



ADVERT NUMBER: _____

DEPT. REF: PML/03/2015

**TENDER TO BUILD, OWN AND
OPERATE A MODULAR FLOATING
SYSTEM IN ST. THOMAS BAY,
MARSASCALA**

Closing Date: **10th April 2015** at **10:00am CET**

Date Published: **20th March 2015**

IMPORTANT:

No Bid Bond is requested for this tender

Clarifications shall be uploaded and will be available to view/download from
<http://www.tourism.gov.mt/en/Departments-Sections-Units/Pages/Departments-Sections-Units%20Sub%20Pages/TendersRFQ-and-RFI.aspx>

<p>Foundation for Tourism Zone Development 233, Republic Street, Valletta</p>

TENDER TO BUILD, OWN AND OPERATE A MODULAR FLOATING SYSTEM IN ST. THOMAS BAY, MARSASCALA

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# VOLUME 1 SECTION 1 - INSTRUCTIONS TO TENDERERS

## A. GENERAL PART

### 1. General Instructions

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

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

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

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

- 1.2 The subject of this tender is to establish a Public Private Partnership through a Concession to Build, Own and exclusively Operate a modular floating system in St. Thomas Bay, Marsascala
- 1.3 The Concession Period is fixed at ten (10) years from the date of Provisional Acceptance. Assets ownership rests with the contracted bidder.
- 1.4 Bidders shall provide a yearly positive or negative financial consideration in their offer. Over a period of ten (10) years offers may result in either a financial cost or contribution to the Concession Authority.
- 1.5 The tenderer will bear all costs associated with the preparation and submission of the tender. The Concession Authority will in no case be responsible or liable for such costs, whatever the conduct or outcome of the procedure.
- 1.6 The Concession Authority retains ownership of all tenders received under this tender procedure. Consequently, tenderers have no right to have their tenders returned to them.

### 2. Timetable

|                                                                                                                    | DATE                        | TIME* |
|--------------------------------------------------------------------------------------------------------------------|-----------------------------|-------|
| Clarification Meeting/Site Visit<br>(Refer to Clause 9.1)                                                          | 25 <sup>th</sup> March 2015 | 10:00 |
| Deadline for request for any additional information from the Concession Authority                                  | 25 <sup>th</sup> March 2015 | 10:00 |
| Last date on which additional information are issued by the Concession Authority                                   | 2 <sup>nd</sup> April 2015  | 10:00 |
| Deadline for submission of tenders / Tender Opening Session<br>(unless otherwise modified in terms of Clause 11.3) | 10 <sup>th</sup> April 2015 | 10:00 |

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

### **3. Lots**

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

### **4. Financing**

- 4.1 The project financing may vary under this contract and may consist of two funding streams, depending on the offer submitted.
1. The first stream is the Contractor's financing, which is the amount that the Contractor will invest in the Build-Own-Operate of the System, including any contributions to the Concession Authority;
  2. In the case where the total cost of the project over a period of ten (10) years is not covered in its entirety by the Contractor, the Concession Authority will finance that cost from local budget funds.

Payments made by the Concession Authority to the Contractor in any single year cannot exceed EUR 5,000. Bids exceeding this budget will be rejected.

- 4.2 The beneficiary of the financing is the **Foundation for Tourism Zone Development** while **Projects Malta Limited** is administering the procurement procedure on behalf of the beneficiary.

### **5. Eligibility**

- 5.1 Participation in tendering is open on equal terms to all natural and legal persons of the Member States of the European Union, the beneficiary country, any other country in accordance with Regulation 69 of the Public Procurement Regulations.
- 5.2 Natural persons, companies or undertakings who fall under any of the conditions set out in Regulation 50 of the Public Procurement Regulations, 2010 (Legal Notice 296 of 2010) may be excluded from participation in and the award of contracts. Tenderers or candidates who have been guilty of making false declarations will also incur financial penalties representing 10% of the total value of the contract being awarded.
- 5.3 Tenders submitted by companies forming a joint venture/consortium must also fulfil the following requirements:

One partner must be appointed lead partner and that appointment confirmed by submission of powers of attorney signed by legally empowered signatories representing all the individual partners. The tender must include a preliminary agreement or letter of intent stating that all partners assume joint and several liability for the execution of the contract, that the lead partner is authorised to bind, and receive instructions for and on behalf of, all partners, individually and collectively.

All partners in the joint venture/consortium are bound to remain in the joint venture/consortium until the conclusion of the contracting procedure. The consortium/joint venture winning this contract must include the same partners for the whole performance period of the contract other than as may be permitted or required by law.

- 5.4 All materials, equipment and services to be supplied under the contract must originate in an eligible country. For these purposes, "origin" means the place where the materials and/or equipment are mined, grown, produced or manufactured and/or from which services are provided.

## **6. Selection Criteria**

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

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

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

*(An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the Concession Authority that it will have at its disposal the resources necessary for the execution of the contract, for example, by producing an undertaking by those entities to place the necessary resources at the disposal of the economic operator)*

This information must follow the forms in Volume 1, Section 6 of the tender documents and include

- the data concerning subcontractors and the percentage of works to be subcontracted as per Form marked Sub-contracting to be submitted in line with Volume 1 Section 6 Form 3. <sup>(Note 2)</sup>

The maximum amount of sub-contracting must not exceed 50% of the total contract value.

The main contractor must have the ability to carry out at least 50% of the contract works by his own means.

- A list of at least three (3) similar installations using the materials being proposed which meet technical specifications and a sample of which shall be presented as per Volume 3, installed in unprotected areas in the Mediterranean as per Form 4 Volume 1 Section 6.

For the avoidance of doubt the tenderer himself need not provide evidence of past experience.

## **7. Multiple Tenders**

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

## **8. Tender Expenses**

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

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

- 9.1 A clarification meeting/site visit will be held on the date and time indicated in Clause 2, at St. Thomas Bay, Marsascala to answer any questions on the tender document which have been forwarded in writing, or are raised during the same meeting. Minutes will be taken during the meeting, and these (together with any clarifications in response to written requests which are not addressed during the meeting) shall be posted online as a clarification note as per Clause 11.2.

Meetings/visits by individual prospective tenderers during the tender period other than this meeting/site visit for all prospective tenderers cannot be permitted.

## **B. TENDER DOCUMENTS**

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

- 10.1 The set of tender documents comprises the following documents and should be read in conjunction with any clarification notes issued in accordance with Clause 24:
- |          |                                                                                                                                                                                                                                                     |
|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Volume 1 | Instructions to Tenderers                                                                                                                                                                                                                           |
| Volume 2 | Draft Contract                                                                                                                                                                                                                                      |
|          | <ul style="list-style-type: none"><li>• General Conditions (available online from <a href="http://contracts.gov.mt/en/Tenders/Pages/Tenders.aspx">http://contracts.gov.mt/en/Tenders/Pages/Tenders.aspx</a>)</li><li>• Special Conditions</li></ul> |
| Volume 3 | Technical Specifications                                                                                                                                                                                                                            |
| Volume 4 | Financial Proposal                                                                                                                                                                                                                                  |
| Volume 5 | Drawings                                                                                                                                                                                                                                            |
- 10.2 Tenderers bear sole liability for examining with appropriate care the tender documents, including those design documents available for inspection, and any clarification notes to the tender documents issued during the tendering period, and for obtaining reliable information with respect to conditions and obligations that may in any way affect the amount or nature of the tender or the execution of the works. In the event that the tenderer is successful, no claim for alteration of the tender amount will be entertained on the grounds of errors or omissions in the obligations of the tenderer described above.
- 10.3 The tenderer must provide all documents required by the provisions of the tender document. All such documents, without exception, must comply strictly with these conditions and provisions and contain no alterations made by the tenderer.

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

- 11.1 Tenderers may submit questions in writing to the Concession Authority through
- sending an email to [admin.projectsmlta@gov.mt](mailto:admin.projectsmlta@gov.mt)

up to 15 calendar days before the deadline for submission of tenders. The Concession Authority must reply to all tenderers' questions, and amend the tender documents by publishing clarification notes, up to at least 6 calendar days before the deadline for submission of tenders.

- 11.2 Questions and answers, and alterations to the tender document will be published as a clarification note on the website of the **Foundation for Tourism Zone Development** <http://www.tourism.gov.mt/en/Departments-Sections-Units/Pages/Departments-Sections-Units%20Sub%20Pages/TendersRFQ-and-RFI.aspx> within the respective tender's page, under the subheading "Tender to Build, Own and Operate a Modular Floating System in St. Thomas Bay, Marsascala". Clarification notes will constitute an integral part of the tender documentation, and it is the responsibility of tenderers to visit this website and be aware of the latest information published online prior to submitting their Tender.
- 11.3 The Concession Authority may, at its own discretion, as necessary and in accordance with Clause 24, extend the deadline for submission of tenders to give tenderers sufficient time to take clarification notes into account when preparing their tenders.

## **12. Labour Law**

- 12.1 Particular attention is drawn to the conditions concerning the employment of labour in Malta and the obligation to comply with all regulations, rules or instructions concerning the conditions of employment of any class of employee. Non conformity with this provision will result in the automatic exclusion of the bid.

