groups as indicated in section 4.1.3 of these Terms of Reference) for consultation and in accordance with the time limits established by the SEA Competent Authority.

The Consultant shall enter into consultations with identified stakeholders (as defined in Legal Notice 418 of 2005) regarding the environmental effects of implementation of the Water Policy and the measures, including the adoption of alternatives envisaged to reduce or eliminate such effects. Following receipt of comments during this consultation, the Consultant shall within **4 weeks** of the conclusion of the consultation period that is established by the SEA Competent Authority and receipt of the comments that may be submitted by the Authority and the SEA Competent Authority on the draft Environmental Report:

- (i) review and revise the Draft Environmental Report on the basis of such comments and consultations. The Draft Environmental Report shall be revised and submitted to the Authority as a Revised Environmental Report (1st Revision).
- (ii) Include a report explaining how comments of the Authority, of the SEA Competent Authority, and of the identified stakeholders have been taken into consideration.

Following an initial review of the Revised Environmental Report (1st Revision) by the Authority, the Consultant shall make available to all stakeholders and the public, a copy of the Revised Environmental Report (1st Revision) for consultation purposes in accordance with the requirements of the Strategic Environmental Assessment Regulations, 2005 (Legal Notice 418 of 2005). This report shall be made available to the public for consultation for a period of at least 8 weeks from the date of notification of the consultation. The Consultant shall collect all comments submitted during this consultation period.

Following this second consultation period on the Environmental Report, the Consultant shall within **4 weeks** from the conclusion of the second consultation process:

- (i) Review and amend the Revised Environmental Report and submit it as the second Revised Environmental Report (2nd Revision) to the Authority;
- (ii) Review and amend the Proposal for a Water Policy on the basis of the consultation processes undertaken and revisions carried out in the Environmental Reports;
- (iii) Submit a separate Explanatory Report explaining how the comments have been incorporated in the Revised Environmental Report and the Water Policy, including at least, all the aspects detailed in Regulation 21(2) of the Strategic Environmental Assessment Regulations, 2005 (Legal Notice 418 of 2005).

The Revised Environmental Report (2nd Revision) and the accompanying Explanatory Report will be reviewed by the Authority and the Consultant shall amend these reports within a reasonable time.

The Final Environmental Report and Final Explanatory Report will be forwarded to the SEA Competent Authority who will prepare an Opinion Report to the Minister.

The Consultant shall within a reasonable time be required to address any issues raised by the SEA Competent Authority identified in Regulation 22 (1) (a) of the Strategic Environmental Assessment Regulations, 2005 (Legal Notice 418 of 2005).

The Consultant shall be required to undertake, but not necessarily be limited to, the following tasks to fulfill the requirements indicated in this workpackage:

1. Consult with the Project Manager and with the relevant target groups (as indicated in section 4.1.3 of these Terms of Reference), to:
 - a. obtain all necessary background information to the Water Policy, its underlying rationale and the specific objectives it is intended to attain;
 - b. identify, discuss and determine the specific options and alternatives being proposed in the Water Policy;
 - c. establish the technical aspects of the proposals;
 - d. enable assessment of the proposals and the environmental effects and impacts and the implications towards compliance to environmental regulations;
2. Identify the environmental protection objectives, established at international, Community or Member State level, which are relevant to the Water Policy and the way those objectives and any environmental considerations have been taken into account during its preparation;
3. Consult, collect and review such baseline environmental information and other documentation, data and information necessary to ensure that the Environmental Reports include all the information required to be provided as specified in Schedule 1 of the Strategic Environmental Assessment Regulations 2005 (Legal Notice 418 of 2005).

It shall be the responsibility of the Consultant to:

1. obtain, collect and collate all relevant information and data necessary for compilation of the Environmental Reports, Explanatory Report and the revision to the Water Policy;
2. liaise with the SEA Competent Authority and other stakeholders during this consultation;
3. obtain any comments from:
 - a. the Authority;
 - b. the SEA Competent Authority, and
 - c. the target groups, identified stakeholders, other stakeholders and the public

expediently and to make all clarifications necessary to enable him to complete the Revised Environmental Reports (1st Revision and 2nd Revision) within the timeframes established.

- **Draft Environmental Report - to be submitted within 8 weeks from approval of the Revised Scoping Report.**
- **Revised Environmental Report (1st Revision) - to be submitted within 4 weeks from the date of end of the first consultations on the Environmental Report.**
- **Revised Environmental Report (2nd Revision), Revisions and Amendments to “Proposal for a Water Policy for Malta” and Explanatory Report to be submitted within 4 weeks from the date of end the second consultations on the Environmental Report (1st Revision).**
- **Final Environmental Report and Final Explanatory Report - depends on the changes requested and has to be within a period deemed reasonable by the Authority.**
- **Issues raised in the SEA Competent Authority’s Opinion Report to the Minister addressed in Final Environmental Report, Final Explanatory Report and Proposal for a Water Policy - (Note: This depends on the issues to be addressed but has to be within a period deemed reasonable by the Authority).**

4.3 - Project Management

4.3.1 Responsible Body

The Malta Resources Authority is responsible for managing this contract.

