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**INVITATION TO BID (ITB) FOR FINANCIAL SUPPORT FOR
ELECTRICITY FROM SOLAR PHOTOVOLTAIC INSTALLATIONS WITH
CAPACITY OF 1000KW_p OR MORE**

Closing Date: **26 October** 2018 at 1200hrs CET

Date Published: **21 August** 2018

IMPORTANT:

- No Bid Bond is requested

Clarifications / meeting minutes resulting from the clarification meeting shall be uploaded and will be available to view/download from

MINISTRY FOR ENERGY AND WATER MANAGEMENT
52, Old Theatre Street, Valletta

INVITATION TO BID (ITB) FOR FINANCIAL SUPPORT FOR ELECTRICITY FROM SOLAR PHOTOVOLTAIC INSTALLATIONS WITH CAPACITY OF 1000KW_p OR MORE

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# VOLUME 1 SECTION 1 - INSTRUCTIONS TO BIDDERS

## A. GENERAL PART

### 1. General Instructions

- 1.1 In submitting a bid, the bidder accepts in full and in its entirety, the content of this document, including subsequent meeting minutes from the clarification meeting/s issued by the Contracting Authority (CA), whatever his own corresponding conditions may be, which he hereby waives. Bidders are expected to examine carefully and comply with all instructions, forms, contract provisions and specifications contained in this document. These Instructions to Bidders complement the (L.N. 76 of 2017) “*Competitive Bidding Rules for Renewable Sources of Energy Installations Regulations, 2017*”, and subsequent amendment L.N. 251 of 2018.

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

The Evaluation Committee shall request rectifications in respect of incomplete/non-submitted information pertinent to the documentation as outlined in sub-Clause 15.1(a), 15.1(b), 15.1(c) of these Instructions to Bidders. Such rectification/s must be submitted within five (5) working days from notification, and will be subject to a non-refundable administrative penalty of €50: failure to comply shall result in the bid offer not being considered any further.

- 1.2 The subject of this document is an Invitation to bid (ITB) for financial support for electricity from solar photovoltaic (PV) installations with capacity of 1000kWp or more.
- 1.3 The bidders will bear all costs associated with the preparation and submission of the bid.
- 1.4 The Contracting Authority retains ownership of all bids received under this invitation to bid procedure. Consequently, bidders have no right to have their bids returned to them.
- 1.5 Bids will be ranked in accordance with bid price in ascending order with the lowest bid ranking first. Depending on the capacity (in kWp) available for allocation, administratively compliant bidders will be awarded the aid they bid for in accordance to the ranking of their bid price, starting with the lowest bid price. One or more bidders may be awarded aid. The ranking of the awarded bids shall also form the basis on which the Distribution System Operator (Enemalta plc) shall assign unallocated grid capacity, giving preference to the awarded bid having the lowest bid price, and proceeding in order of bid price as reflected by the assigned *rank number*. If two or more bids submitted exactly at the same bid price have been concurrently awarded aid, then the order which shall be used to assign unallocated grid capacity shall be determined by the contracting authority by the drawing of lots. Further information can be found in Annex 1.

## 2. Timetable

|                                                                                                                                                                                                   | DATE                          | TIME*   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|---------|
| Clarification Meeting<br>(Refer to Clause 7.1)                                                                                                                                                    | 29 <sup>th</sup> August 2018  | 1000hrs |
| Deadline for request for any additional information from the Contracting Authority<br>Clarifications to be sent:<br>Via email: procurement.mew@gov.mt<br><br>(See Volume 2 Section 2 article 2.1) | 5 <sup>th</sup> October 2018  | 2345hrs |
| Last date on which additional information are issued by the Contracting Authority                                                                                                                 | 19 <sup>th</sup> October 2018 | 2345hrs |
| Deadline for submission of bids /<br>Bids Opening Session<br>(unless otherwise modified in terms of Volume 1<br>Section 1 Clause 9.2)                                                             | 26 <sup>th</sup> October 2018 | 1200hrs |

\* All times Central European Time (CET)

## 3. Eligibility

- 3.1 This call for bids is being issued under an open procedure as described in the (L.N. 76 of 2017) *“Competitive Bidding Rules for Renewable Sources of Energy Installations Regulations, 2017.”* and subsequent amendment L.N. 251 of 2018

## 4. Selection Criteria

- 4.1 Refer to clause 14.

## 5. Multiple Bids

- 5.1 A bidder may submit only one bid (with one bid price) per site. Bidders who submit different options (bid prices) for a photovoltaic system installation on the same site will be automatically considered non-compliant.
- 5.2 If the bidder intends to bid for more than one site, then such bids have to be presented as separate submissions.
- 5.3 A company may not submit a bid for the same site both individually and as a partner in a joint venture/consortium.

## 6. Bidder Expenses

- 6.1 The bidder will bear all costs associated with the preparation and submission of the bid. The Contracting Authority will neither be responsible for, nor cover, any expenses or losses.

## 7. Clarification Meeting

- 7.1 A clarification meeting will be held on the date and time indicated in Clause 2, at Chadwick Hall, Institute of Water Technology, Water Services Corporation, Triq Hal Qormi, Hal Luqa, to answer any questions on the ITB document which have been raised during the same meeting. Minutes will be taken during the meeting and shall be posted online as a clarification note as per Clause 9.1.

**Meetings/visits by individual prospective bidders during the bidding period other than this clarification visit for all prospective bidders are not permitted.**

## B. BID DOCUMENTS

### 8. Content of ITB Document

- 8.1 The set of ITB documents comprises the following documents and should be read in conjunction with any clarification notes issued in accordance with Clause 22:

**Volume 1** Instructions to bidders

- Volume 2**
- (L.N. 76 of 2017) “*Competitive Bidding Rules for Renewable Sources of Energy Installations Regulations, 2017*”, and subsequent amendment L.N. 251 of 2018
  - Conditions for Invitation to bid (ITB) for financial support for electricity from solar photovoltaic installations with capacity of 1000kWp or more.

**Volume 3** Bid and Capacity Offered

- 8.2 Bidders bear sole liability for examining with appropriate care the ITB documents, including those design documents available for inspection, and any clarification notes to the ITB documents issued during the bidding period, and for obtaining reliable information with respect to conditions and obligations that may in any way affect the amount or nature of the bid. In the event that the bid is successful, no claim for alteration of the bid amount will be entertained on the grounds of errors or omissions in the obligations of the bidder described above.
- 8.3 The bidder must provide all documents required by the provisions of the ITB. All such documents, without exception, must comply strictly with these conditions and provisions and contain no alterations made by the bidder.

### 9. Explanations/Clarification Notes Concerning Bid Documents

- 9.1 Clarification notes (Meeting minutes from the clarification meeting and any alterations to the ITB document) will be published on <http://energy.gov.mt/en/tenders/Pages/Tenders-.aspx>. Clarification notes will constitute an integral part of the ITB documentation, and it is the responsibility of bidders to visit this website and be aware of the latest information published online prior to submitting their bid.
- 9.2 The Contracting Authority, at its own discretion, as necessary and in accordance with Clause 22, may extend the deadline for submission of bids to give bidders sufficient time to take clarification notes into account when preparing their bids.

### 10. Labour Law

- 10.1 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.

## 11. Law

- 11.1 By submitting their bids, bidders 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 bid and the resulting contract.

## C. BID PREPARATION

### 12. Language of Bids

- 12.1 The ITB and all correspondence and documents related to the ITB exchanged by the bidder and the Contracting Authority must be written in English.
- 12.2 Supporting documents and printed literature (if applicable) furnished by the bidder may be in another language, provided they are accompanied by an accurate translation into English. For the purposes of interpretation of the ITB, the English language will prevail.