## **13. Law**

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

## **C. TENDER PREPARATION**

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

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

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

- 15.1 Tenders must satisfy the following conditions:
- (a) All tenders must be submitted in one original, clearly marked "original", and one identical copy (including all documentation as in the original) signed in the same way as the original and clearly marked "copy".
  - (b) Both documents are to be separately sealed and placed in another sealed envelope/package so that the bid can be identified as one tender submission. Following the tender opening session, the copy shall be kept, unopened, at the **Foundation for Tourism Zone Development**, for verification purposes only should the need arise.
  - (c) All tenders must be received by date and time indicated in the timetable at Clause 2 and deposited in the Tender Box of Projects Malta Ltd, The Clock Tower, Level 1, Tigne' Point, Sliema.
  - (d) All packages, as per (b) above, must bear only:
    - (i) the above address;
    - (ii) the reference of the invitation to tender concerned;
    - (iii) the number of the lot(s) to which the tender refers;
    - (iv) the name of the tenderer.



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

16.1 The tender must comprise the following duly completed documents, inserted in a single, sealed envelope (unless their volume requires a separate submission):

(a) *General/Administrative Information*<sup>(Note 2)</sup>

Statement on Conditions of Employment (Volume 1 Section 3 (1))  
Memorandum of Understanding (Volume 1 Section 3 (2))

*(b) Selection Criteria*

Evidence of three (3) similar installations in unprotected areas in the Mediterranean as per Clause 6 of Volume 1 Section 1 - Instruction to Tenderers.

(b) *Financial and Economic Standing*<sup>(Note 2)</sup>

(No Evidence of economic and financial standing is required)

(c) *Technical Capacity*<sup>(Note 2)</sup>

- (i) Provide data concerning subcontractors and the percentage of works to be subcontracted as per Form marked Sub-contracting. (Volume 1 Section 6 Form 3)
- (ii) A list of at least three (3) similar installations installed in unprotected areas in the Mediterranean. (Volume 1 Section 6 Form 4)

(d) *Evaluation Criteria/Technical*<sup>(Note 3)</sup>

Tenderer's Technical Offer in response to specifications (Volume 3)  
*Specifications*

**Samples as listed in the table at the end of the Technical Specifications Section may be requested during adjudication stage and these will need to be submitted within 5 working days of being notified to do so. Samples are not subject to rectifications.**

(e) *Financial Offer/Bill of Quantities*<sup>(Note 3)</sup>

The Tender Form in accordance with the form provided in Volume 1, Section 2; a separate Tender Form is to be submitted for each option tendered, each form clearly marked 'Option 1', 'Option 2' etc.;  
A Financial Proposal as per specifications listed in Volume 3 in the form provided in Volume 4 Section 1.

**Notes to Clause 16.1:**

*Tenderers will be requested to clarify/rectify, within two working days from notification, the tender guarantee only in the following two circumstances: either incorrect validity date, and/or incorrect value.*

*Tenderers will be requested to either clarify/rectify any incorrect and/or incomplete documentation, and/or submit any missing documents within two working days from notification.*

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

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

### **17. Tender Prices**

- 17.1 Tenderers will be deemed to have satisfied themselves, before submitting their Financial Proposal, to its correctness and completeness, to have taken account of all that is required for the full and proper performance of the contract.
- 17.2 The tender must be submitted in Euro (€). Three decimal points do not exist as currency; therefore such offers cannot be accepted. Offers are to be submitted up to two decimal points.
- 17.3 Tenderers must quote all components of the price **inclusive** of taxes, customs and import duties and any discounts **BUT** excluding VAT. VAT shall be paid in accordance with the applicable VAT Regulations.
- 17.4 Different options are to be clearly identifiable in the technical and financial submission; a **separate Tender Form (as per Volume 1, Section 2) marked 'Option 1', 'Option 2' etc. for each individual option clearly outlining the price of the relative option is to be submitted.**
- 17.5 The prices for the contract, must include all of the works, supplies and services to be provided. The prices quoted are fixed and not subject to revision or escalation in costs, except for any increases determined by government in respect to its policies or otherwise provided for in the Special Conditions.

### **18. Currencies of Tender**

- 18.1 The currency of the tender is the Euro (€). All sums in the breakdown of the overall price, in the questionnaire and in other documents must be expressed in Euro (€), with the possible exception of originals of bank and annual financial statements.
- 18.2 All correspondence relating to payments, including invoices and interim and final statements, must be submitted as outlined in the contract.

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

- 19.1 Tenders must remain valid for a period of 90 days after the deadline for submission of tenders indicated in the contract notice, the tender document or as modified in accordance with Clauses 11.3 and/or 24. Any tenderer who quotes a shorter validity period will be rejected.
- 19.2 In the event that the evaluation process has not been concluded by the end of the validity period of the submitted bids, the Head of Concession Authority may consider to cancel the tender following consultations with Projects Malta Ltd and the Permanent Secretary;.
- 19.3 In exceptional circumstances the Concession Authority may request that tenderers extend the validity of tenders for two further periods of four (4) weeks each. Such requests and the responses to them must be made in writing. A tenderer may refuse to comply with such a request. However, his tender will no longer be considered for award. If the tenderer decides to accede to the extension, he may not modify his tender.
- 19.4 Following the further extension by eight (8) weeks, in accordance with Regulation 6(2)(c) of LN296/2010 the non-conclusion of the evaluation process will automatically lead to the cancellation of the tender, provided that the Head of Concession Authority shall consult Projects Malta Ltd and the Permanent Secretary.

- 19.5 The successful tenderer must maintain his tender for a further 60 days from the date of notification of award.

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

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

## **21. Variant Solutions**

- 21.1 No variant solutions will be accepted except where they allow for minor modifications to ensure flexibility. Tenderers must submit a tender in accordance with the requirements of the tender document.

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

- 22.1 All tenders must be submitted in one original, clearly marked “original”, and one identical copy (including all documentation as in the original) signed in the same way as the original and clearly marked “copy”. Tenders must comprise the documents specified in Clause 16 above. It is the responsibility of the tenderers to ensure that both the original and the copy are an identical representation of one another.
- 22.2 The tenderer’s submission must be typed in, or handwritten in indelible ink. Any pages on which entries or corrections to his submission have been made must be initialled by the person or persons signing the tender. All pages must be numbered consecutively by hand, machine or in any other way acceptable to the Concession Authority.
- 22.3 The tender must contain no changes or alterations, other than those made in accordance with instructions issued by the Concession Authority (issued as clarification notes) or necessitated by errors on the part of the tenderer. In the latter case, corrections must be initialled by the person signing the tender.
- 22.4 The tender will be rejected if it contains any alteration, tampering, addition or deletion to the tender documents not specified in a clarification note issued by the Concession Authority.

## **D. SUBMISSION OF TENDERS**

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

- 23.1 The tenders must be submitted in English and deposited in the tender box **before** the deadline specified in Clause 2 or as otherwise specified in accordance with Clause 11.1 and/or 24.1. They must be submitted:  
EITHER by recorded delivery (official postal/courier service) or hand delivered to:  
**Projects Malta Ltd.**  
**The Clock Tower,**  
**Level 1, Tigne’ Point,**  
**Sliema.**  
Tenders submitted by any other means will not be considered.
- 23.2 Tenderers must seal the original and the copy of their tender as outlined in Clause 15.
- 23.3 If the outer envelope is not sealed and marked as required in Sub clause 15.1, the Concession Authority will assume no responsibility for the misplacement or premature opening of the tender.

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

- 24.1 The Concession Authority may, at its own discretion, extend the deadline for submission of tenders by issuing a clarification note in accordance with Clause 11. In such cases, all rights and obligations of the Concession Authority and the tenderer regarding the original date specified in the contract notice will be subject to the new date.

## **25. Late Tenders**

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

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

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

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

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

- 27.1 Tenders will be opened in public session on the date and time indicated in the timetable at Clause 2 (or as otherwise specified in accordance with Clause 11.1 and/or 24.1) at the Projects Malta Ltd, The Clock Tower, Level 1, Tigne' Point, Sliema by the Tender Opening Committee. They will draw up a 'Summary of Tenders Received' which will be published on the notice board at Projects Malta Ltd and shall also be available to view on the website of the

Foundation for Tourism Zone Development

<http://www.tourism.gov.mt/en/Departments-Sections-Units/Pages/Departments-Sections-Units%20Sub%20Pages/TendersRFQ-and-RFI.aspx>

- 27.2 At the tender opening, the tenderers' names, the tender financial proposal, written notification of alterations and withdrawals, and any other information the Concession Authority may consider appropriate will be published.
- 27.3 Envelopes marked "withdrawal" will be read out first and returned to the tenderer.
- 27.4 Alterations to financial proposals made by tenderers after submission will not be taken into consideration during the analysis and evaluation of tenders.

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

- 28.1 After the opening of the tenders, no information about the examination, clarification, evaluation or comparison of tenders or decisions about the contract award may be disclosed before the notification of award.

- 28.2 Information concerning checking, explanation, opinions and comparison of tenders and recommendations concerning the award of contract, may not be disclosed to tenderers or any other person not officially involved in the process unless otherwise permitted or required by law.
- 28.3 Any attempt by a tenderer to approach any member of the Evaluation Committee/Concession Authority directly during the evaluation period will be considered legitimate grounds for disqualifying his tender.

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

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

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

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

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

The Evaluation Committee will check the compliance of tenders with the instructions given in the tender document, and in particular the documentation submitted in respect of Clause 16. The Evaluation Committee shall, after having obtained approval by the Departmental Contracts Committee, request rectifications in respect of incomplete/non-submitted information pertinent to the documentation as outlined in sub-Clause 16.1(a), 16.1(b) and 16.1(c) of these Instructions to Tenderers. Such rectification/s must be submitted within five (5) working days from notification, and will be subject to a non-refundable administrative penalty of €50: failure to comply shall result in the tender offer not being considered any further. No rectification shall be allowed in respect of the documentation as outlined in sub-Clause 16.1(d) and 16.1(e) of these Instructions to Tenderers. Only clarifications on the submitted information in respect of the latter may be eventually requested.

