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# General Rules Governing Dynamic Purchasing Systems V1.0

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*Department of  
Contracts*

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## 1. *Applicability and Law*

- 1.1 These General Rules govern the establishment of Dynamic Purchasing Systems (DPS) only. Any specific contracts issued shall be governed by the General Rules Governing Tenders.
- 1.2 By submitting their request to be admitted (“the application”) to a DPS, Candidates 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 DPS document and the resulting Specific Contracts.
- 1.3 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.

## 2. *Participation*

- 2.1 Participation is open on equal terms to all natural and legal persons of the Member States of the European Union, the beneficiary country and any other country.
- 2.2 In case of Specific Contracts issued through a DPS, participation in tendering will be open only to the firms who have been admitted to the DPS by the date of publication of the Specific Contract, and who shall be invited by the Contracting Authority. Tender submissions in respect of Specific Contracts should be submitted by the same admitted participant who has been invited for the Specific Contract. No change whatsoever in the identity or composition of the participant is permitted
- 2.3 Natural persons, companies or undertakings who fall under any of the conditions set out in Part VI of the Public Procurement Regulations, 2016 shall be excluded from participation in the DPS and the award of contracts. Candidates who have been guilty of making false declarations will incur financial penalties representing 10% of the total value of the Specific Contract/s that is subsequently awarded.

Provided that the Candidate does not prove in his offer that he should not be excluded as established under PART VI of the Public Procurement Regulations.

- 2.4 Applications submitted by companies forming a joint venture/consortium/group of Economic Operators must also fulfil the following requirements:
  - One partner must be appointed lead partner and that appointment confirmed by submission of powers of attorney signed by legally empowered signatories representing all the individual partners. The application must include a preliminary agreement or letter of intent stating that all partners assume joint and several liability for the execution of the specific contract/s, that the lead partner is authorised to bind, and receive instructions for and on behalf of, all partners, individually and collectively.
  - All partners in the joint venture/consortium/group of Economic Operators are bound to remain in the joint venture/consortium/group of Economic Operators until the conclusion of the DPS. The consortium/joint venture/group of Economic Operators admitted in the DPS must include the same partners for the whole performance period of the DPS other than as may be permitted or required by law.

- 2.5 In the case of a joint venture/consortium/group of Economic Operators, the joint venture/consortium/group of Economic Operators as a whole must satisfy the criteria established in the Instructions to Candidates of the DPS.
- 2.6 An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary, for example, by producing an undertaking by those entities to that effect.

### **3. *Multiple Applications***

- 3.1 An Economic Operator may only be admitted in a DPS with one concurrent application.
- 3.2 An Economic Operator may not be admitted to a DPS both individually and as a partner in a joint venture/consortium.
- 3.3 An Economic Operator may not be admitted to a DPS individually/partner in a joint venture/consortium, and at the same time be nominated as a subcontractor by any another Candidate, or joint venture/consortium.
- 3.4 An Economic Operator cannot be a member in more than one Joint Venture.
- 3.5 An Economic Operator may act as a subcontractor for any number of Candidates, and joint ventures/consortia, provided that it does not apply individually or as part of a joint venture/consortium, and that the nominations do not lead to a conflict of interest, collusion, or improper practice.
- 3.6 The Central Purchasing Body/Contracting Authority is to ask an economic operator to replace the sub-contractor within 5 working days, if during the evaluation process it transpires that a sub-contractor is either black-listed or does not satisfy the exclusion-criteria listed under PART VI of the Public Procurement Regulations.
- 3.7 If the Economic operator does not comply with the request made by the Central Purchasing Body/Contracting Authority under clause 3.6, his offer shall be rejected unless he proves that the sub-contractor should not be excluded under PART VI of the Public Procurement Regulations.

### **4. *Application Expenses***

- 4.1 The Candidates will bear all costs associated with the preparation and submission of the application. The Central Purchasing Body/Contracting Authority will neither be responsible for, nor cover, any expenses or losses incurred by the Candidate through site visits and inspections or any other aspect related to the preparation and submission of his application.