### 13. Presentation of Bids

- 13.1 Bidders must satisfy the following conditions:
- (a) All bids must be submitted in one original sealed envelope in a single package.
  - (b) All bids must be received by date and time indicated in the timetable at Clause 2 and deposited in the bid box at the entrance of the:  
  
**Corporate Services Directorate,  
Ministry for Energy and Water Management  
52, Old Theatre Street  
Valletta**
  - (c) The package, as per (b) above, must bear only:
    - (i) the above address;
    - (ii) the reference of the invitation to bids concerned;
    - (iii) the name of the bidder.

### 14. Bids

- 14.1 The bid price for financial support must be quoted as a fixed price (in euro) per kWh to be paid for electricity generated and sold to the distribution system operator from the PV system installation offered in the bid for a period not exceeding 20 years from the date the PV system is connected to the grid and metered by the DSO.
- 14.2 Bidders must quote all components of the price **excluding VAT**. VAT shall be paid in accordance with the applicable VAT legislation.

14.3 The maximum bid price for financial support (euro per kWh) shall not exceed the maximum allowed support stated in Table 1 for the applicable installation type categories (as per General Guidance Notes of Volume 1 Section 5).

If the proposed PV installation covers a site which spans across more than one distinct category (but with a common point of connection to the grid), the maximum bid price shall be calculated in proportion to the relative land coverage. Thus, for example, if 30% of the PV installation shall be overlying a car park, with the remaining part installed over industrial land, the maximum bid price cannot exceed:  $0.153 \times 0.3 + 0.140 \times 0.7 = 0.1439$  euro per kWh, subject to provisions outlined in the guidance notes.

A site can be considered to fall under the “others” category only if it cannot be classified under any of the other specific categories listed below.

Bidders who quote a higher bid price than the relevant cap indicated in the table below shall have their offer deemed non-compliant and shall be rejected.

| Category Number | Installation Type Categories                                        | Maximum allowed financial support euro per kWh (cap) |
|-----------------|---------------------------------------------------------------------|------------------------------------------------------|
| 1               | Quarries, Official Disused Landfills, Industrial Land and Roof Tops | 0.140                                                |
| 2               | Car Parks                                                           | 0.153                                                |
| 3               | Land under a Government Concession                                  | 0.108                                                |
| 4               | Others                                                              | 0.133                                                |

## 15. Selection and Award Requirements

15.1 The bid must comprise the following duly completed documents, inserted in a single, sealed envelope:

- (a) **General/Administrative Information**
- (i) Screening letter issued by the Planning Authority and a site plan indicating clearly the area which is being proposed to host the installation.
  - (ii) A copy of a recent “Grid Connection Study” and “Quotation” (issued not earlier than 90 calendar days from the publishing of this ITB document) for the necessary grid connection and relevant grid infrastructure costs issued by the Distribution System Operator (Enemalta plc) - relative to the proposed Photovoltaic system installation offered in the bid. No deposit on the relevant grid infrastructure upgrade or allocation is required with the bid as this may be construed as constituting “start of works” as defined in Volume 1 Section 3, and invalidate the eligibility for support.
  - (iii) A declaration by the owner or occupier of the site identified in (i) that he intends to lease this site to the bidder (or has already entered into a lease agreement with the bidder) for the purpose of the construction of a PV installation, and that there is no legal impediment restraining the owner/occupier from leasing the site to the bidder for the purpose of the construction of PV installation.



Declaration is to be accompanied by a copy of the I.D. Card or passport of owner/occupier.

- (iv) A declaration by the bidder that the Site identified in (i) is not subject to any covenants, restrictions, agreements, planning obligations, contracts, options, rights of way or other encumbrances which hinders the use of the site for the purposes of installing the solar Photovoltaic system identified in this bid;
- (v) The Bid Form in accordance with the form provided in Volume 1, Section 2.
- (vi) State Aid Declaration in accordance with the form provided in Volume 1, Section 3.
- (vii) In case of Joint Venture/Consortium, please attach Form 1 marked as Power of Attorney duly filled in.
- (viii) In case of Joint Venture / Consortium, please attach Form 2 marked as DATA on Joint Venture / Consortium duly filled in
- (ix) Photographs of the site where the photovoltaic system is proposed to be installed.

(b) **Selection Criteria**

*(i) Financial and Economic Standing*

Evidence of financial and economic standing:

The bidder must submit a statement by a recognised bank certifying that the bidder has sufficient financial resources/credit facilities to install and maintain the PV installation for which he is requesting support through this competitive process. In the case of a consortium/joint venture the aforementioned statement must cover all members/companies forming the consortium/joint venture.

*With reference to documentation submitted in response to Clause 15.1a and 15.1b, bidders will be requested to either clarify/rectify any incorrect and/or incomplete documentation, and/or submit any missing documents within five working days from notification. Rectifications will be subject to a non-refundable administrative penalty of €50, and that failure to comply shall result in the offer not being considered any further.*

*A bidder 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 may rely on the capabilities of participants in the group or of other entities. Groups of economic operators may submit bids or put themselves forward as candidates. These groups are not required to assume a specific legal form; however, the selected group may be required to do so when it has been awarded the contract, to the extent that this change is necessary for the satisfactory performance of the contract.*

*(ii) Pursuant to the State Aid Declaration submitted in accordance with the form provided in Volume 1, Section 3, the Contracting Authority will perform site-inspections to verify that there has not been any start of works prior to the submission of this invitation to bid. The Contracting Authority may delegate the inspections to third parties who will report their findings to the Contracting Authority. The Contracting Authority will use the site-inspection findings in the administrative compliance verification process in terms of this ITB.*

(c) **Financial Offer/Bill of Quantities**

- (i) A bid (bid price per kWh) and capacity offered in the form provided in Volume 3. *No rectification shall be allowed. Only clarifications on the submitted information may be requested.*

**Bidders 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.**

**Bidders are NOT required NOR expected to submit, with their offer, any components of the bid document except those specifically mentioned in Clause 15.**

## **16. Currencies of Bid and Payments**

- 16.1 The currency of the bid is the Euro (€).

## **17. Period of Validity of Bids**

- 17.1 Bids must remain valid for a period of 90 days after the deadline for submission of bids indicated in the contract notice, the ITB document or as modified in accordance with Clauses 9 and/or 22. Any bidder who quotes a shorter validity period will be rejected.
- 17.2 The Contracting Authority may consider cancelling the ITB in the event that the evaluation process has not been concluded by the end of the validity period of the submitted bids.
- 17.3 In exceptional circumstances the Contracting Authority may request that bidders extend the validity of bid. Such requests and the responses to them must be made in writing. A bidder may refuse to comply with such a request, in which case his bid will no longer be considered for award.

## **18. Bid Bond (Bid Guarantee)**

- 18.1 Not applicable

## **19. Variant Solutions**

- 19.1 No variant solutions will be accepted. Bidders must submit a bid in accordance with the requirements of the ITB document.

## **20. Preparation and Signing of bids**

- 20.1 Bids must comprise the documents specified in Clause 15 above.
- 20.2 The bidder's submission must be typed in, or handwritten in indelible ink. All pages must be numbered consecutively by hand, machine or in any other way acceptable to the Contracting Authority and initialled by the bidder.
- 20.3 The bid must contain no changes or alterations, other than those made in accordance with instructions issued by the Contracting Authority (issued as clarification notes).

20.4 The bid will be rejected if it contains any alteration, tampering, addition or deletion to the ITB documents not specified in a clarification note issued by the Contracting Authority.

## **D. SUBMISSION OF BIDS**

### **21. Sealing and Marking of Bids**

- 21.1 The bids must be submitted in English to the MEW Director Corporate Services before the deadline specified in Clause 2 or as otherwise specified in accordance with Clause 9.1 and/or 22.1. They must be submitted:

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

**Corporate Services Directorate,  
Ministry for Energy and Water Management  
52, Old Theatre Street  
Valletta**

Bids submitted by any other means will not be considered.