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

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

*(i) Eligibility Criteria*

- Tender Form (Volume 1, Section 2)

*(ii) Selection Criteria*

Evidence of technical capacity (sub-Clause 6.1.2)

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

At this step of the evaluation process, the Evaluation Committee will analyse the administratively-compliant tenders' technical conformity in relation to the technical specifications (Volume 3, and the documentation requested by the Concession Authority as per sub-Clause 16(d)), classifying them technically compliant or non-compliant. Tenders who are deemed to be provisionally technically compliant through the evaluation of their technical offer (especially the specifications) may be requested to submit samples so that

the Evaluation Committee will corroborate the technical compliance of the offers received. These samples may be returned to the respective bidders, upon their request, at the end of the evaluation process.

### 30.5 Part 4. Financial Evaluation

The Financial Proposals for tenders which were not eliminated during the technical evaluation (i.e., those found to be technically compliant with the Specifications defined in Volume 3) will be evaluated.

The financial evaluation will be carried out as follows:

The Evaluation Committee will check that the Financial Offers contains no arithmetical errors as outlined in Clause 31. Following this, the Evaluation Committee will assess each proposal to determine the most favourable offer in line with the award criteria as defined in Article 32 of these instructions to tenderers.

**NB. When compiling the Financial Proposal (Volume 4) a positive result signifies a COST which the Concession Authority would have to disburse to the Contractor. A negative result means a CONTRIBUTION that the Contractor would need to pay to the Concession Authority. The net financial cost/contribution to the Concession Authority over a period of ten (10) years is the determining factor, on which criteria bidders are assessed and awarded.**

The Evaluation Committee will assess the bids received as explained in the example below (*the example is for illustration purposes only and is there to guide the bidders on how the Evaluation Committee will assess the Financial Proposals*):

*Example:*

| YEAR                                                                     | Bidder W | Bidder X | Bidder Y | Bidder Z |
|--------------------------------------------------------------------------|----------|----------|----------|----------|
| YEAR 1                                                                   | EUR 10   | EUR 1    | EUR 15   | (EUR 2)  |
| YEAR 2                                                                   | EUR 10   | EUR 1    | EUR 5    | (EUR 2)  |
| YEAR 3                                                                   | EUR 10   | EUR 1    | EUR 5    | (EUR 2)  |
| YEAR 4                                                                   | EUR 10   | EUR 1    | (EUR 5)  | (EUR 2)  |
| YEAR 5                                                                   | EUR 10   | EUR 1    | (EUR 5)  | (EUR 2)  |
| YEAR 6                                                                   | EUR 10   | EUR 1    | (EUR 5)  | (EUR 2)  |
| YEAR 7                                                                   | (EUR 10) | EUR 1    | (EUR 5)  | (EUR 2)  |
| YEAR 8                                                                   | (EUR 10) | EUR 1    | (EUR 5)  | (EUR 2)  |
| YEAR 9                                                                   | (EUR 10) | EUR 1    | (EUR 5)  | (EUR 2)  |
| YEAR 10                                                                  | (EUR 10) | EUR 1    | (EUR 5)  | (EUR 2)  |
| NET FINANCIAL COST /<br>(CONTRIBUTION) TO<br>THE CONCESSION<br>AUTHORITY | EUR 20   | EUR 10   | (EUR 10) | (EUR 20) |

Summary of bids received:

**Where**, Bidder W charged EUR 10 a year for the first 6 years, but then offered a contribution of EUR 10 every year during year 7 and 10, resulting in a net financial cost of EUR 20 which the Concession Authority shall disburse to the Contractor over a period of ten (10) years.

**Where**, Bidder X charged EUR 1 a year for 10 years, resulting in a net financial cost of EUR

10 which the Concession Authority shall disburse to the Contractor over a period of ten (10) years.

**Where**, Bidder Y, charged EUR 15 for the first year, EUR 5 for year 2 and year 3, but then offered a contribution to the Concession Authority of EUR 5 every year from year 4 to 10, resulting in a net financial contribution of EUR 10 which the Contractor shall pay to the Concession Authority over a period of ten (10) years.

**Where**, Bidder Z, offered a contribution of EUR 2 every year for ten (10) years, resulting in a net financial contribution of EUR 20 which the Contractor shall pay to the Concession Authority over a period of ten (10) years.

The above bidders would rank as follows:

1. Bidder Z - (EUR 20)
2. Bidder Y - (EUR 10)
3. Bidder X - EUR 10
4. Bidder W - EUR 20

Therefore, in this case, Bidder Z would be awarded the Concession Contract, for the offer of EUR 20 net Contribution (over a period of ten (10) years) payable to the Concession Authority.

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

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

## **F. CONTRACT AWARD**

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

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

### ***33. Right of the Concession Authority To Accept Or Reject Any Tender***

- 33.1 The Concession Authority reserves the right to accept or reject any tender and/or to cancel the whole tender procedure and reject all tenders. The Concession Authority reserves the right to initiate a new invitation to tender.
- 33.2 In the event of a tender procedure's cancellation, tenderers will be notified by the Concession Authority. If the tender procedure is cancelled before the outer envelope of any tender has been opened, the sealed envelopes will be returned, unopened, to the

tenderers.

- 33.3 Cancellation may occur where:
1. the tender procedure has been unsuccessful, namely where no qualitatively or financially worthwhile tender has been received or there has been no response at all;
  2. the economic or technical parameters of the project have been fundamentally altered;
  3. exceptional circumstances or force majeure render normal performance of the project impossible;
  4. all technically compliant tenders exceed the financial resources available;
  5. there have been irregularities in the procedure, in particular where these have prevented fair competition;
  6. the duration of the evaluation has exceeded the stipulated time limit in Article 19 of Instructions to Tenderers;

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

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

- 34.1 Prior to the expiration of the period of validity of tenders, the Concession Authority will notify the successful tenderer, in writing, that his tender has been recommended for award, pending any appeal being lodged in terms of Part II of the Public Procurement Regulations (being reproduced in Volume 1, Section 5).
- 34.2 Unsuccessful bidders shall be notified with the outcome of the evaluation process, and will be provided the following information:
- (i) the criteria for award;
  - (ii) the name of the successful tenderer;
  - (iii) the recommended price of the successful bidder;
  - (iv) the reasons why the tenderer did not meet the technical specifications/ notification that the offer was not the cheapest (if applicable);
  - (v) the deadline for filing a notice of objection (appeal);
  - (vi) the deposit required if lodging an appeal.
- 34.3 The recommendations of the Evaluation Committee shall be published on the Notice Board of Projects Malta Ltd, and published online on the website of the **Foundation for Tourism Zone Development**

<http://www.tourism.gov.mt/en/Departments-Sections-Units/Pages/Departments-Sections-Units%20Sub%20Pages/TendersRFQ-and-RFI.aspx>

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

- 35.1 After the lapse of the appeals period, and pending that no objections have been received and/or upheld, the successful tenderer may be invited to clarify certain contractual questions raised therein. Such clarification will be confined to issues that had no direct bearing on the choice of the successful tender. The outcome of any such clarifications will be set out in a Memorandum of Understanding, to be signed by both parties and incorporated into the contract.
- 35.2 Before the Concession Authority signs the contract with the successful tenderer, the successful tenderer may be requested to provide the documentary proof or statements required to show that it does not fall into any of the exclusion situations listed in Tenderer's Declaration of the Tender Response Format. The above mentioned documents must be submitted by every member of a Joint Venture/Consortium (if applicable).



35.3 The Contractor shall, within 15 calendar days of receipt of the contract, sign and date the contract and return it together with a copy of the Performance Guarantee. The Contractor is further obliged to forward the original performance guarantee to the Concession Authority. The Concession Authority will not effect any payment to the contractor until the performance guarantee is submitted.

35.4 If the selected tenderer fails to sign and return the contract, other required documentation, and any guarantees required within the prescribed 15 calendar days, the Concession Authority may consider the acceptance of the tender to be cancelled without prejudice to the Concession Authority's right to seize the guarantee, claim compensation or pursue any other remedy in respect of such failure, and the successful tenderer will have no claim whatsoever on the Concession Authority.

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

35.5 The performance guarantee referred to in the General Conditions is set at EUR 12,000 and must be presented in the form specified in Volume 2, Section 4, to the tender document. The performance guarantee shall be released within 30 days of the end of the term of the concession, unless the Special Conditions provide otherwise.

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

36.1 The period to build the Modular Floating System indicated in Clause 5.2 of Volume 3 commences from the date of the Notice of the Award of the Contract, or the date of the last signature of the contract, whichever comes first.

36.2 The Contractor must inform the Concession Authority's representative that he has received the notice.

## **G. MISCELLANEOUS**

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

37.1 Any attempt by a candidate or tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the committee or the Concession Authority during the process of examining, clarifying, evaluating and comparing tenders will lead to the rejection of his candidacy or tender and may result in administrative penalties.

37.2 Without the Concession Authority's prior written authorisation, the Contractor and his staff or any other company with which the Contractor is associated or linked may not, even on an ancillary or subcontracting basis, supply other services, carry out works or supply equipment for the project. This prohibition also applies to any other programmes or projects that could, owing to the nature of the contract, give rise to a conflict of interest on the part of the Contractor.

37.3 When putting forward a candidacy or tender, the candidate or tenderer must declare that he is affected by no potential conflict of interest, and that he has no particular link with other tenderers or parties involved in the project.

37.4 The Contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of his profession. He must refrain from making public statements about the project or services without the Concession Authority's prior approval. He may not commit the Concession Authority in any way without its prior written consent.