The Water Directorate within the Malta Resources Authority has been delegated direct responsibility for the project management of this contract. The Project Manager for this contract is the Director for Water Resources.

The Consultant shall submit all information and liaise with the Project Manager, where and as applicable, in the execution of this contract.

4.3.2 Management Structure

The Malta Resources Authority (MRA) was established in 2000 by the Malta Resources Authority Act XXV as an independent body to regulate water, energy and mineral resources. Article 4 of the Act establishes the functions of the Authority, giving it wide ranging responsibilities essentially involving regulation of practices, operations and activities in the energy, water and minerals sectors, and the power to grant licenses for the carrying out of any operation or activity relating to energy, water and mineral resources.

To fulfil its responsibilities, three directorates are established within the Authority by the Act:

- the Directorate for Water Resources Regulation with responsibility for the regulation of all practices relating to water resources, drainage and sewage;
- the Directorate for Energy Resources Regulation with responsibility for the regulation of all practices relating to generation, transmission, distribution, supply and use of energy, whatever the sources of any such energy;
- the Directorate for Mineral Resources Regulation with responsibility for the regulation of all practices relating to mineral resources.

The MRA Board is composed of a Chairman and 6 other members all appointed by the Minister.

The Chief Executive Officer has executive responsibility and his responsibilities are also defined in the Act. The Act further establishes for the appointment of a Head for each Directorate.

The Chief Executive Officer is responsible for any decisions related to implementation of the contract.

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

The Authority shall facilitate information required by the Consultant in connection with the project from regulated entities and governmental agencies.

However final responsibility for collection of all such information shall rest on the Contractor.

5. Logistics and Timing

5.1 - Location

The operational base of the contract is Malta. All meetings with and presentations to the Authority shall be carried out in Malta.

5.2 - Commencement Date & Period of Execution

The intended commencement date is 17th May 2010 and the period of execution of the contract will be 18 months from this date.

6. Requirements

6.1 - Personnel

The contract performance requires, as a minimum:

- An SEA lead expert with proven track record and experience in similar environmental assessments and with overall responsibility for the execution of the contract;
- A second key expert with a specialisation, proven track record and experience in the water sector;
- Other experts with appropriate specialisation in the different fields and which the tenderer may identify and consider necessary for the execution of the contract (refer section 6.1.2 of these Terms of Reference) in accordance with these Terms of Reference and the requirements of the Strategic Environmental Assessment Regulations, 2005;
- Administrative support.

6.1.1 Key Experts

Detailed CVs must be presented only for the SEA lead expert and the supporting key expert with specialisation in the water sector.

The Key Experts that **have** to be provided by the contract must have:

- A related university degree;
- Knowledge of the national and institutional context of environmental legislation;
- Ability to manage and deliver reports in a timely fashion.

SEA Lead Expert

The SEA Lead Expert will be responsible for conducting the contract together with the other nominated experts forming part of the Consultancy Team. The SEA Lead Expert has the following responsibilities:

- (a) lead the Consultancy team and co-ordinate inputs from the other experts nominated with the Consultancy team in submission of the deliverables required by the tender;
- (b) liaise with the Project Manager and the SEA Competent Authority in the execution of the contract;
- (c) co-ordinate consultations with all stakeholders including the target groups, identified stakeholders by the SEA Competent Authority and the public.

The SEA lead expert shall have the following professional qualifications, skills and experience:

(i) Professional Qualifications and skills

- higher university (postgraduate) degree in the environmental field, preferably environment protection, strategic environmental assessment or other related field;

- familiar with the requirements of national and EU directives and regulations in the field of environment and EU environmental policy;
- computer literacy (MS office and MS Project);
- good analytical, communication and writing skills
- fluency in English (written and spoken)

(ii) General Professional Experience

- at least 10 years of general professional experience;
- responsibility for managing at least 2 Environmental Impact Assessments or Strategic Environmental Assessments. (References to be included.)

(iii) Specific Professional Experience

- at least 5 years experience in the preparation and co-ordination of Environmental Impact Assessments and /or Strategic Environmental Assessments; (References to be included.)
- at least 10 years experience in project management and similar assignments.