- 21.2 Bidders must seal the bid as outlined in Clause 13.
- 21.3 If the outer envelope is not sealed and marked as required in Sub clause 13.1, the Corporate Services Directorate will assume no responsibility for the misplacement or premature opening of the bid.
- 21.4 Prospective bidders may submit questions in writing to the Contracting Authority through the contact details and within the timeframes as detailed in Clause 2 of the ITB document. The Contracting Authority shall reply to all Prospective bidders questions, and apply any necessary corrections to the ITB documents by publishing clarification notes, as well as issue corrigenda to this document, up to 6 calendar days, before the deadline for submission of bids. Clarifications requests received by other means will not be taken into consideration.

### **22. Extension of Deadline for Submission of Bids**

- 22.1 The Contracting Authority may, at its own discretion, extend the deadline for submission of bids by issuing a clarification note in accordance with Clause 9. In such cases, all rights and obligations of the Contracting Authority and the bidder regarding the original date specified in the bid will be subject to the new date.

### **23. Late Bids**

- 23.1 **All bids received after the deadline for submission specified in the contract notice or these instructions will be kept by the Corporate Services Directorate, Ministry for Energy and Water Management, 52, Old Theatre Street, Valletta, Malta.**
- 23.2 No liability can be accepted for late delivery of bids. Late bids will be rejected and will not be evaluated.

### **24. Alterations and Withdrawal of Bids**

- 24.1 Bidders may alter or withdraw their bids by written notification prior to the above deadline. No bid may be altered after the deadline for submission.

- 24.2 Any notification of alteration or withdrawal must be prepared, sealed, marked and submitted in accordance with Clause 21, and the envelope must also be marked with "alteration" or "withdrawal".

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

### **25. Opening of Bids**

- 25.1 Bids 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 9.1 and/or 22.1) at the

**Corporate Services Directorate,  
Ministry for Energy and Water Management  
52, Old Theatre Street  
Valletta**

The Contracting Authority will draw up a 'Summary of Bids Received' which will be published on the notice board at the Corporate Services Directorate and shall also be available to view on <http://energy.gov.mt/en/tenders/Pages/Tenders-.aspx>

- 25.2 At the bid opening, the bidders' names, the bid prices and any other information the Contracting Authority may consider appropriate will be published.
- 25.3 Envelopes marked "withdrawal" will be read out first and returned to the bidder.
- 25.4 Reductions or alterations to bid prices made by bidders after submission will not be taken into consideration during the analysis and evaluation of bids.

### **26. Secrecy of the Procedure**

- 26.1 After the opening of the bids, no information about the examination, clarification, evaluation or comparison of bids or decisions about the contract award may be disclosed before the notification of award.
- 26.2 Information concerning checking, explanation, opinions and comparison of bids and recommendations concerning the award of contract, may not be disclosed to bidders or any other person not officially involved in the process unless otherwise permitted or required by law.
- 26.3 Any attempt by a bidder to approach any member of the Evaluation Committee directly during the evaluation period will be considered legitimate grounds for disqualifying his bid.

### **27. Clarification of Bids**

- 27.1 When checking and comparing bids, the evaluation committee may, ask a bidder to clarify any aspect of his bid.
- 27.2 Such requests and the responses to them must be made by e-mail (See Volume 2 Section 2 Article 2.1). They may in no circumstances alter or try to change the financial support (bid price per kWh) or content of the bid.

## 28. Bid Evaluation Process

28.1 The following should be read in conjunction with Clause 25.

### Part 1: Administrative / Eligibility and Selection Compliance

The Evaluation Committee will check the compliance of bids with the instructions given in the ITB document Clause 15.1 (a)

28.2 **Part 2: Selection Criteria**

The Evaluation Committee will check the evidence of financial and economic standing with instructions given in the ITB document Clause 15.1 (b).

28.3 **Part 3. Financial Evaluation**

Bidders who have been considered compliant with the eligibility and selection criteria (Parts 1 and 2) will have their bid for financial support evaluated.

28.4 During the bid evaluation for Parts 1, 2, and 3, the Evaluation Committee shall, request clarifications/ rectifications in respect of incomplete/non-submitted information pertinent to the documentation as outlined in sub-Clause 15.1(a), 15.1(b), and clarifications with respect to sub-Clause 15.1(c) of these Instructions to bidders. Such clarification/rectification/s must be submitted within five (5) working days from notification, and rectifications will be subject to a non-refundable administrative penalty of €50: failure to comply shall result in the bid offer not being considered any further.

## 29. Correction of Arithmetical Errors

29.1 Correction of Arithmetical Errors for Admissible bids is not applicable. Bidders are required to state the bid price per kWh in **Figures and Words**. For evaluation purposes the bid price as quoted in words shall prevail.

## F. CONTRACT AWARD

### 30. Criteria for Award

30.1 The sole award criterion will be the **bid price per kWh**. The contract/s will be awarded to the lowest priced bids (per kWh) satisfying the administrative, technical and financial criteria.

The bidder must submit bids for a fixed bid price per kWh for electricity production and corresponding bid capacity as stipulated in L.N. 76 of 2017 *and subsequent amendment L.N. 251 of 2018*.

If the capacity offered as part of a single bid eligible for support cannot be fully accommodated in the remaining un-allocated capacity, the Contracting Authority shall refuse the bid and cancel the unallocated capacity.

In the case when two or more eligible bids with the same bid price per kWh are received, and which bids cannot be all accommodated within the unallocated capacity, the Evaluation Committee will rank the bids in question by the drawing of lots. The concerned bidders will be invited (via an email sent by the Contracting Authority) to attend for the drawing session and a notice shall be published on the MEW's website (energy.gov.mt) showing the date, time

and venue of the drawing of lots. However, if one or more of the concerned bidders does not attend for the drawing of lots on the date, time and venue as determined by the Contracting Authority the procedure will nonetheless be executed. The same procedure shall be applied when establishing the ranking order for the purpose of allocating the available grid connection capacity in the case of two or more successful bids at same bid price per kwh.

### **31. Right of the Contracting Authority to accept or reject any Bid**

- 31.1 The Contracting Authority reserves the right to accept or reject any bid and/or to cancel the whole bidding procedure and reject all bids. The Contracting Authority reserves the right to initiate a new invitation to bid.
- 31.2 In the event of a bid procedure's cancellation, bidders will be notified by the Contracting Authority. If the bid procedure is cancelled before the external envelope of any bid has been opened, the sealed envelopes will be returned, unopened, to the bidders.
- 31.3 Cancellation may occur where:
- (a) the bid procedure has been unsuccessful, namely where no qualitatively or financially worthwhile bid has been received or there has been no response at all;
  - (b) exceptional circumstances or force majeure;
  - (c) there have been irregularities in the procedure, in particular where these have prevented fair competition;
  - (d) the duration of the evaluation has exceeded the stipulated time limit in Article 17 of Instructions to Bidders.

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

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

- 32.1 Prior to the expiration of the period of validity of bids, the Contracting Authority will notify the successful bidder/s, in writing, that his/their bid has/have been recommended for award, pending any appeal being lodged in terms of regulation 270 of S.L.174.04, namely the Public Procurement Regulations. Any appeals have to be submitted to the Public Contracts Review Board within ten calendar days of the publishing of the recommendation for award.
- 32.2 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 bidder/s;
  - (iii) Awarded bid price/s of the successful bidder/s;
  - (v) the deadline for filing a notice of objection (appeal);
  - (vi) the deposit required if lodging an appeal.
- 32.3 The recommendations shall be published on the Notice Board of the Contracting Authority and on: <http://energy.gov.mt/en/tenders/Pages/Tenders-.aspx> Moreover the bidders will also be notified by email of the results from the evaluation of the bids submitted.
- 32.4 Successful bidders are required to request an updated grid connection study from Enemalta within 14 calendar days of award for support. Failure to submit this request will lead to the loss of their place in the ranking order for the purpose of grid capacity allocation.