37.5 For the duration of the contract, the Contractor and his staff must respect human rights

and undertake not to offend the political, cultural and religious morals of Malta.

- 37.6 The Contractor may accept no payment connected with the contract other than that provided for therein. The Contractor and his staff must not exercise any activity or receive any advantage inconsistent with their obligations to the Concession Authority.
- 37.7 The Contractor and his staff are obliged to maintain professional secrecy for the entire duration of the contract and after its completion. All reports and documents drawn up or received by the Contractor are confidential.
- 37.8 The contract governs the Parties' use of all reports and documents drawn up, received or presented by them during the execution of the contract.
- 37.9 The Contractor shall refrain from any relationship likely to compromise his independence or that of his staff. If the Contractor ceases to be independent, the Concession Authority may, regardless of injury, terminate the contract without further notice and without the Contractor having any claim to compensation.
- 37.10 The tender(s) concerned will be rejected or the contract terminated if it emerges that the award or execution of a contract has given rise to unusual commercial expenses. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commissions paid to a company which has every appearance of being a front company.

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

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

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

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

## VOLUME 1 SECTION 2 - TENDER FORM

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

Publication reference: **PML/03/2015**  
**TENDER TO BUILD, OWN AND OPERATE A MODULAR FLOATING SYSTEM IN ST. THOMAS BAY, MARSASCALA**

|                                                                                      |                                                                   |                                                   |  |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|---------------------------------------------------|--|
| <b>A. TENDER SUBMITTED BY:</b>                                                       | <i>(This will be included in the Summary of Tenders 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 ...                                                                              |                                                                   |                                                   |  |

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

| Supply intended to be sub-contracted | Name and details of sub-contractors | Value of sub-contracting as percentage of the total cost <sup>3</sup> | Experience in similar supplies (details to be specified) |
|--------------------------------------|-------------------------------------|-----------------------------------------------------------------------|----------------------------------------------------------|
| 1                                    |                                     |                                                                       |                                                          |
| 2                                    |                                     |                                                                       |                                                          |
| (.)                                  |                                     |                                                                       |                                                          |

3. The maximum amount of sub-contracting must not exceed 50% of the total contract value. The main contractor must have the ability to carry out at least 50% of the contract works by his own means.

### B CONTACT PERSON (for this tender)

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

## C TENDERER'S DECLARATION(S)

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

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

- 1 We have examined, and accept in full and in its entirety, the content of this tender document (including subsequent Clarifications Notes issued by the Concession Authority) for invitation to tender 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 tender offer not being considered any further.
- 2 We offer to provide, in accordance with the terms of the tender document and the conditions and time limits laid down, without reserve or restriction, the following:  
  
[.....] [*description of works/ supplies/ and services*]
- 3 Without prejudice to the conditions established under the contract, the total price of our tender over a period of ten (10) years (inclusive of duties, VAT, other taxes) is: [*Delete where it is not applicable*]  
  
Net Financial Cost to be disbursed by the Concession Authority (if any):  
[.....](inclusive of duties, VAT, other taxes)  
  
Net Financial Contribution to the Concession Authority (if any): [.....]
- 4 The Operating License granted to us in terms of the Concession Contract shall be of **ten (10) years**.
- 5 This tender is valid for a period of 90 days from the final date for submission of tenders.
- 6 If our tender is accepted, we undertake to provide a performance guarantee of **EUR 12,000** as required by the terms of the tender conditions.
- 7 We are making this application in our own right and [**as partner in the consortium led by < name of the leader / ourselves >**] for this tender. We confirm that we are not tendering for the same contract in any other form. [**We confirm, as a partner in the consortium, that all partners are jointly and severally liable by law for the performance of the contract, that the lead partner is authorised to bind, and receive instructions for and on behalf of, each member, and that all partners in the joint venture/consortium are bound to remain in the joint venture/consortium for the entire period of the contract's performance**]. We are fully aware that, in the case of a consortium, the composition of the consortium cannot be modified in the course of the tender procedure.
- 8 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.
- 9 We accept that we shall be excluded from participation in the award of this tender if compliance certificates in respect of declarations made under Clause 7 of this declaration are not submitted by the indicated dates.
- 10 We agree to abide by the ethics clauses of the instructions to tenderers and, in particular, have no potential conflict of interests or any relation with other candidates or other parties in the tender procedure at the time of the submission of this application. We have no interest of any nature whatsoever in any other tender in this procedure. We recognise that our tender may be excluded if we propose key experts who have been involved in preparing this project or engage such personnel as advisers in the preparation of our tender.

- 11 We will inform the Concession Authority immediately if there is any change in the above circumstances at any stage during the implementation of the contract. We also fully recognise and accept that any false, inaccurate or incomplete information deliberately provided in this application may result in our exclusion from this and other contracts funded by the Government of Malta and the European Communities.
- 12 Our tender submission has been made in conformity with the Instructions to Tenderers, and in this respect we confirm having included in the appropriate packages as required, the following documentation:

- (a) **General Information** <sup>(Note 2)</sup>
- Statement on Conditions of Employment
  - Memorandum of Understanding
- Selection Criteria** <sup>(Note 2)</sup>
- (b) **Financial and Economic Standing** <sup>(Note 2)</sup>
- No evidence of Financial and Economic Standing is required
- (c) **Technical Capacity** <sup>(Note 2)</sup>
- Provide data concerning subcontractors and the percentage of works to be subcontracted as per Form marked Sub-contracting
  - A list of at least three (3) similar installations installed in unprotected areas in the Mediterranean. (Volume 1 Section 6 Form 4)
- (d) **Evaluation Criteria/Technical Specifications** <sup>(Note 3)</sup>
- Tenderer's Technical Offer
- (e) **Tender Form and Financial Proposal** <sup>(Note 3)</sup>

**Notes:**

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

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

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

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

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

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

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

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

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

## VOLUME 1 SECTION 3 - TENDERER'S STATEMENTS

### ***1. Statement on Conditions of Employment***

|                                                                                                                                                       |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Tenderers are to ensure that self-employed personnel are not engaged on this contract.<br/>Non-compliance will invalidate the contract.</b></p> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|

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

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

Signature: .....

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

Date: .....

## ***2. Memorandum of Understanding***

**Tender to Build, Own and Operate a Modular Floating System in St. Thomas Bay, Marsascala**

**Reference Number: PML/03/2015**

We, the undersigned, hereby declare that:

- (i) We “the undersigned” are entering into a concession contract (“the contract”) for a period of ten (10) years (“the Concession Period”) with the **Foundation for Tourism Zone Development** (“the Concession Authority”) to build, own and operate a Modular Floating System (“the System”) at St. Thomas Bay, Marsascala (“the Site”);
- (ii) We will provide free, unencumbered access to the general public, to use the System as a bathing platform, everyday, between 09:00 and 18:30 (subject to load limitations and/ or maximum load capacity).
- (iii) Only licensed commercial activity can be undertaken on the System; Licensed commercial activity may also occur outside the hours defined in point ii, above.
- (iv) The System’s enclosed sea area as well as a minimum of 2 outer-sides of the System must be designated as swimmers’ zones;
- (v) The System will be installed and certified within the terms stipulated in the Contract conditions;
- (vi) The System will be operated, every year, for the term of the Concession Period, at least between 15<sup>th</sup> June until 15<sup>th</sup> September (“the peak season”);
- (vii) The System will be dismantled for storage each year upon cessation of operations (“the off-peak season), or whenever it is deemed necessary (e.g. unfavourable climate conditions, repairs, safety, etc.);
- (viii) A preventive procedure as determined by the undersigned on the basis of a technical report endorsed by a naval architect and engineer, will be in place to define when the System is safe to operate, and prevent public access in any circumstances which are deemed to be unsafe;
- (ix) The System will be safely stored during the off-peak season, or whenever it is dismantled, at a location provided for and at the cost of the undersigned;
- (x) The System will be assembled every year and ready for operation at least by the first day of the peak season;
- (xi) If the system needs to be dismantled during the peak season, it shall be reassembled within a reasonable period of time as agreed with the Concession Authority;
- (xii) Verification and test certificates confirming complete installation of the System, including anchorage, will be handed over to the Concession Authority after every assembly and installation. The System cannot be operated if such certificates are not endorsed by the Concession Authority;
- (xiii) The System is adequately anchored to the sea bed when in operation in line with the Method Statement;
- (xiv) The System will be adequately insured in line with the terms established in the Contract;



- (xv) The System will be adequately kept and maintained by the undersigned as provided in the manufacturer’s operations and maintenance manual;
- (xvi) If technically permitting, a net will be attached around the enclosed area of the System to prevent the entry of jelly fish;
- (xvii) The System will be adequately lightened after sunset, providing that the Concession Authority provides electricity for free (for this purpose). No remuneration whatsoever shall be requested by the undersigned in this regard.
- (xviii) The System will be under surveillance 24/7, providing health and safety measures, to prevent accidents, to ensure that the maximum load capacity of the System is not exceeded, and to maintain order. Any related costs shall be borne by the undersigned;
- (xix) All reasonable steps will be taken to protect the environment (both on and off the System) and to limit nuisance to people resulting from pollution, noise and other results of the Operations;
- (xx) Provide adequate signage indicating the following:
  - a. instructional signage showing the maximum number of people allowed on the system and the maximum load capacity in certain conditions;
  - b. general disclaimers relating to theft and personal injury.
- (xxi) Any operations, in part or in full, may only be transferred/assigned in line with the conditions of the contract;
- (xxii) The System and its operations may be relocated to another site, upon prior written consent of the Concession Authority;
- (xxiii) We will forfeit the performance guarantee, in part or in full, if, after one (1) written warning within a given season, the Concession Authority proves that we were in breach of any of the above conditions;
- (xxiv) This contract is null and void if, after three (3) written warnings issued by the Concession Authority within a given season, we are found in breach of any of the above conditions. No claim for damages or compensation can be raised by us.