Key Expert - Water

The Key Expert on the Water Sector shall have the following responsibilities:

- provide technical input to the review of and amendments to the Water Policy and the measures and actions proposed;
- provide technical input in the strategic environmental assessment and in the deliverables required by the tender;
- support the SEA lead expert team in co-ordinating inputs from the other experts nominated with the Consultancy team and in submitting the deliverables required by the tender.

This key expert shall have the following professional qualifications, skills and experience:

(i) Professional Qualifications and skills

- relevant university degree in engineering, hydrology or water resource management
- be familiar with the requirements of national and EU directives and regulations in the water sector and EU water policy;
- computer literacy (MS office and MS Project);
- good analytical, communication and writing skills;
- fluency in English (written and spoken)

(ii) General Professional Experience

- at least 10 years general professional experience;
- management responsibility or signification participation in at least 2 projects (with a total project cost of more than € 100,000) and which were related to the water sector. (References to be included.)

(iii) Specific Professional Experience

- at least 5 years experience in the water sector (water resource regulation, water resource management, water policy or water engineering) (References to be included.).
- at least 2 years experience in institutional development.

The key experts have a central role in implementing the contract. The key experts proposed in this tender must engage themselves exclusively to the tenderer in the performance of the contract.

Key experts must have the nationality of one of the EU Member States, candidate countries or any other country in accordance with Article 68 of LN177/2005.

6.1.2 Other Experts

The tenderer may nominate other experts which he considers necessary for the completion of the contract in accordance with these Terms of Reference and the requirements of the Strategic Environmental Assessment Regulations, 2005.

Other experts that may be indicated as being available to form an extended multidisciplinary SEA team, in order to be considered as suitable for the purpose, must have:

- a university degree in the field of expertise that is being indicated as their discipline with professional credentials that can be presented if and when requested,;
- at least three years relevant experience in that field;
- veritable professional experience in their specific areas with traceable references;
- experience in work as a Consultant,
- ability to work in a team,
- fluency in English and good writing and communication skills

It is expected that such a team may comprise experts in environmental health, geology, hydrology, energy, ecology, air and water quality specialists, urban planning, archaeology/heritage and economics.

On nominating such experts, the tenderer shall submit in his tender offer:

- (i) A description of the relevant training, qualifications and experience of each of the expert being nominated preferably in no more than three hundred (300) words for each such expert;
- (ii) the degree and area of involvement and the expected contribution / participation of each supporting expert in the contract.

Once experts are nominated by the tenderer and on award of the tender offer, these nominated experts will be considered as an integral part of the Consultancy team responsible for the execution of the contract.

The Consultant shall select and hire other experts as required according to the profiles identified in the Organisation & Methodology and these Terms of Reference. For the purposes of this contract, international experts are considered to be those whose permanent residence is outside the beneficiary country while local experts are considered to be those whose permanent residence is in the beneficiary country.

The Consultant should pay attention to the need to ensure the active participation of local professional skills where available, and a suitable mix of international and local staff in the project teams. All experts must be independent and free from conflicts of interest in the responsibilities accorded to them.

The selection procedures used by the Consultant to select these other experts shall be transparent,

and shall be based on pre-defined criteria, including professional qualifications, language skills and work experience. The findings of the selection panel shall be recorded. The selection of experts shall be subject to approval by the Contracting Authority.

Note that civil servants and other staff of the Public Service of the beneficiary country cannot be recruited as experts. See sub-article 9.5 of the General Conditions.

6.1.3 Support Staff and Backstopping

The tenderer shall indicate in his tender offer the support administrative staff available and that will be involved in the contract, their degree and level of participation and the area of contribution and participation.

6.2 - Accommodation

For the purposes of this contract, all office accommodation required during the implementation of this Contract shall be provided by the Consultant.

The Consultant shall provide and maintain:

- (i) all office facilities such as secretarial, IT equipment, printers/plotters, faxes, telephone lines, network connections/infrastructure, internet access, photocopiers,
- (ii) transportation
- (iii) local lodging

that he may require for the performance of the contract.

6.3 - Facilities to be provided by the Consultant

The Consultant will be responsible for the provision of all equipment, supplies, documentation, logistical support, office space and accommodation of his personnel required for the complete and satisfactory execution of the Consultancy services envisaged in this tender.

The Consultant shall ensure that experts are adequately supported and equipped. In particular it shall ensure that there is sufficient administrative, secretarial and interpreting provision to enable experts to concentrate on their primary responsibilities. It must also transfer funds as necessary to support its activities under the contract and to ensure that its employees are paid regularly and in a timely fashion.

If the Consultant is a consortium, the arrangements should allow for the maximum flexibility in project implementation. Arrangements offering each consortium partner a fixed percentage of the work to be undertaken under the contract should be avoided.