### **5. *Content of DPS Document***

- 5.1 This DPS document should be read in conjunction with any clarification notes issued in accordance with Clause 6.

- 5.2 Candidates bear sole liability for examining with appropriate care the DPS documents, and any clarification notes to the DPS documents issued during the period when the DPS is established, and for obtaining reliable information with respect to conditions and obligations that may in any way affect the nature of the DPS.
- 5.3 The Candidate must provide all information and documents required by the provisions of the DPS document. All such documents, without exception, must comply strictly with these conditions and provisions and contain no alterations made by the Candidate.
- 5.4 The DPS documentation shall be made freely available electronically from the date of establishment. This documentation must remain available electronically throughout the duration of the DPS, and the internet address where this documentation will be available shall be indicated in the Contract Notice.

## **6. *Explanations/Clarification Notes Concerning DPS Documents***

- 6.1 Prospective Candidates may submit questions in writing to the Central Purchasing Body/Contracting Authority through the contact details and within the timeframes as detailed in Clause 2 of the Instructions to Candidates. The Central Purchasing Body/Contracting Authority must reply to all Economic Operators' questions, and apply any necessary corrections to the DPS documents by publishing clarification notes, as well as issue corrigenda to the DPS documents. Clarifications received by other means will not be taken into consideration.
- 6.2 Questions and answers, minor alterations and corrigenda to the DPS document will be published as a clarification note on the Government's e-Procurement Platform [www.etenders.gov.mt](http://www.etenders.gov.mt) within the respective DPS workspace. Clarification notes will constitute an integral part of the DPS documentation, and it is the responsibility of Candidates to visit this website and be aware of the latest information published online prior to submitting their request.
- 6.3 All correspondence and documents related to the DPS document exchanged by the Candidates and the Central Purchasing Body/Contracting Authority must be written in English. Supporting documents furnished by the Candidate may be in another language, provided they are accompanied by an accurate translation into English. For the purposes of interpretation of the DPS document, the English language will prevail.

## **7. *Currency***

- 7.1 The currency of the DPS is the Euro (€). Financial information should thus be quoted in Euro (€).
- 7.2 All instances where reference is made to financial information must be expressed in Euro (€), with the exception of bank and financial statements, where applicable.
- 7.3 Where Candidates submit bank and financial statements which are not denominated in Euro (€), the conversion rate used shall be the same conversion rate applicable on the date of the date of submission of request.

## **8. *Period of Validity of Applications***

- 8.1 Applications must remain valid for a period of 30 calendar days after the submission of application. Any application which quotes a shorter validity period will be rejected.
- 8.2 The Director General Contracts/Head of Contracting Authority may consider cancelling the DPS in line with what is established in Regulation 15 of the Public Procurement Regulations (2016).

## **9. *Submitting an Application***

- 9.1 Applications must be compiled, packed and uploaded on [www.etenders.gov.mt](http://www.etenders.gov.mt) before the deadline specified in Clause 2 of the Instructions to Candidates of the DPS Document, or as otherwise modified in accordance with Clause 10 of the same DPS Document. An email receipt will acknowledge the submission of the application. Applications submitted by any other means will not be considered.

## **10. *Delays in submitting Applications***

- 10.1 No liability can be accepted for delays or technical difficulties (as per Terms of Use and Manual for Economic Operators of the Government e-Procurement Platform) that preclude applications for admittance to a DPS from being submitted.

## **11. *Amendments and resubmission of Applications***

- 11.1 Once an application is submitted, it is immediately referred for evaluation, therefore Candidates cannot amend/replace or withdraw their application after submission.
- 11.2 Should their application be rejected, Candidates may resubmit another application for the same DPS immediately, taking into account the reasons provided by the Central Purchasing Body/Contracting Authority explaining why their original application was rejected.

## **12. *Evaluation of Requests to Participate***

- 12.1 The Central Purchasing Body/Contracting Authority shall evaluate each application received individually, and shall be finalised within 10 working days from its receipt. This may be prolonged to 15 working days in individual cases where this can be justified, in particular because of the need to examine additional documentation or to otherwise verify whether the original selection criteria are met.
- 12.2 Further to the timeframes indicated in Clause 12.1, the Central Purchasing Body/Contracting Authority may extend the evaluation period provided that no invitation to tender for a Specific Contract is issued during the extended evaluation period. The Central Purchasing Body/Contracting Authority shall indicate in the DPS document the length of the extended period that it intends to apply.