Signature: .....

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

Date: .....

## VOLUME 1 SECTION 4 - GLOSSARY

### Definitions

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

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

**Build Period:** means supply, deliver and install the System.

**Concession:** means a Public Private Partnership entered into between the Contractor and the Concession Authority for a fixed term.

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

**Concession Contract:** means the Build, Own and Operate contract.

**Concession Period:** means the Operation Service Period which shall commence on the date of issue of the Provisional Acceptance Certificate until the date of issue of the Contract Completion Certificate.

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

**Contract Completion:** means the end date of the Concession Period.

**Contract Completion certificate:** Certificate(s) issued by the Concession Authority to the Contractor at the end of the Concession period stating that the Contractor has completed his obligations to construct, complete, operate and maintain the System concerned.

**Contract value:** The aggregate amount to be paid/received by the Concession Authority over a period of ten (10) years.

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

**Day:** Calendar day.

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

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

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

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

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

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

**Final Beneficiary:** The Department/Entity or other government body on whose behalf Projects Malta Ltd has issued this tender.

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

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

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

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

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

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

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

**Net financial contribution:** The aggregate amount over a period of ten (10) years which the Contractor shall pay to the Concession Authority.

**Net financial cost:** The aggregate amount over a period of ten (10) years which the Concession Authority shall disburse in favour of the Contractor.

**Operating License:** means the license referred to in Volume 2 Section 5, by which the Concession Authority grants to the Contractor to operate and maintain the System during the Concession Period.

**Party:** means the Concession Authority or the Contractor, as the context requires.

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

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

**Project Manager:** The legal or natural person responsible for monitoring the execution of the contract on behalf of the Concession Authority.

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

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

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

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

**System:** The Modular Floating System to be installed at St. Thomas Bay, Marsascala

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

**Tender price:** The sum stated by the tenderer in his tender for carrying out the contract. Over an aggregate period of ten (10) years, this can result in either a financial cost or contribution to the Concession Authority.

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

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

## VOLUME 1 SECTION 5 - EXTRACTS FROM THE PUBLIC PROCUREMENT REGULATIONS

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

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

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

(d) After appointing the application for hearing, and after listening to the oral submissions made by all parties, the Court shall decide the application on its merits, within the shortest time possible but not any later than four months from the day when the appeal had been filed and the parties have been duly notified. Pending the decision of the Court, the process of the call for tenders shall be suspended.

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

## VOLUME 1 SECTION 6 - QUESTIONNAIRE

Forms to be filled in by the Tenderer:

Form 1 - Power of Attorney

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

Form 3 - Sub-Contracting

Form 4 - List of similar installations

### *Notes to Tenders*

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

**Form 1 - Power of Attorney**

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

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

Date: .....



**Form 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 Concession 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) .....                                 |
| 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>.....                                            |
| 7 | Proposed proportion of responsibilities between partners (in %) with indication of the type of the works to be performed by each*<br>* The company acting as the lead partner in a joint venture/consortium, they must have the ability to carry out at least 50% of the contract works by its own means. If a company is another partner in a joint venture/consortium (i.e. not the lead partner) it must have the ability to carry out at least 10% of the contract works by its own means |                                                                        |
|   | ..... - .....%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | ..... - .....%                                                         |
|   | ..... - .....%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | ..... - .....%                                                         |

Signature: .....

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

Date: .....

### **Form 3 - Sub-Contracting**

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

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

Signature: .....

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

Date: .....

**Form 4 - List of Similar installations**

List of at least three (3) similar installations installed in unprotected areas in the Mediterranean.

| Description of System installed | Place of installation |
|---------------------------------|-----------------------|
|                                 |                       |
|                                 |                       |
|                                 |                       |
|                                 |                       |
|                                 |                       |
|                                 |                       |
|                                 |                       |
|                                 |                       |

\* In so listing the similar installations, I am giving my consent to the Evaluation Committee, so that the latter may, if it deems necessary, request additional proof to substantiate the above information during the Evaluation process.

Signature: .....

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

Date: .....

## VOLUME 2

### VOLUME 2 SECTION 1 - DRAFT CONCESSION CONTRACT FORM

Financed by: ..... [Specify Source of Financing]

Project: ..... [Title and Number]

Contract Number: ..... [Contract Number]

This concession contract is concluded between:

**Foundation for Tourism Zone Development  
233, Republic Street,  
Valletta**

(hereinafter called “The Concession Authority” on the one part, and

[Name of Contractor]  
[Address]

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

Whereas the Concession Authority is desirous that certain supplies and services should be owned, operated and maintained by the Contractor, viz.:

**TENDER TO BUILD, OWN AND OPERATE A MODULAR FLOATING SYSTEM IN ST. THOMAS BAY, MARSASCALA**

and has accepted a tender by the Contractor for the provision of such supplies, installation, completion, operation and maintenance of such supplies and the remedying of any defects therein.

**It is hereby agreed as follows:**

1. In this contract words and expressions shall have the meanings assigned to them in the contractual conditions set out below.
2. The Concession Period is fixed at ten (10) years from the date of Provisional Acceptance.
3. The following documents shall be deemed to form and be read and construed as part of this contract, in the following order of precedence:
  - (a) this contract,
  - (b) the Special Conditions,
  - (c) the General Conditions,
  - (d) the technical specifications and design documentation,
  - (e) the Memorandum of Understanding,
  - (f) the Operating License,
  - (g) the Contractor’s technical offer (including any clarifications made during adjudication),
  - (h) the financial proposal (after arithmetical corrections),
  - (i) the tender form,
  - (j) any other documents forming part of the contract.

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

4. In consideration of the operating License and [the payments to be made by the Concession Authority to the Contractor/the Contribution to be made by the Contractor to the Concession Authority] as hereinafter mentioned, the Contractor undertakes to build, own and operate the Modular Floating System, and remedy defects therein in full compliance with the provisions of the contract.
5. The Concession Authority hereby agrees [to pay/receive from] the Contractor in consideration of the execution and completion of the works and remedying of defects therein the following amounts of: [*Delete where it is not applicable*]
  - Year 1 - Cost/Contribution to Concession Authority [.....]
  - Year 2 - Cost/Contribution to Concession Authority [.....]
  - Year 3 - Cost/Contribution to Concession Authority [.....]
  - Year 4 - Cost/Contribution to Concession Authority [.....]
  - Year 5 - Cost/Contribution to Concession Authority [.....]
  - Year 6 - Cost/Contribution to Concession Authority [.....]
  - Year 7 - Cost/Contribution to Concession Authority [.....]
  - Year 8 - Cost/Contribution to Concession Authority [.....]
  - Year 9 - Cost/Contribution to Concession Authority [.....]
  - Year 10 - Cost/Contribution to Concession Authority [.....]

The Aggregate amount over a period of ten (10) years is:

- Net Amount to be disbursed by the Concession Authority (if any): [.....](inclusive of duties, VAT, other taxes)
- Net Financial Contribution to the Concession Authority (if any): [.....]
- Contract price in words:..... Euro

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

7. The Contractor hereby agrees to submit a performance guarantee amounting to €12,000 together with the signed contract.
8. The provisions of this contract are without prejudice to the obligations of the Concession Authority in terms of the Freedom of Information Act (Cap. 496 of the Laws of Malta). The Concession Authority, prior to disclosure of any information to a third party in relation to any provisions of this contract which have not yet been made public, shall consult the contractor in accordance with the provisions of the said Act, pertinent subsidiary legislation and the Code of Practice issued pursuant to the Act. Such consultation shall in no way prejudice the obligations of the Concession Authority in terms of the Act.
9. In witness whereof the parties hereto have signed the contract. This contract shall take effect on the date on which it is signed by the last party.

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

**Concession Authority:**

**Contractor:**

Signed by:

Signed by:

.....

.....

In the capacity of:

In the capacity of:

.....

.....

Being fully authorized by and acting on behalf of

Being fully authorized by and acting on behalf of

.....

.....

Date: .....

Date: .....

## VOLUME 2 SECTION 2 - GENERAL CONDITIONS

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

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

For the purpose of this Tender, wherever in these General Conditions reference is made to the 'Central Government Authority', this should be changed to the 'Concession Authority'.

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

These general conditions will form an integral part of the contract that will be signed with the successful tenderer/s.

**Where neither the Special Conditions, nor the General Conditions provide for a particular circumstance during the Concession period, the General Conditions of the Design, Build and Operate Projects published by FIDIC in 2008, shall take precedence.**

## VOLUME 2 SECTION 3 - SPECIAL CONDITIONS

These conditions amplify and supplement, if necessary, the General Conditions governing the contract. Unless the Special Conditions provide otherwise, those General Conditions remain fully applicable. The numbering of the Articles of the Special Conditions is not consecutive but follows the numbering of the Articles of the General Conditions. Other Special Conditions should be indicated afterwards.

### Article 2: Law Applicable

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

### Article 3: Order of precedence of contract documents

- 3.1 The contract is made up of the following documents, in order of precedence:
  - (a) the Concession contract,
  - (b) the Special Conditions,
  - (c) the General Conditions,
  - (d) the technical specifications and design documentation,
  - (e) the Memorandum of Understanding,
  - (f) the Operating License,
  - (g) the Contractor's technical offer (including any clarifications made during adjudication),
  - (h) the financial proposal (after arithmetical corrections),
  - (i) the tender form,
  - (j) any other documents forming part of the contract.