- 32.5 Successful bidders are allowed to relocate the PV system benefiting from support to an alternative site subject to the submission of all documentation requested in Volume 1, Section 1, Clause 15.1(a) (except the bid form) as applicable to the alternative site and subsequent approval by the contracting authority, and provided that the new alternative site falls within the same category as the original site specified in the Award Letter and Contract of Award, and shall be subject to all relevant permits, new chargeable technical studies related to the new site and grid connection costs. The awarded support (price/kWh) and corresponding allocated capacity shall not be altered, but the rank order shall no longer apply for the purpose of grid capacity allocation.

### 33. Contract Signing and Performance Bond

- 33.1 After the lapse of the appeals period, and pending that no objections have been received and/or upheld, the successful bidder/s 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 bidder/s. The outcome of any such clarifications, if any, will be set out in a Memorandum of Understanding, to be signed by both parties and incorporated into the contract.
- 33.2 Before the Contracting Authority signs the contract with the successful bidder/s, the successful bidder/s 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 Bidder's Declaration Form. The above mentioned documents must be submitted by every member of a Joint Venture/Consortium (if applicable).
- 33.3 The Contractor shall, within 7 calendar days of receipt of the contract, sign and date the contract and return it together with the Performance Bond.
- 33.4 If the selected bidder/s fail/s to sign and date and return the contract/s, other required documentation, and any bonds required within the prescribed 7 calendar days, the Contracting Authority may consider the interest of the bidder/s to be withdrawn without any further notice, and without prejudice to the Contracting Authority's right to claim compensation or pursue any other remedy in respect of such failure, and the successful bidder/s will have no claim whatsoever against the Contracting Authority.

The bidder/s whose eligible bid has been evaluated as next cheapest may be recommended for award, and so on and so forth.

- 33.5 Only the signed contract/s will constitute an official commitment on the part of the Contracting Authority, and activities **may not begin until the contract has been signed by the Contracting Authority and the successful bidder/s.**
- 33.6 The performance bond referred to in the Conditions is set at Euro50,000, and must be presented in the form specified in Volume 2, Section 3, to the ITB document.

The performance bond shall be released within 30 days from when the PV installation is commissioned and connected to the distribution system through the appropriate metering equipment provided by the distribution system operator.

The contractor shall be considered to be in breach of the conditions of the award if the installed (and commissioned) capacity is lower than 80% of the relevant bid capacity. This shall lead to the partial or full forfeiture of the performance bond as shown below:

- (a) If the installed and commissioned Capacity is smaller or equal than 50% of the bid capacity or smaller than 1MWp, this shall lead to the complete forfeiture of the performance bond and **withdrawal of the award of support**;
- (b) If the installed and commissioned capacity is between 50% and 80% of the relevant bid capacity, and is not smaller than 1MWp, this shall lead to the partial forfeiture of the performance bond. This shall be calculated as follows:



$$\text{Forfeited Performance Bond (\%)} = \frac{0.8 \cdot \{\text{Installed Capacity} / \text{Bid Capacity}\}}{1} \times 100\%$$

0.3

## **G. MISCELLANEOUS**

### **34. Ethics Clauses**

- 34.1 Any attempt by a candidate or bidder to obtain confidential information, enter into unlawful agreements with competitors or influence the committee or the Contracting Authority during the process of examining, clarifying, evaluating and comparing bids will lead to the rejection of his candidacy or bid and may result in administrative penalties.
- 34.2 When putting forward a candidacy or bid, the candidate or bidder must declare that he is affected by no potential conflict of interest, and that he has no particular link with other bidders or parties involved.
- 34.3 The Contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of his profession. He may not commit the Contracting Authority in any way without its prior written consent.
- 34.4 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.
- 34.5 The Contractor and his staff must not exercise any activity or receive any advantage inconsistent with their obligations to the Contracting Authority.
- 34.6 The Contractor and his staff are obliged to maintain professional secrecy for the entire duration of the contract and after its completion.
- 34.7 The contract governs the Parties' use of all reports and documents drawn up, received or presented by them during the execution of the contract.
- 34.8 The Contractor shall refrain from any relationship likely to compromise his independence or that of his staff. If the Contractor ceases to be independent, the Contracting Authority may, regardless of injury, terminate the contract without further notice and without the Contractor having any claim to compensation.

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

- 35.1 Any personal data submitted in the framework of the competitive bidding rules and/or subsequently included in the contract shall be processed pursuant to the Data Protection Act (2001) and all of its subsidiary legislation. It shall be processed solely for the purposes of the performance, management and follow-up of the bidding procedure and/or subsequent contract by the 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.
- 35.2 The provisions of this document/contract are without prejudice to the obligations of the Contracting Authority in terms of the Freedom of Information Act (Cap. 496 of the Laws of Malta). The Contracting Authority, prior to disclosure of any information to a third party in relation to any provisions of this document/contract which have not yet been made public, shall consult the contractor in accordance with the provisions of the said Act, pertinent subsidiary legislation and the Code of Practice issued pursuant to the Act. Such consultation

shall in no way prejudice the obligations of the Contracting Authority in terms of the Freedom of Information Act.

### **36. Gender Equality**

- 36.1 In carrying out his/her obligations in pursuance of this contract, the bidder 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. Bidders 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 - BID FORM

Publication reference: .....

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

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

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

## c BIDDER'S DECLARATION(S)

To be completed and signed by the bidder (including each partner in a joint venture/ consortium).

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

- 1 I/We have examined, and accept in full and in its entirety, the content of this bid document (including subsequent Clarifications Notes issued by the Contracting Authority) for invitation to bid No [\_\_\_\_\_/\_\_\_\_\_] of [...../...../.....]. We hereby accept the contents thereto in their entirety, without reservation or restriction. We also understand that any disagreement, contradiction, alteration or deviation shall lead to our bid offer not being considered any further.
- 2 I/We offer to provide, in accordance with the terms of the bid document and the conditions and time limits laid down, without reserve or restriction, the requirements stated in the contract.
- 3 The total bid price per kWh of our bid is: as per **Volume 3 - 'Bid and Capacity Offered'** form (inclusive of duties, other taxes but exclusive of VAT).
- 4 This bid is valid for a period of 90 days from the final date for submission of bids.
- 5 If our bid price per kWh and corresponding bid capacity is accepted, I/we undertake to provide a performance bond as specified in the conditions.
- 6 I/We are making this application in our own right and [as partner in the joint venture/consortium led by < name of the leader / ourselves > ] for this bid. I/We confirm that we are not benefiting and/or requesting/bidding for aid for the same project in any other form. [We confirm, as a partner in the joint venture/consortium, that all partners are jointly and severally liable by law for the performance of the contract, that the lead partner is authorized to bind, and receive instructions for and on behalf of, each member. We are fully aware that, in the case of a joint venture/consortium, any modifications to the composition of the joint venture/consortium are subject to the approval of the Contracting Authority in the course of the evaluation of the bids.
- 7 I/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. Documentary evidence may be requested to be produced during the evaluation stage.

- 8 I/We agree to abide by the ethics clauses of the instructions to bidders and, in particular, have no potential conflict of interests or any relation with other candidates or other parties in the bid procedure at the time of the submission of this application.
- 9 I/We will inform the Contracting Authority immediately if there is any change in the above circumstances at any stage during the implementation of the contract. I/We also fully recognize 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/or the European Union.
- 10 Our bid submission has been made in conformity with the Instructions to Bidders.
- 11 I/We acknowledge that the Contracting Authority may request clarification/rectification(s) as stipulated in Clause 15.1 of the ITB.
- 12 I/We note that the Contracting Authority is not bound to proceed with this invitation to bid 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.