### 13. *Secrecy of the Procedure*

- 13.1 After the receipt of the application, no information about the examination, clarification, evaluation or comparison of request or decisions about the admittance to the a DPS may be disclosed before the notification of outcome.
- 13.2 Information concerning checking, explanation, opinions and recommendations concerning the admittance to a DPS, may not be disclosed to Candidates or any other person not officially involved in the process unless otherwise permitted or required by law. Any attempt by an Candidate to approach any member of the Evaluation Committee, or of Central Purchasing Body/Contracting Authority directly during the evaluation period will be considered legitimate grounds for disqualifying his application.

### 14. *Clarification of Applications*

- 14.1 When checking requests, the Central Purchasing Body/Contracting Authority may ask an Candidate to clarify any aspect of his application.
- 14.2 Such requests and the responses to them must be made through the Government's e-Procurement Platform ([www.etenders.gov.mt](http://www.etenders.gov.mt)). They may in no circumstances alter or try to change the content of the application, except for rectifications as allowed in terms of Clause 7 of the Instructions to Candidates.

### 15. *Application Evaluation Process*

Without prejudice to what is stated in Clause 9 of these General Rules, the evaluation process is to follow the process established hereunder:

#### 15.1 **Part 1: Review of eligibility of Applications**

The Evaluation Committee will check the compliance of applications with the instructions given in the DPS documents, and in particular the documentation submitted in respect of the requirements detailed in Clause 7 (A) of the Instructions to Candidates. The Evaluation Committee can request clarifications and rectifications, in which case the Evaluation Committee shall obtain the prior approval as may be required by the Central Purchasing Body/Contracting Authority. In the case where a rectification is requested this shall be regulated by Note 1 in Clause 7 of the Instructions to Candidates. Rectification/s must be submitted within five (5) working days from notification, and will be free of charge: failure to comply shall result in the application being rejected.

Rectifications are allowed under Note 1 as follows:

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

#### 15.2 **Part 2: Review of exclusion (including Blacklisting) and Selection Criteria**

Submissions which have been considered as eligible shall be evaluated to ensure compliance with Clause 7(B) of the Instructions to Candidates. In order to be considered

for this evaluation, Candidates must submit the completed European Single Procurement Document (ESPD) as part of their application.

In order for the Evaluation Committee to carry out the evaluation, it may ask during the evaluation procedure to submit all or part of the supporting documents where this is necessary to ensure the proper evaluation of the criteria listed under Clause 7(B) of the Instructions to Candidates. The Evaluation Committee can request clarifications and rectifications, in which case the Evaluation Committee shall obtain the prior approval as may be required by the Central Purchasing Body/Contracting Authority. In the case where a rectification is requested this shall be regulated by Note 1 in Clause 7 of the Instructions to Candidates. Rectification/s must be submitted within five (5) working days from notification, and will be free of charge: failure to comply shall result in the application being rejected.

Rectifications are allowed under Note 1 as follows:

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

## **16. Right of the Central Purchasing Body/Contracting Authority to accept or reject any Application**

- 16.1 The Central Purchasing Body/Contracting Authority reserves the right to accept or reject any application and/or to cancel the DPS before and after the closing date established for the DPS and/or reject all applications. The Central Purchasing Body/Contracting Authority reserves the right to initiate a new DPS.
- 16.2 In the event of a DPS's cancellation, participants will be notified by the Central Purchasing Body/Contracting Authority.
- 16.3 Cancellation may occur where:
- (a) the economic or technical parameters of the project have been fundamentally altered;
  - (b) exceptional circumstances or *force majeure* render normal performance of the project impossible;
  - (c) there have been irregularities in the procedure, in particular where these have prevented fair competition.