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

### Article 4: Communications

Foundation for Tourism Zone Development  
233, Republic Street,  
Valletta

### Article 5: Assignment

- 5.2 Neither party shall, without the prior written consent of the other party, assign, transfer (in whole or in part) or charge or deal in any manner with this agreement or the benefit of or the rights under this Agreement. Any Change of Control even of carried out by means of more than one transfer/assignment in the Contractor will be deemed to be a transfer or assignment requiring the prior written consent of the Concession Authority. Nor shall the shares of the Contractor be pledged without the express consent of the Concession Authority.

### 7.1 Article 7: Supply of Documents

Upon signing of the contract, the Project Manager shall provide the Contractor, free of charge, with a copy of the drawings prepared for the performance of the contract. Upon final acceptance, the Contractor shall return to the Project Manager all drawings.



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

- 9.1** The Contractor shall perform the contract with due care and diligence including, the delivery to site, erect, test, certify, assemble, dismantle, operate and maintain the System including the remedying of any defects in the supplies. When completed, the System shall be fit for purpose for which it was originally intended as defined in the Contract, and the Contractor shall be responsible that it remains fit for purposes during the Concession Period.

The contractor shall also provide all necessary equipment, supervision and labour required to operate the site as defined in this Contract.

The Contractor shall be responsible for the adequacy, stability and safety of all Site operations during both the Build and Operate periods and shall provide the required certificates as defined in the Contract.

If the Contractor becomes aware of any change in his financial situation which will or could adversely affect his ability to complete and fulfil all his obligations under the Contract, he shall immediately give notice to the Concession Authority with detailed particulars. Within 28 days of receiving such Notice, the Concession Authority shall advise the Contractor of what action it intends to take, or what action it requires the Contractor to take.

- 9.6** Not Applicable

## **Article 10: Origin**

- 10.3** The Contractor shall present an official certificate of origin on provisional acceptance.

## **Article 11: Performance Guarantee**

- 11.1** The Contractor shall, within 15 days of receipt of the contract for signature, furnish the Concession Authority with a guarantee for the full and proper performance of the contract. The amount of the guarantee shall be of EUR 12,000, including any amounts stipulated in addenda to the contract.

The Concession Authority will furthermore not effect any payment (if applicable) to the Contractor until the performance guarantee has been submitted.

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

- 11.5** Should the Contractor fail to extend or provide a new guarantee, the Concession Authority may: either suspend the payments due to the Contractor (if applicable) or terminate the contract.

- 11.6** The Concession Authority shall demand payment from the guarantee of part or all sums for which the guarantor is liable under the guarantee due to the Contractor's default under the Contract, in accordance with the terms included in the Memorandum of Understanding and in accordance with the terms of the guarantee.

Before making any claim under the performance guarantee, the Concession Authority shall issue a written warning, stating the nature of the default in respect of which the claim will be made unless the Contractor complies with the terms of the Contract with immediate effect.

- 11.7** The performance guarantee shall remain valid and enforceable until the issue of the Contract Completion Certificate. It shall be released within 30 days of the issue of this Certificate.

## **Article 12: Insurance**

- 12.1 The Contractor shall insure and keep insured in the joint names of the Contractor and the Concession Authority from the commencement date until the date of issue of the Contract Completion Certificate,
- a) against the cost of the supplies for their full replacement value and to include loss and damage of any part as a consequence of failure of elements defectively designed with defective materials or workmanship;
  - b) against loss or damage from whatever cause arising until Contract Completion;
  - c) against liabilities for death or injury to any person arising out of the performance of the Contract;
  - d) against liability for claims, damages, losses and expenses arising from injury, sickness, disease or death of any person employed by the Contractor;
  - e) against liability for claims, damages, losses and expenses caused to 3<sup>rd</sup> party property arising out of the performance of the Contract;
  - f) other insurances required by Law and by local practice (if any).

Any insurance costs shall be borne by the Contractor.

## **Article 13: Performance Programme (Timetable)**

- 13.1 The contractor is not required to submit a performance programme. Notwithstanding this, the following timeframes need to be respected:

The Modular floating system shall be delivered, installed, certified and ready to operate within forty (40) days of the commencement date.

The System will be operated, every year, for the term of the Concession Period, at least between 15<sup>th</sup> June until 15<sup>th</sup> September (“the peak season”).

## **Article 14: Contractor’s Drawings**

- 14.7 Before provisional acceptance of the supplies, the Contractor shall supply operation and maintenance manuals to the Concession Authority. The supplies shall not be considered completed for the purpose of provisional acceptance until such manuals have been supplied to the Concession Authority.

## **Article 15: Tender Prices**

- 15.1 The Contractor will be deemed to have taken full account of all requirements and obligations as defined in this Contract.

The Contractor shall be deemed to have satisfied himself before submitting his tender as to the correctness and sufficiency of the tender and to have taken account of all that is required for the full and proper performance of the contract whether expressed or implied, covered by all parts of this contract. The sums included in the Financial Proposal must therefore include for all incidental and contingent expenses and risks of every kind necessary to build, insure, operate, dismantle, re-assemble, store, upkeep and maintain the System in accordance with the terms of the Contract.

The Contractor is bound by the sums submitted until the issue of the Contract Completion Certificate.

## **Article 17: Patents and License**

The Concession Authority cannot request the Contractor for any payment, other than those specified in the Financial Proposal submitted with this Contract, or as otherwise stated in Article 22.1 of the Special Conditions, resulting from the use of the Operating License during the Concession Period.

#### **Article 18: Commencement Order**

- 18.1** The commencement date of this tender shall be the date of the notice of award of the contract or the last date of signature on the contract, whichever comes first.

The commencement date of the Operating License shall be the date of the Provisional Acceptance Certificate.

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

- 19.1** Without prejudice to the contents of Article 19.1, the maximum period allowed for the Build Period of this contract is forty (40) days from the Commencement date.

The Concession Period is fixed at ten (10) years from the date of Provisional Acceptance. At the end of this term, a Contract Completion Certificate will be issued by the Concession Authority.

#### **Article 20: Extension of period of execution**

- 20.1** The Contractor may request an extension to the 'build' period of execution if his performance of the contract is delayed, or expected to be delayed, for any of the following reasons:

- a) extra or additional supplies ordered by the Concession Authority;
- b) exceptional weather conditions in the country of the Concession Authority which may affect installation or erection of the supplies;
- c) physical obstructions or conditions which may affect delivery of the supplies, which could not reasonably have been foreseen by a competent contractor;
- d) administrative orders affecting the date of completion other than those arising from the Contractor's default;
- e) failure of the Concession Authority to fulfil its obligations under the contract;
- f) failure of the Concession Authority to obtain any regulatory permit;
- g) any suspension of the delivery and/or installation of the supplies which is not due to the Contractor's default;
- h) force majeure;
- i) any other causes referred to in these General Conditions which are not due to the Contractor's default.

- 20.3** Within 30 days from receipt of request for extension, the Project Manager shall, by written notice to the Contractor after due consultation with the Concession Authority and, where appropriate, the Contractor, grant such extension of the period of performance as may be justified, either prospectively or retrospectively, or inform the Contractor that he is not entitled to an extension.

#### **Article 21: Delays in execution**

- 21.1** If the Contractor fails under his own responsibility to deliver any or all of the supplies or perform the services within the time-limit(s) specified in the contract, the Concession Authority may, without formal notice and without prejudice to its remedies under the contract, be entitled, for every day which shall elapse between the expiry of the Build Period and the actual date of provisional acceptance, to liquidated damages equal to EUR 250 up to a maximum of EUR 10,000.

#### **Delays and interruptions during the Operation Service**

If the Contractor fails under his own responsibility to operate the System in the peak period as specified in the Memorandum of Understanding, the Concession Authority may, without formal notice and without prejudice to its remedies under the contract, be entitled, for every day which shall elapse between the start of the peak period and the

actual commencement of operations, to liquidated damages equal to EUR 250 up to a maximum of EUR 10,000, in any given season.

If there are any delays of interruptions during the Operation Service which are caused by the Concession Authority or by a cause for which the Concession Authority is responsible, the Concession Authority shall compensate the Contractor for any cost and losses including loss of revenue and loss of profits. There will be no extension of the Concession Period as a result of any such delay or interruption.

#### **Article 22: Variations**

- 22.1** The Contractor may, by written notice, request the Concession Authority approval to increase the surface area of the System, after obtaining the necessary regulatory permits. The Concession Authority may grant approval, provided that this does not increase by more than 50% of the original size.

Where the contract provides for a net financial cost to the Concession Authority, the total cost of such increase shall be borne by the Contractor. Where the Contract provides for a net Contribution to the Concession Authority, the Contractor shall pay the Concession Authority a fee equivalent pro-rata (according to the increase in the surface area) to the yearly contribution provided for in the original Financial Proposal, after taking into consideration the period remaining until Contract Completion.

#### **Article 23: Suspension**

- 23.1** The Concession Authority may, by administrative order, at any time during the Build-Own-Operate period, instruct the Contractor to suspend:
- a) the delivery of supplies to the place of acceptance at the time specified for delivery in the performance programme;
  - b) the installation of the supplies which have been delivered to the place of acceptance;
  - c) the Operating License.
- 23.3** Additional expenses incurred in connection with such protective measure shall be added to the contract price. The Contractor shall not be paid any additional expenses if the suspension is:
- a) dealt with differently in the contract; or
  - b) necessary by reason of abnormal climatic conditions at the place of acceptance; or
  - c) necessary owing to some default of the Contractor; or
  - d) necessary owing to delays in obtaining regulatory permits by the Concession Authority; or
  - e) necessary for the safety or the proper execution of the contract or any part thereof insofar as such necessity does not arise from any act or default by the Project Manager or the Concession Authority.
- 23.6** If the period of suspension exceeds 180 days, and the suspension is not due to the Contractor's default, the Contractor may, by notice to the Project Manager, request to proceed to build/operate within 30 days, or terminate the contract.