### **13 Specific Declarations**

- a. I/We confirm that we will comply with planning permission requirements.
- b. I/We confirm that the proposed photovoltaic installation will be grid connected according to the requirements set by the Distribution System Operator.
- c. I/We are aware that all the information submitted in this application may be cross checked with other government entities and authorise the Contracting Authority to ask any other government entity to provide the required information.
- d. I/We shall give access to all relevant government entities to inspect the photovoltaic installation after due notice is given by the Contracting authority.
- e. I/We am/are aware that personal information provided in this submission is protected and used in accordance with the Data Protection Act. Information being provided will be used and shared by/with the Regulator for Energy and Water Services (REWS) and its agents, Planning Authority, and relevant organisations involved in the administration, supervision and auditing of the support scheme. The information may also be used to demonstrate market transformation trends.

## VOLUME 1 SECTION 3 - STATE AID DECLARATION FORM

| SECTION A                                                                                                                                                                                                                                                                                                           |                                                                                               |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| 1.0 Details of the Applicant                                                                                                                                                                                                                                                                                        |                                                                                               |
| <p><i>Please insert your personal details if applying as an individual or those of the Legal Representative if bid is submitted on behalf of an Undertaking <sup>(1)</sup>. In the case of a consortium/joint venture, insert the details of the person/s holding power of attorney as submitted in Form 1.</i></p> |                                                                                               |
| Full Name of Individual or Legal Representative:                                                                                                                                                                                                                                                                    |                                                                                               |
| Contact Address:                                                                                                                                                                                                                                                                                                    |                                                                                               |
| I.D. / Passport No.:                                                                                                                                                                                                                                                                                                |                                                                                               |
| Tel. No. (Fixed Line):                                                                                                                                                                                                                                                                                              |                                                                                               |
| Tel. No. (Mobile):                                                                                                                                                                                                                                                                                                  |                                                                                               |
| Email:                                                                                                                                                                                                                                                                                                              |                                                                                               |
| Name of Undertaking (if applicable):                                                                                                                                                                                                                                                                                |                                                                                               |
| VAT No. (if applicable):                                                                                                                                                                                                                                                                                            |                                                                                               |
| Company (or equivalent) Reg. No. / Trading License No: (if applicable):                                                                                                                                                                                                                                             |                                                                                               |
| Size of Undertaking (if applicable) <sup>(2)</sup> :                                                                                                                                                                                                                                                                | <input type="checkbox"/> Small <input type="checkbox"/> Medium <input type="checkbox"/> Large |
| NACE code of Undertaking's main economic activity (if applicable) <sup>(3)</sup> :                                                                                                                                                                                                                                  |                                                                                               |
| 2.0 Declaration of the Applicant(s) <sup>(4)</sup>                                                                                                                                                                                                                                                                  |                                                                                               |

I/We declare that there has **not been any start of works** prior to the submission of this application for support: ‘start of works’ here meaning the earlier of either the start of construction works relating to the investment, or the first legally binding commitment to order equipment or any other commitment that makes the investment irreversible, whichever is the first in time. Buying land and preparatory works such as obtaining permits and conducting preliminary feasibility studies are not considered ‘start of works’. For take-overs, ‘start of works’ means the moment of acquiring the assets directly linked to the acquired establishment;

I/We declare that I/we have NOT been found guilty and, or have NOT been convicted of a criminal offence and, or have NOT been subject to any form of enforcement action by any official authority in the past 5 years and, or there are NO pending charges against me/us;

I/We declare that the undertaking/s in 1.0 above, is(are) an undertaking which is(are) not subject to an outstanding recovery order following a previous European Commission decision declaring an aid illegal and incompatible with the internal market;

I/We declare that the undertaking/s in 1.0 above, is(are) not an “undertaking in difficulty”<sup>(5)</sup> as defined by the applicable Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (2014/C 249/01), as amended or replaced.

I/We are applying for the Scheme without financial incentives / grants, as applicable on the date of submission of this application, and confirm that no financial incentives / grants have been or will be assigned to this PV system other than the aid being requested in response to this ITB. The Public Funding being requested as aid is a premium which is equal to the difference between the applicable bid price (when awarded) and the applicable proxy for the market price as determined by the Regulator (which may vary) over the 20 years of the guaranteed support period.

Date (dd/mm/yyyy): \_\_\_\_/\_\_\_\_/\_\_\_\_

| <b>Signature</b> | <b>Full Name(s) of Signatory / Signatories</b> | <b>Position held:</b> | <b>Identity Card No / Passport No</b> | <b>Contact Tel No / Mobile No</b> |
|------------------|------------------------------------------------|-----------------------|---------------------------------------|-----------------------------------|
|                  |                                                |                       |                                       |                                   |
|                  |                                                |                       |                                       |                                   |
|                  |                                                |                       |                                       |                                   |
|                  |                                                |                       |                                       |                                   |
|                  |                                                |                       |                                       |                                   |
|                  |                                                |                       |                                       |                                   |

| SECTION B - Declaration by Warranted Auditor                                                                                                                                                                                                                                                                             |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <p>This is to certify that Undertaking defined in Section A, with Name:<br/>           _____ VAT No / Registration No: _____ is not an<br/>           “undertaking in difficulty” as defined in the Guidelines on State aid for rescuing<br/>           and restructuring non-financial undertakings in difficulty .</p> |  |
| Signature:                                                                                                                                                                                                                                                                                                               |  |
| Name & Surname:                                                                                                                                                                                                                                                                                                          |  |
| Firm Registration No (if applicable):                                                                                                                                                                                                                                                                                    |  |
| ID No:                                                                                                                                                                                                                                                                                                                   |  |
| Warrant No:                                                                                                                                                                                                                                                                                                              |  |
| Telephone/Mobile No:                                                                                                                                                                                                                                                                                                     |  |
| E/mail:                                                                                                                                                                                                                                                                                                                  |  |
| Address:                                                                                                                                                                                                                                                                                                                 |  |
| Date (dd/mmm/yyyy):                                                                                                                                                                                                                                                                                                      |  |
| Rubber Stamp:                                                                                                                                                                                                                                                                                                            |  |

**NOTES:**

- (1) “Undertaking” means any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed. For the purposes of this definition “entity” includes any natural or legal person engaged in the provision of a good or service on the market”. Please note that definition of an undertaking includes a natural person who has a generator and intends to sell electricity through this scheme.
- (2) Please indicate the category of your activity by choosing from small, medium or large in terms of the Definition in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium sized enterprises, hereunder reproduced: Staff headcount and financial thresholds determining enterprise categories
  - a. The category of micro, small and medium-sized enterprises (‘SMEs’) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.



- b. Within the SME category, a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.
- c. Within the SME category, a micro-enterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

Tick “Small” if you are a natural person or enterprise employing fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million; otherwise Tick “Medium” if you are a natural person or enterprise employing more than 50 persons but less than 250 and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total which exceeds EUR 10 million but is lower than EUR 43 million; or otherwise Tick “Large” if you are a natural person that employs more than 250 persons and which have an annual turnover exceeding EUR 50 million, and/or an annual balance sheet total exceeding EUR 43 million.

- (3) NACE code: Please indicate the NACE code of your main activity. The list of the NACE codes may be found in NACE Rev. 2 statistical classification of economic activities as laid down in Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006, establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains.