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



## **17. Notification of Admission**

- 17.1 Prior to the expiration of the period of validity of the application, the Central Purchasing Body/Contracting Authority shall inform the Candidate concerned at the earliest possible opportunity of whether or not he has been admitted to the DPS.
- 17.2 Unsuccessful Candidates shall be notified with the outcome of the evaluation process, and will be provided the reasons why the application did not meet the eligibility/selection criteria as set in the DPS.
- 17.3 No appeal period is due, however unsuccessful Candidates may reapply if previously not accepted at any time during the lifetime of the DPS.

## **18. Admission to the DPS**

- 18.1 Notification by the Central Purchasing Body/Contracting Authority that the application has been successful will signal that the Candidate has been admitted to the DPS, and that the Candidate is considered as an active participant to the same DPS.
- 18.2 All the Candidates satisfying the selection criteria shall be admitted to the DPS and the number of Candidates to be admitted to the DPS shall not be limited.
- 18.3 The Central Purchasing Body/Contracting Authority shall invite all admitted participants to submit a tender for each Specific Contract under the DPS.
- 18.4 No contract agreement will be necessary following the electronic notification sent to the Candidate signalling successful admittance to a DPS.
- 18.5 The Central Purchasing Body/Contracting Authority may, at any time during the period of validity of the DPS, require admitted participants to submit a renewed and updated self-declaration or European Single Procurement Document (ESPD), within five (5) working days from the date on which that request is transmitted.
- 18.6 The Central Purchasing Body/Contracting Authority may remove admitted participants from a DPS or refrain from inviting them to tender for specific contracts, if they fail to submit a renewed and updated self-declaration or ESPD, or it is evinced that the admitted participants have been blacklisted from participating in procurement procedures.

## **19. Ethics Clauses**

- 19.1 Any attempt by an Candidate to obtain confidential information, enter into unlawful agreements with competitors or influence the outcome of the DPS procedure during the process of examining, clarifying, evaluating and the recommendation leading to the admittance of applications will result in the rejection of his application or tender for Specific Contracts, and may result in administrative penalties.

- 19.2 Unless otherwise provided for in the DPS documents, when putting forward application, the Candidate must declare that he is affected by no potential conflict of interest, and that he has no particular link with other Candidates/participants or parties involved in the project. A false declaration shall lead to the disqualification of the Candidate/participant. In instances where a state of conflict of interest exists the Candidate/participant is to be excluded from the admittance to that particular DPS unless such a conflict of interest cannot be remedied by a less intrusive manner.
- 19.3 Where a Contracting Authority is of the opinion that the conflict of interest can be remedied without excluding the Candidate in question, after obtaining the prior approval of the Director, it shall give five (5) working days to the Candidate in question to remedy such conflict of interest. In default, the Candidate in question shall be excluded.
- 19.4 The Candidate shall refrain from any relationship likely to compromise his independence or that of his staff. If the Candidate ceases to be independent, the Central Purchasing Body/Contracting Authority may, regardless of injury, exclude the Candidate from the DPS without further notice and without the Candidate having any claim to compensation.

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

- 20.1 Any personal data submitted in the framework of the DPS shall be processed pursuant to the **Data Protection Legislation / Data Protection Regime**’ means the Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the “GDPR Regulation”), the Electronic Communications Data Protection Directive 2002/58/EC, the Directive 2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data (the “Data Directive”), the Electronic Communications Data Protection Directive 2002/58/EC, and all applicable laws and regulations relating to processing of personal data and privacy.

It shall be processed solely for the purposes of the performance, management and follow-up of the DPS procedure by the Central Purchasing Body/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.

- 20.2 The provisions of the DPS are without prejudice to the obligations of the Central Purchasing Body/Contracting Authority in terms of the Freedom of Information Act (Cap. 496 of the Laws of Malta). Unless otherwise provided in the Public Procurement Regulations, the Central Purchasing Body/Contracting Authority prior to disclosure of any information to a third party in relation to any provisions of the DPS which have not yet been made public, shall consult the Candidate/participant 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 Central Purchasing Body/Contracting Authority in terms of the Act.

## 21. *Gender Equality*

- 21.1 In carrying out his/her obligations in pursuance of this contract, the Candidate 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. Candidates 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.
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