#### **Article 25: Inspection and Testing**

- 25.1.1** The inspection and testing of the system shall be carried out by a naval architect and engineer on behalf of the Contractor after every assembly of the System. These tests shall include the appropriate inspection to demonstrate that the System can be safely operated, under all operating conditions.

The Concession Authority shall retain the right to inspect or test all parts of the System, at any date, within 24 hours from a written notice sent to the Contractor.

If, as a result of an inspection or testing, any part of the System is found to be defective or otherwise not in accordance with the Contract, the Concession Authority may, by written notice, request the Contractor to stop the operations, until the Contractor remedies the situation, at his own cost.

The Concession Authority may be entitled, for every day which shall elapse between the date of the written notice until the Contractor remedies the situation, to liquidated damages equal to EUR 250 up to a maximum of EUR 10,000.

- 25.2 The testing and certification of equipment shall take place at the place of delivery and installation, that is, St. Thomas Bay, Marsascalea.

#### **Article 26: Methods of Payment**

- 26.1 Payments will be made in Euro.
- 26.3 Payments are to be effected within a maximum period of 60 days, failing which the provisions of the Late Payments Directive will come into effect.
- 26.5 The following payment schedule shall be applicable:-

| <b>Year</b> | <b>Payment due date</b>                                                                                     |
|-------------|-------------------------------------------------------------------------------------------------------------|
| 1           | Payment for year 1 becomes due on the date of the Provisional Acceptance Certificate (n <sup>th</sup> year) |
| 2           | Payment for year 2 due on n + 1 year                                                                        |
| 3           | Payment for year 3 due on n + 2 years                                                                       |
| 4           | Payment for year 4 due on n + 3 years                                                                       |
| 5           | Payment for year 5 due on n + 4 years                                                                       |
| 6           | Payment for year 6 due on n + 5 years                                                                       |
| 7           | Payment for year 7 due on n + 6 years                                                                       |
| 8           | Payment for year 8 due on n + 7 years                                                                       |
| 9           | Payment for year 9 due on n + 8 years                                                                       |
| 10          | Payment for year 10 due on n + 9 years                                                                      |

In such a case where the Financial Proposal provides for a net financial cost to be disbursed by the Concession Authority, payments shall be authorized by the **Foundation for Tourism Zone Development** and paid by the Treasury Department.

Where the Financial Proposal provides for a net financial contribution to the Concession Authority, the payment shall be made to the **Foundation for Tourism Zone Development**

During the Operation Service, any revenues or losses realised from authorized commercial activity shall be the exclusive property of the Contractor.

- 26.9 No price revision is allowed, unless otherwise stated in Article 20.1 of the Special Conditions.

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

- 28.1 Sums due to either party shall be paid within 60 days of the date on which an admissible payment is registered, in accordance with Article 26. This period shall begin to run from the approval of these documents by the competent department referred to in Article 26.1. These documents shall be approved either expressly or tacitly, in the absence of any written reaction in the 60 days following their receipt accompanied by the requisite

documents.

**28.2** Once the deadline laid down in Article 28.1 has expired:

- either party, depending on who is receiving the payment, may, within two months of late payment, claim late-payment interest: meaning simple interest for late payment at a rate which is equal to the sum of the reference rate and at least eight percent (8%);
- on the first day of the month in which the deadline expired. The late-payment interest shall apply to the time which elapses between the date of the payment deadline (exclusive) and the date on which the receiving party's account is debited (inclusive).

**Article 29: Delivery**

**29.1** The Contractor shall bear all risks relating to the goods until the date of issue of the Contract Completion Certificate.

During delivery, the supplies shall be packaged so as to prevent their damage or deterioration in transit to their destination.

**29.2** All equipment shall be packed in sturdy packages to eliminate damages due to logistical operations.

**Article 30: Verification of operations**

**30.1** Verification and test Certificates confirming the complete installation of the System, including anchorage, will be handed over to the Concession Authority after every assembly and installation. Such verifications and tests shall be certified by a naval architect and engineer. The System cannot be operated if such certificates are not endorsed by the Concession Authority. Such verifications and tests shall be carried out at the expense of the Contractor.

**Article 31: Provisional Acceptance**

**31.1** A provisional acceptance certificate by the beneficiary will be delivered to the Contractor if the delivery, installation, and commissioning of the 'build' part, has been effected in accordance with the conditions of the Contract.

**Article 32: Warranty**

**32.1** The Contractor shall warrant that the supplies are new, unused, of the most recent models and incorporate all recent improvements in design and materials, unless otherwise provided in the contract. The Contractor shall further warrant that all supplies shall have no defect arising from design, materials or workmanship, except insofar as the design or materials are required by the specifications, or from any act or omission, that may develop under use of the supplies in the conditions obtaining in the country of the Concession Authority. This warranty shall remain valid for 2 years after provisional acceptance.

The Contractor shall at his own cost make good for any defect or damage to the System, once the Warranty period has expired, and until the issue of the Contract Completion Certificate.

**Article 34: Final Acceptance**

The obligation of the Contractor to operate and maintain the System under the

Operating License shall cease at the end of the period stated in the Contract. A Contract Completion certificate will be delivered at the end of the Concession Period.

**Article 35: Breach of Contract**

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

## VOLUME 2 SECTION 4 - SPECIMEN PERFORMANCE GUARANTEE

(LETTERHEAD OF THE REGISTERED FINANCIAL INSTITUTION PROVIDING THE GUARANTEE)

Concession Authority Address

[Date]

Dear Sir,

Our Guarantee Number ..... for €.....

Account: [Account Holder's Name]

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

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

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

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

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

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

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

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

Yours Faithfully,

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



## VOLUME 2 SECTION 5 - SPECIMEN OPERATING LICENSE

In terms of the Build, Own and Operate contract (hereinafter referred to as the 'Concession Contract'), this Operating License Agreement (hereinafter referred to as the 'Operating License') is to be made effective upon the date indicated in the Provisional Acceptance Certificate, indicating completion and commissioning of the Build part, by the **Foundation for Tourism Zone Development**

(hereinafter referred to as the 'Concession Authority') and .....(hereinafter referred to as the 'Contractor').

Whereas the Contractor, as the successful bidder of tender PML/03/2015 for the Build, Own and Operate of a Modular Floating System in St. Thomas Bay, Marsascala (hereinafter referred to as the 'System'), has supplied, installed and completed the System.

Whereas, in accordance with the Contract, the Contractor is to own, operate and maintain the System, and remedy any defects therein contained.

Now, therefore, pursuant to the provisions contained in the Concession Contract, the Parties agree as follows:

1. The Concession Authority hereby grants to the contractor an Operating License (hereinafter referred to as the 'License') which shall give the Contractor the legal right to exclusively operate the System, during the Concession Period and to the revenue deriving therefrom.
2. Assets ownership rests with the contractor.
3. For avoidance of all doubt and dispute and notwithstanding anything contained herein, the contractor shall be responsible for the maintenance and care of the System during the Concession Period and shall remedy any defects therein in terms of the Concession Contract.
4. The License shall automatically come into effect upon issuing of the Provisional Acceptance Certificate and shall remain in force and effect for the term of the Concession Period, unless terminated by the Concession Authority for any reason prior to this date.
5. The Concession Authority hereby grants to the contractor an exclusive right to attach the System to the shoreline, where and as defined in the Drawings attached. If the System is relocated to a different site during the Concession Period, such an exclusive right to attach the system to the shoreline will be transferred to the new location.
6. The parties hereby expressly agree and acknowledge that the granting of the License shall not, in any manner whatsoever, grant or transfer to the Contractor and/or its sub-contractors, under any title whatsoever any real or personal rights to any title or interest over the land and sea or any (other) property within, on, under, adjacent to or surrounding the Site, except for the System, which shall remain the property of the Contractor.
7. The Concession Authority hereby grants the contractor to undertake any form of commercial activity provided that the relevant licenses are obtained from the Competent Authorities.

In witness whereof the Parties hereto have executed this Operating License

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For and on behalf  
Of the Concession Authority

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For and on behalf  
Of the Contractor

## VOLUME 3 - TECHNICAL SPECIFICATIONS

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

#### Note:

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

### **1. Background Information**

#### **1.1 - Beneficiary Country**

The Maltese Islands

#### **1.2 - Geographic Area to be covered**

St. Thomas Bay, Marsascala as indicated on site-plan available In Volume 5.

#### **1.3 - Contracting/Concession Authority**

Foundation for Tourism Zone Development  
233, Republic Street,  
Valletta

#### **1.4 - Tender Administrator**

Projects Malta Ltd.

The Clock Tower,  
Level 1, Tigne Point,  
Sliema, Malta

e-mail: [admin.projectsmalta@gov.mt](mailto:admin.projectsmalta@gov.mt)

### **2. Contract Objectives and Expected Results**

#### **2.1 - Overall Objectives**

The overall objectives of the project of which this contract will be a part are to increase the size and accessibility of beaches and bays across the coastline of the Maltese Islands through extending or creating new surface areas for the public to make use of and enjoy. It will create new swimming areas and increases berthing facilities for small seacrafts.