<http://ec.europa.eu/eurostat/documents/3859598/5902521/KS-RA-07-015-EN.PDF>

- (4) In the case when the applicant is an organisation / company, the required number of Legal Representatives are also making the declaration on behalf of the directors of the Undertaking.
- (5) Definition of ‘undertaking in difficulty’ - In line with paragraph 20 of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, an undertaking is considered to be in difficulty when, without intervention by the State, it will almost certainly be condemned to going out of business in the short or medium term. Therefore, an undertaking is considered to be in difficulty if at least one of the following circumstances occurs: (a) In the case of a limited liability company, where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital. For the purposes of this provision, "limited liability company" refers in particular to the types of company mentioned in Annex I of Directive 2013/34/EU and "share capital" includes, where relevant, any share premium. (b) In the case of a company where at least some members have unlimited liability for the debt of the company, where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses. For the purposes of this provision, "a company where at least some members have unlimited liability for the debt of the company" refers in particular to the types of company mentioned in Annex II of Directive 2013/34/EU. (c) Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors. (d) In the case of an undertaking that is not an SME, where, for the past two years: (1) the undertaking's book debt to equity ratio has been greater than 7.5 and (2) the undertaking's EBITDA interest coverage ratio has been below 1.0. An SME that has been in existence for less than three years will not be considered to be in difficulty unless it meets the condition set out in paragraph (c).

## VOLUME 1 SECTION 4 - GLOSSARY

### Definitions

*Note: the present definitions are given here for convenience only, in the context of the bid 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 Contracting Authority to the Contractor regarding the execution of the contract.

**Agency:** means the Energy and Water Agency

**Beneficiary Country:** The Maltese Islands.

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

**Bid price:** means price per kWh offered by a bidder in this competitive bidding process.

**Commission:** The European Commission.

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

**Contract:** The signed and dated agreement entered into by the parties for the award of aid subject to the performance of the relevant obligations, including all attachments thereto and all documents incorporated therein.

**Contracting Authority:** means the contracting party which shall award support.

**Contractor:** The contracting party which is awarded support following a successful bidding process.

**Day:** Calendar day.

**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 Contracting Authority and possessing the technical, linguistic and administrative capacities necessary to give an informed opinion on bidders.

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

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

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

**Month:** Calendar month.

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

**Paying Agent:** An agent chosen by the Contracting Authority to pay the Contractor aid which may be due following full compliance with the obligations of the Contract.

**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.

**Project:** refers to the solar photovoltaic installation for which aid is being requested under this ITB.

**Proxy for the market Price:** has the same meaning as in Legal Notice 120 of 2017.

**Public Service:** Government Ministries and Departments.

**Site:** Refers to the footprint of the PV installation as indicated on the site plan submitted with the bid.

**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 1 SECTION 5

### Guidance Notes applicable to site types suitable for hosting PV installations equal to or larger than 1MWp.

#### ***Category 1: Quarries, Official Disused Landfills, Industrial Land and Roof Tops***

Quarries: Official quarries as determined by the Planning Authority and any other body regulating the extraction of minerals. Only quarries which are endorsed under this category by the Planning Authority in the screening letter can submit a bid under this category.

Official Disused Landfills: Official landfills which are no longer in use and have either been rehabilitated or are in the process of being rehabilitated but which are still classified as landfills with the competent authority.

Industrial Land and Roof Tops: Sites (both ground and roof) located in industrial zones as determined by the relevant Local Plan.

#### ***Category 2: Car Parks***

Only sites which shall be used prevalently as a car park after the installation of the PV system are eligible to submit an offer under this category. The PV installation has to form part of the car park overlying structure.

#### ***Category 3: Land Under a Government Concession***

This category applies to all sites which have been acquired by the applicant through a government concession excluding concessions specific for the deployment of PV systems. If a site location falls within the definition of any of the other categories listed in Volume 1 Section 5 but also falls within the definition of this category (5), the site location shall only be eligible to be submitted under a bid for this category.

#### ***Category 4: Others***

This is a “catch-all” category and applicants can opt to submit an offer under this category only if the site description does not fall within any of the five categories listed above and provided that the proposed installation is still considered to be in line with either the solar farms policy or any other applicable planning and environmental policy.

**Form 1 - Power of Attorney**

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

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

Date: .....

## Form 2 - Data on Joint Venture/Consortium

(Where applicable)

|   |                                                                                                                                            |                                                                        |
|---|--------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|
| 1 | Name                                                                                                                                       | .....                                                                  |
| 2 | Managing Board's Contact Details                                                                                                           | Address: .....<br>.....<br>Telephone: ..... Fax: .....<br>Email: ..... |
| 3 | Agency in the state of the Contracting Authority, if any<br><i>(in the case of a Joint Venture/Consortium with a foreign lead partner)</i> | Address: .....<br>.....<br>Telephone: ..... Fax: .....<br>Email: ..... |
| 4 | Names of Partners                                                                                                                          | (i) .....<br>(ii) .....<br>(iii) .....<br>(iv) .....                   |
| 5 | Name of Lead Partner                                                                                                                       | .....                                                                  |
| 6 | Agreement governing the formation of the Joint Venture/Consortium<br><i>(Enclose Joint Venture/ Consortium Agreement)</i>                  |                                                                        |
|   | Place of Signature:<br>.....                                                                                                               | Date of Signature:<br>.....                                            |

Signature: .....

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

Date: .....

## VOLUME 2 SECTION 1 - L.N. 76 of 2017 and amendment L.N. 251 of 2018

(L.N. 76 of 2017) “Competitive Bidding Rules for Renewable Sources of Energy Installations Regulations, 2017” can be viewed/downloaded from:

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=28317&l=1>

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=29206&l=1>

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

This legislation will form an integral part of the contract that will be signed with the successful bidder/s.

## VOLUME 2 SECTION 2

### **CONDITIONS for Invitation to Bid (ITB) for Financial Support for Electricity from Solar Photovoltaic Installations with Capacity of 1000kWp or more**

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

These conditions will form an integral part of the contract that will be signed with the successful bidder/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 Conditions shall not be taken as part thereof or be taken into consideration in the interpretation of the Contract.
- 1.3 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.
- 1.4 The word “country” shall be deemed to include State or territory.
- 1.5 Words importing persons or parties shall include firms and companies and any organization having legal capacity.
- 1.6 This contract is regulated by Maltese Law. By submitting their bids, bidders 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 ITB and the resulting contract.

### **Article 2 Notices and written communications**

- 2.1 Whenever there is a deadline for the receipt of a written communication (including Emails), the sender shall ask for an acknowledgement of receipt of its communication. The sender can only claim an email has been sent if he receives an acknowledgement. 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**

N/A

#### **Article 4 Sub-contracting**

N/A

### **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.
- 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**

N/A

### **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 Malta 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 requirements under the contract with due care, efficiency and diligence, in accordance with the best professional practice.
- 7.3 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. 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.

7.4 If the Contractor is a joint venture/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 joint venture/consortium to act on its behalf for the purposes of this contract shall have the authority to bind the joint venture/consortium.

7.5 The Contractor shall, within 7 calendar days of receipt of the contract, sign and date the contract and return it together with the original Performance bond.

The performance bond shall be in the format given by the Contracting Authority, and must be provided in the form of a bank guarantee.

The performance bond shall be denominated in Euros. The bond shall continue to remain valid for 25 calendar months commencing from the award date.

If the natural or legal person providing the performance bond is not able to abide by his commitments, the bond shall cease to be valid. The Contracting Authority shall give formal notice to the Contractor to provide a new bond on the same terms as the previous one. Should the Contractor fail to provide a new bond, the Contracting Authority will 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 bond of all sums for which the guarantor is liable under the bond due to the Contractor's default under the contract, in accordance with the terms of the bond 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 bond, 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 time 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 requirements

in the bid 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 If the Contractor, 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 favour or disfavour 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.
- 8.3 The Contractor and its staff shall maintain confidentiality, 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. Infringement of this condition would lead to the Contractor being disqualified. 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.
- 8.4 The Contractor shall supply to the Contracting Authority on request supporting evidence regarding the conditions in which the contract is being executed.