6.4 - Equipment

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

7. Reports

7.1 - Reporting Requirements

Please refer to Article 26 of the General Conditions. Interim progress reports must be prepared every six months during the period of execution of the contract. They must be accompanied by a corresponding invoice.

There must be a final progress report and final invoice at the end of the period of execution. The draft final progress report must be submitted at least one month before the end of the period of execution of the contract. Note that these interim and final progress reports are additional to any required in Section 4 of these Terms of Reference.

All reports must be submitted both in hard copy and soft copy (Microsoft Word / Microsoft Excel version).

7.2 - Submission & approval of progress reports

Two (2) copies of the progress reports referred to above must be submitted to the Project Manager identified in the contract. The progress reports must be written in English. The Project Manager is responsible for approving the progress reports.

8. Monitoring and Evaluation

8.1 - Definition of Indicators

The following **5 key performance indicators** shall be used by the Authority to monitor and evaluate the Consultant's performance of this contract:

1. Submission of all reports and documentation within the timeframes envisaged in the contract;
2. The quantity and quality of the input, responses and feedback received during consultation processes of the SEA;
3. The extent of revisions to the Scoping Report, Environmental Reports and Water Policy taking into account the consultation processes undertaken;
4. Confirmation by the SEA Competent Authority in its Opinion Report to the Minister on the SEA for the Water Policy that the obligations outlined in the Strategic Environmental Assessment Regulations, 2005 have been followed.
5. The envisaged significant impacts on the environment resulting from implementation of the Water Policy, as indicated by the SEA Competent Authority in its Opinion Report to the Minister on the SEA, have been addressed in the Environmental Reports.

8.2 - Special Requirements

The contract's progress, procedures, timetable etc will be subject to periodic reviews in accordance with the procedures established by the Contracting Authority and agreed with the Consultant. The meetings will review the progress of the project and endorse work plans for the future.

The Consultant shall allow for regular meetings with representatives of the Malta Resources Authority. Regularity of the meetings shall be agreed between the Malta Resources Authority and the Consultant.

VOLUME 3 SECTION 2 - TENDERER'S TECHNICAL OFFER (ORGANIZATION & METHODOLOGY)

To be completed by the tenderer

1. RATIONALE

- Any comments on the Terms of reference of importance for the successful execution of activities, in particular its objectives and expected results, thus demonstrating the degree of understanding of the contract. **Any comments contradicting the Terms of reference or falling outside their scope will not form part of the final contract**
- An opinion on the key issues related to the achievement of the contract objectives and expected results
- An explanation of the risks and assumptions affecting the execution of the contract

2. STRATEGY

- An outline of the approach proposed for contract implementation
- A list of the proposed activities considered to be necessary to achieve the contract objectives
- The related inputs and outputs
- In the case of a tender being submitted by a consortium, a description of the input from each of the consortium partners and the distribution and interaction of tasks and responsibilities between them
- A description of the support facilities (back-stopping) that the team of experts will have from the contractor during the execution of the contract
- A description of sub-contracting arrangements foreseen, if any and within the limit indicated in clause 3 of the Instructions to tenderers, with a clear indication of the tasks that will be entrusted to a sub-contractor and a statement by the tenderer guaranteeing the eligibility of any sub-contractor

3. TIMETABLE OF ACTIVITIES

- The timing, sequence and duration of the proposed activities, taking into account mobilisation time
- The identification and timing of major milestones in execution of the contract, including an indication of how the achievement of these would be reflected in any reports, particularly those stipulated in the Terms of reference

VOLUME 4 - FINANCIAL BID

Global price for a Strategic Environmental Assessment (SEA) of a Proposal for a Water Policy for Malta as outlined in the Tender Document, MRA Ref.: MRA/WAT/9/10

Description	Amount in Euro (€)
Strategic Environmental Assessment (SEA) of a Proposal for a Water Policy for Malta	€..... Amount in Words:

FINANCIAL BID BREAKDOWN

Item	Description of Service	Amount including Taxes, Other Duties & Discounts EUR
A	Inception report including detailed and definite workplan	
B	<i>Scoping, Consultations on and Revisions to Scoping Report</i>	
B1	Draft Scoping Report	
B2	Revised scoping report following consultation process	
C	<i>Draft Environmental Report, Consultations and Revisions to Environmental Reports and Other Documents</i>	
C1	Draft Environmental Report	
C2	Revised Environmental Report (1 st revision) following first round of consultations	
C3	Revised Environmental Report (2nd revision) and Revisions to Water Policy following second round of consultations	

Item	Description of Service	Amount including Taxes, Other Duties & Discounts EUR
C4	Finalised Environmental Report, Final Water Policy and Finalised Explanatory report (inclusive of other documentation to address issues raised by SEA Competent Authority in its Opinion report to the Minister)	
	GRAND TOTAL	