#### **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, is 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.

#### **Article 10 Penalties**

10.1 Refer to L.N. 76 of 2017 regulation 7 & 10. Furthermore, partial/non-realization of the contracted capacity shall lead to the partial/complete forfeiture of the performance bond as outlined in Volume 1 Section 1 Art 33.6.

10.2 Further to the above schedule, the financial support shall be immediately terminated if the proposed PV system generates less than 800 kWh per kWp of licensed capacity per year for any three (3) years in a row.

#### **Article 11 Specifications and Designs**

Not applicable.

#### **Article 12 Indemnification**

12.1 At its own expense, the Contractor shall indemnify, protect and defend, the Contracting Authority, their 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 contract, including any violation of any legal provisions, or rights of third parties, in respect of patents, trademarks 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, their 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 euro 1 million excluding VAT, 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 contract 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 contract requirements have been performed as may be determined by the law governing the contract.

### **Article 13 Intellectual and industrial property rights**

- 13.1 The Contractor shall not divulge information obtained from the Contracting Authority, without the prior written consent of the Contracting Authority.
- 13.2 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.

## **D. EXECUTION OF THE CONTRACT**

### **Article 14 Execution of the Contract**

- 14.1 The performance of the contract shall be deemed to commence on the date on which contract is signed.
- 14.2 The period of execution of tasks shall commence on the date fixed in accordance with Article 14.1, without prejudice to extensions of the period which may be granted under Article 15.

## **Article 15 Delays in execution**

- 15.1 Penalties and validity of awarded price per kWh are stipulated in L.N. 76 of 2017 regulation 7, Volume 1 Section 1 Art 33.6 and Article 10 above.

## **Article 16 Amendment of the contract**

- 16.1 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.

## **Article 17 Information**

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

## **Article 18 Verification and Checks**

- 18.1 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.
- 18.2 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.
- 18.3 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.

- 18.4 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 19 Timetable and Notifications**

By not later than three months from the award, a successful bidder must submit a timetable for the construction of the installation(s) to the Contracting Authority. As a minimum, the timetable must contain information for each installation covered by the contract on when the successful bidder expects to have obtained all the necessary licenses and permits, commence construction work and connect the installation to the grid.

As from the date of the submittal of the aforesaid timetable, and until such time when the installation covered by the contract has been connected to the grid, the successful bidder must submit to the Contracting Authority every three months an updated timetable and progress of works in the form of a report with the same information as mentioned above.

#### **Article 20 Approval of Reports and Documents**

- 20.1 The written 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.
- 20.2 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.
- 20.3 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.



## **E. BREACH OF CONTRACT AND TERMINATION**

### **Article 21 Suspension**

- 21.1 The Contracting Authority is entitled to suspend the payment of support awarded under the Contract for such time and in such manner as it may consider necessary.
- 21.2 If the period of suspension exceeds 90 days and the suspension is not due to the Contractor's default, the Contractor may, by written notice to the Contracting Authority, request that the execution of the contract resumes within 30 days.
- 21.3 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.
- 21.4 Where such errors, irregularities or fraud are attributable to the Contractor, the Contracting Authority may refuse to make payments either directly or through the paying agent, and recover amounts already paid and any applicable interest, as well as terminate the contract.
- 21.5 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 22 Termination by the Contracting Authority**

- 22.1 Termination shall be without prejudice to any other rights or powers under the contract of the Contracting Authority and the Contractor.
- 22.2 In addition to the grounds for termination defined in these 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 with the timeframes and other administrative requirements and reporting obligations established by the contract and relevant legislation;
  - c) the Contractor assigns the contract to a third party without the authorization of the Contracting Authority and/or other relevant authorities;
  - d) 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;
- e) the Contractor has been convicted of an offence concerning its professional conduct by a judgment which has the force of res judicata;
  - f) the Contractor has been guilty of grave professional misconduct proven by any means which the Contracting Authority can justify;
  - g) 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 EU;
  - h) following another procurement procedure or grant award procedure the Contractor has been declared to be in serious breach of contract for failure to comply with its contractual obligations;
  - i) any organisational modification involving a change in the legal personality, nature or control of the Contractor, unless such modification is recorded in an addendum to the contract;
  - j) any other legal disability hindering performance of the contract occurs;
  - k) the Contractor fails to provide the required performance bonds or insurance, or the person providing the underlying bond or insurance is not able to abide by its commitments;

## **Article 23 Termination by the Contractor**

- 23.1 The Contractor may, after giving 14 days notice to the Contracting Authority, terminate the contract if the Contracting Authority consistently fails to meet its obligations after repeated reminders.
- 23.2 The Contractor may terminate the contract within 12 weeks from the award of the contract if the grid connection costs as quoted by Enemalta plc **after the contract award date** exceed those submitted with the bid in response to this ITB, as applicable for the same installation, by at least 25%.
- 23.3 Such termination shall be without prejudice to any other rights of the Contracting Authority or the Contractor acquired under the contract.

## **Article 24 Force Majeure**

- 24.1 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.

- 24.2 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, direct lightning strikes, 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.
- 24.3 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.
- 24.4 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 23, 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.
- 24.5 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 Contracting Authority 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 Contracting Authority.
- 24.6 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.

## **F. SETTLEMENT OF DISPUTES**

### **Article 25 Settlement of Disputes**

- 25.1 The Contracting Authority and the Contractor shall make every effort to settle amicably any dispute relating to the contract which may arise between them.
- 25.2 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.
- 25.3 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:
- a) either to the Law Courts of Malta, or
  - b) to a Malta Arbitration Centre, in the case where the parties by agreement decide to refer the matter to arbitration.

## VOLUME 2 SECTION 3 SPECIMEN PERFORMANCE BOND FORM

(LETTERHEAD OF THE REGISTERED FINANCIAL INSTITUTION PROVIDING THE BOND)

Name of Contracting Authority  
(Address)

[Date]

Dear Sir,

Our Bond Number ..... for €.....

Account: [Account Holder's Name]

In connection with the contract entered into between the Director of Contract on your behalf/ yourself and [Name and Address of Contractor] hereinafter referred to as "the Contractor" as per the latter's bid and your acceptance under [Contract Reference], whereby the contractor undertook the [title of contract] in accordance with the Conditions for Contracts forming part of the contract documents, we hereby guarantee to pay you on demand a maximum sum of €[amount in words and numbers] in case the obligations of the above-mentioned contract are not duly performed by the Contractor.

This bond 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 bond does not exempt the above-mentioned Contractor from any obligations, acts of performance or undertaking assumed under the bid documents as ratified in the contract.

This bond 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 bond 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 bond shall be null and void, whether returned to us or not, and our liability hereunder shall terminate.

This bond is governed by Maltese Law, it is personal to you, and is not transferable or assignable.

Yours Faithfully,

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

## VOLUME 3 - Bid and Capacity Offered

**Bid Price as specified in L.N. 76 of 2017 (as both Figures and Word format)**

|            |  |  |   |  |
|------------|--|--|---|--|
| Euro Cents |  |  | . |  |
|------------|--|--|---|--|

 per kWh

\_\_\_\_\_per kWh

The bid price applies to electricity generated and sold to the distribution system operator from a commissioned new solar photovoltaic installation of capacity \_\_\_\_\_ kWp to be installed on a site falling under category *[to specify category number]*\_\_\_\_\_as described in the bid submission and subject to relevant annual thresholds. The aid is being requested for a period of 20 years.

The price quoted is inclusive of duties, other taxes but exclusive of VAT. For the sake of clarity the bid price shall be deemed to be the arithmetic sum of the proxy for the market price and the premium.

### Notes:

- All inputs shall be in figures and words.
- Bidders who submit a site under an incorrect category shall have their offer deemed non-compliant and shall be rejected.
- The payment of the premium may be delegated by the Contracting Authority to a paying agent (example Arms Ltd).
- Support shall be limited to the commissioned capacity or bid capacity, whichever is the lowest, in line with L.N. 76 of 2017.
- Without prejudice to L.N. 76 of 2017 and amendment L.N. 251 of 2018, the awarded bid price per kWh with respect to an approved renewable energy installation shall be payable for the actual number of units of electricity generated by such installation and sold to the distribution system operator, up to the annual threshold (in kWh) calculated as “commissioned kWp x 1600 kWh/kWp”, provided that the commissioned capacity is equal or lower than the awarded (bid) capacity. Should the commissioned capacity be larger than the awarded (bid) capacity, the annual threshold (in kWh) shall be calculated as “awarded(bid) capacity in kWp x 1600kWh/kWp”.

## Annex 1 - Procedure for Grid Allocation

1. Under this competitive process each bidder is required to present a recent grid connection study issued by Enemalta plc, dated not earlier than 90 calendar days from the publishing of this ITB document. Bidders must note that this pre-bid grid connection study will only be performed upon receipt of payment of the established fee by Enemalta plc. It is highly recommended that requests for a grid connection study together with payment reach Enemalta plc by not later than 30 calendar days from the publishing of this ITB document.
2. The pre-bid grid connection study referred to in this paragraph of this Annex will be performed by Enemalta for each bidder separately, and taking into account only the individual bidder proposal and any other connected and committed PV systems at the time of the study. Other proposed installations with a capacity exceeding 1 MW will not be taken into account by Enemalta at this pre-bid stage.

Note: A committed PV system is that for which a deposit equal to 50 % of the total connection cost has been paid by the applicant as a guarantee for the works to proceed, or for which a feed-in tariff or equivalent aid has been assigned prior to performing the associated grid connection study and which was awarded a valid no-objection letter from Enemalta.

The grid connection study referred to in paragraph 1 shall provide an estimate of the total connection costs. This estimate is not binding on Enemalta, and the necessary grid capacity for the connection of the studied PV system shall not be reserved. To note that a deposit made against the allocation of grid capacity is considered as a “start of works” and precludes the bidder from qualifying for aid under this ITB.

After the bidding process is concluded, successful bidders should request an updated grid connection study from Enemalta plc within 14 calendar days of the award under this ITB. This is necessary to determine and reflect updated conditions and connection costs for connection of the PV system to the grid. The grid connection study update will only be performed upon receipt of the applicable payment for the updated grid connection study by Enemalta. Enemalta plc will perform the updated studies for the successful bidders in the ranking order resulting from the competitive process, starting with the successful bidder with the highest ranking but taking into consideration all relevant installations proposed as a result of the bidding process and committed/connected installations.

3. **Successful bidders who do not request an updated grid study within the stipulated period (within 14 calendar days of the award under this ITB) will lose their ranking order for the purpose of grid connection, and will be considered independently, after all the other successful bidders have been processed and the necessary grid capacity for the connection of their PV systems has been committed.**

Enemalta plc is designated by law as the distribution system operator and therefore is responsible for operating, maintaining and developing the distribution system in a given area, including, where necessary, the interconnection of such distribution systems to ensure the long-term ability of the system to meet the reasonable demands for the distribution of electricity. Consequently, in certain cases Enemalta shall direct the applicability of inter-dependency between systems.

Successful bidders who are awarded support<sup>1</sup>, will be informed by Enemalta of inter-dependency between systems, and of the possibility of cost-sharing of a common grid connection, if this exists, and where it is

<sup>1</sup> Support refers to that which is awarded to successful bidders following a competitive bidding process applicable to PV systems with capacity of at least 1MWp

determined that the connection of the PV system of a successful bidder can be influenced by the connection of the PV systems of one or more additional successful bidders. Enemalta shall, for the purposes of this exercise, offer connection options, including the cost sharing of a common grid connection, to the bidder with the highest awarded ranking, and then, if applicable, to other successful bidders in accordance to their ranking order resulting from the competitive process.

4. Where Enemalta determines that there are inter-dependent PV systems, the following procedure shall apply:

- a) The updated study of each successful bidder will take into consideration the reservation of the grid capacity that is necessary to connect the PV systems of successful bidders with a higher ranking (if any and based on the capacity available for connection at the particular network point under consideration), and will include the following costs for connection:
  - the cost of connection, independent of other PV systems, and based on the assumption that PV systems of all successful applicants with a better ranking (if any) have been connected independently to the grid.
  - the total cost of connection of each approved option of a cost-shared connection to the grid involving inter-related systems, who have submitted payment for an updated grid connection study within the stipulated deadline, if applicable. An approved option is one that has been confirmed by Enemalta to be technically feasible and is based on the final ranking order resulting from the competitive process.
- b) Within a period of four weeks from being provided with the cost of connection options in the case of the possibility of a cost sharing option, successful bidders will provide Enemalta with the details of any cost-sharing agreement that has been voluntarily reached with other successful bidders. In case there is no agreement between the successful bidders within the stipulated period, Enemalta shall establish its own conclusions based on the final ranking order resulting from the competitive process.

In case of agreement between the successful bidders, Enemalta will register the participation of these successful bidders in a cost-shared connection, on receipt of a Cost Sharing Participation Fee from each of the participants equivalent to 20 % of their agreed share of the total connection costs. The fee will be non-refundable, unless the necessary planning permission/s related to the PV system is/are not granted/approved to one or more of the participants, and then only if Enemalta plc has not entered into a binding commitment involving related expenses (e.g. acquisition of equipment). In the eventuality that a works contract is in due time entered with Enemalta plc, the fee will form part of the participant's share of the legal deposit that must be paid to Enemalta prior to commencement of the works that were the subject of the connection agreement for which the fee had been paid.

Should one or more participants withdraw from the cost-sharing agreement, Enemalta will inform the other successful bidders of inter-related systems of any change in the conditions for connection. Unless there are alternative cost-sharing options available for the remaining participants, the agreement will be cancelled, and the Cost Sharing Participation Fee will be returned only to the remaining participants, and then only if Enemalta plc has not entered into a binding commitment with regard to any related expenses (e.g. acquisition of equipment). In such case, the results of any study that is based on the cost-sharing agreement between successful bidders will be rendered invalid. In the case of an alternative cost-sharing option available for the remaining participants, this can be registered in lieu of the original agreement provided the costs and Cost Sharing Participation Fee with Enemalta are updated accordingly.

Should no cost sharing agreement be reached the best ranked successful bidders will have the priority for the most favourable connection option.



- c) Once the infrastructure is put in place, it becomes part of Enemalta's network and may therefore be used accordingly in terms of the applicable law.
5. The results of the following options of the updated grid connection study for successful bidders will be valid for a period of one year and Enemalta plc will reserve the grid capacity (up to a maximum of the awarded capacity) for the connection of the PV system for this period:
    - the option of an independently-connected PV system for the case where no connection agreement has been registered;
    - the connection option specified in the cost-shared agreement for the case of registered cost-shared connection agreements.
  6. Grid capacity will be committed permanently when the successful bidder applies and pays the 50% legal deposit for the execution of the necessary works to connect the PV system to the grid. The deposit is refundable if the applicant (or other participant in a cost-shared agreement, if applicable) does not manage to obtain planning permission, and only as long as Enemalta plc has not yet entered into a binding commitment on any related expenses (e.g. acquisition of equipment).
  7. In order to avoid disruption to the grid connection process of successful bidders, Enemalta will not alter the results of any updated grid connection study/ies, in case one or more successful bidders connect a lower capacity PV system than that awarded through the competitive bidding process.
  8. Any dispute, whether contractual or otherwise, which arises in connection with this Annex shall be governed by the Laws of the Republic of Malta.