## 2.2 - Specific Objectives

The objectives of this contract are as follows:

- to Build and Own a Modular Floating System, at St. Thomas Bay, Marsascala;
  - the equipment procured shall be made up of recyclable material, has a long lifetime, can be easily assembled and dismantled within a short period of time and is totally reversible to ensure a very low or negligible impact on the environment;
- to enter into a Concession Agreement and grant an Operating License to exclusively operate the System for a ten (10) year term.

## 2.3 - Results to be Achieved by the Contractor

The results of this contract are as follows:

- to provide free and unencumbered access to the general public, to use as a bathing platform, everyday, between 09:00 and 18:30 (subject to load limitations and/ or maximum load capacity);
- to build a Modular Floating System, at St. Thomas Bay, Marsascala as per technical specifications listed under this Section;
- to operate the System in line with the conditions set out in the Memorandum of Understanding and Operating license;
- to retain full responsibility of the operations and any commercial activity resulting thereof;
- The Concession Authority requires the contractor to provide a holistic system, inclusive of all the necessary system-compatible accessories required for the proper operation of the project, in line with Article 4.1;
- The Concession Authority requires bidders to include in their offers all the technical requirements listed under Articles 4.2 and 4.3;
- The System shall be operational within forty (40) days of the commencement date;
- Assets ownership rests with the contracted bidder.

## 3. Assumptions and Risks

### 3.1 - Assumptions Underlying the Project Intervention

For the smooth planning, design and implementation of this project, the following assumptions are being made in relation to the contractor:

- Completion of tasks within established timeframes;
- Contractor has the capability and resources to operate the System;
- Conformity to European Standards;
- All Operational and Maintenance costs were factored by the Contractor when preparing the Financial Proposal.

To the extent which is practicable (taking account of cost and time), the Contractor shall be deemed to have obtained all necessary information as to risks and contingencies and other circumstances which may influence and affect the Tender or the provision of the Operation Service. To the same extent, the Contractor shall be deemed to have inspected and examined the Site, its surroundings and other available information, and have been satisfied before submitting the Tender as to all relevant matters, including (but not limited to):

- The form and nature of the site, including sub-surface conditions;
- Climatic conditions;
- Laws, procedures of regulatory and other authorities and labour practices; and
- Health and Safety requirements.

## 4 - Technical Specifications

### 4.1 - Overall system requirements

- 4.1.1 In his offer, each bidder shall provide proof supported by literature that he meets or exceeds the below system requirements:

**System:** Modular Floating System;  
**Condition:** New (as per Article 32.1, Volume 2 Section 3)  
**Material:** High-Density Polyethylene;  
**Float Sizes (L x B x H):** 50-100 x 50 x 40 cm  $\pm$ 25%;  
**Float Connections:** Secure connecting pins;  
**Float Colour:** Beige / Grey (both colours shall be offered by the bidder);  
**Load Capacity:** minimum of 270 kg per sq.m;  
**Accessories:** system compatible;  
**Accessories Material:** High-Density Polyethylene and/or Stainless/Galvanized Steel;  
**Warranty:** 2 years  
**Minimum Lifespan:** 15 years

### 4.2 - Graphical representation

It should be noted that the images portrayed in this section are for reference purposes only, and bidders can recommend similar float designs, as long as all items specifications are adhered to.



### 4.3 - Technical Requirements:

- 4.3.1 In his offer, each bidder shall provide proof supported by literature that he meets or exceeds the below technical requirements and, where requested, provide details on the most appropriate system:

- System is built with modules being easily attached to each other;
- System is weatherproof and resistant to waves up to 2.5m high;
- System is resistant to the marine environment (including but not limited to ) salt and sea water, and acids;
- System is resistant to UV rays;

- System is easy to install and dismantle within a few hours;
- System shall also be able to be towed away as a whole assembly;
- System is made up from recyclable materials;
- System is robust to endure minor accidental impacts;
- Modules have a non-skid finish on the walking surface and has no sharp edges;
- System conforms to European Standards and requirements;
- System is built according to the site-plan and Design Drawings provided in Volume 5, allowing for minor modifications to ensure flexibility, and includes the following list of system compatible accessories:
  - 370 sq.m. of Modular Floating System (deck-space), installed as per Design Drawing, and inclusive of any accessories essential for the proper operation of the system (floats, pins, nuts, spacers);
  - One (1) walkway with handrails installed at point A as marked on the Design Drawing inclusive of any connections required to fix the walkway to the shoreline;
  - Six (6) bathing ladders installed at points B as marked on the Design Drawing;
  - Two (2) Diving boards installed at locations where the water depth is not less than 3 meters;
  - A net along the perimeter of the enclosed sea area of the system to prevent the entry of jelly fish if technically permitting;
  - Thirty-nine (39) meters of handrail installed at points D and indicated with an orange double-line on the Design Drawing;
  - 174 meters of lighting system, with light fittings installed (at least) at every meter, along the perimeter of the Modular Floating System, indicated with a yellow line on the Design Drawing;
- Any other system-upgrades, except for those referred to in this Article, shall be borne by the Contractor.

4.3.2 Each bidder has to prepare stability details for the whole assembly, including the maximum number of persons that can be carried, maximum weather conditions and wave height that the assembly can be safely used, and the maximum crowding on one side that may be allowed. The moorings are not to be included in the stability considerations.

#### 4.4 - Method Statements

Method Statements must be submitted with the Tender by each bidder;

- i. To propose the most appropriate and secure anchoring system. The tenderer will have to design the anchoring system for the installation taking in consideration the depth of water around the platform and the typical tidal variations of +/- 400mm around the Maltese Islands. The calculation for the moorings to be submitted to the Ports Directorate of Transport Malta. This proposal needs to be endorsed by a naval architect and engineer;
- ii. To demonstrate how they intend to comply with Health and Safety requirements, when installing the anchoring system. The Method Statement must be certified by a naval architect and engineer.

Failure to submit the Method Statements as per above requirements will automatically disqualify the respective bidders.

Once the contract is awarded, the Method Statements will form an integral part of the Memorandum of Understanding.

## ***5. Logistics and Timing***

### **5.1 - Location**

The Modular Floating System shall be built at St. Thomas Bay, Marsascala as indicated on site-plan provided in Volume 5, allowing for minor modifications to ensure flexibility. With the prior written consent of the Concession Authority, and under particular circumstances, the Contractor may relocate the System and its operations to another site.

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

The intended commencement date shall be the date of the notice of award of the contract or the last date of signature on the contract, whichever comes first. The period of execution of the contract will be forty (40) days from the commencement date.

The Concession Period is fixed at ten (10) years from the date of Provisional Acceptance. At the end of this term, a Contract Completion Certificate will be issued by the Concession Authority.

## ***6. Designs and drawings***

### **6.1 Design Drawings**

Refer to Volume 5.

### **6.2 Design Responsibility**

The **Foundation for Tourism Zone Development** is responsible for all designs and drawings provided with this tender document. These designs may only be amended following written approval by the Concession Authority.

## ***7. Memorandum of Understanding***

The Memorandum of Understanding (Volume 1 Section 3) endorsed by the Contractor in his tender, will become part of the contract agreement.

## ***8. Handover Documentation***

### **8.1 Operation and Maintenance manuals**

Before provisional acceptance of the supplies, the Contractor shall supply operation and maintenance manuals, ensuring that he has adequate information to assemble, dismantle, store, operate, maintain, adjust, and repair the System.

## 9. Samples

The following samples may be requested during evaluation and these will need to be submitted within 5 working days of being notified to do so.

| Item | Description   | Reference in the Technical Specifications (Volume 3) |
|------|---------------|------------------------------------------------------|
| 1    | Float         | Art 4.1 & 4.2                                        |
| 2    | Handrail      | Art 4.3                                              |
| 3    | Light Fitting | Art 4.3                                              |
| 4    | Ladder        | Art 4.3                                              |
| 5    | Diving Board  | Art 4.3                                              |

These samples may be returned to the respective bidders, upon their request, at the end of the evaluation process.

*Part 2 - The Contractor's Technical Offer*



## VOLUME 4 - FINANCIAL PROPOSAL

**Tender Title:** Tender to Build, Own and Operate a Modular Floating System in ST. THOMAS BAY, MARSASCALA

**Reference Number:** PML/03/2015

**Notes:**

- The contractor agrees to Build, Own and Operate a Modular Floating System with the terms and conditions defined in the Contract Conditions.
- Notwithstanding any limits which may be implied by the wording of the financial proposal, the Contractor accepts that the amounts entered are for a complete System in every respect. The Contractor will be deemed to have taken full account of all requirements and obligations in Volume 4, whether expressed or implied, covered by all parts of this contract.
- The yearly cost/(contribution) included in the Financial Proposal must include for all incidental and contingent expenses and risks of every kind necessary to build, own, operate, dismantle, re-assemble, keep and maintain the System in accordance with the terms of the Contract.
- The Concession Authority reserves the right to use the amounts entered in this Financial Proposal for calculating payments, receivables and for valuing variations.
- Please note that a **positive result** signifies a cost which the Concession Authority would have to disburse to the Contractor. A **(negative) result** means a contribution that the Contractor would need to pay to the Concession Authority.
- The aggregate, **net financial cost/contribution over a ten (10) year period** to the Concession Authority is the determining factor, on which criteria bidders are assessed and awarded.

| YEARLY COST / (CONTRIBUTION) TO THE CONCESSION AUTHORITY                                           | Total including Duties & Other Taxes/Charges <u>but</u> exclusive of VAT (Delivered Duty Paid-DDP)<br>€ |
|----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| YEAR 1                                                                                             |                                                                                                         |
| YEAR 2                                                                                             |                                                                                                         |
| YEAR 3                                                                                             |                                                                                                         |
| YEAR 4                                                                                             |                                                                                                         |
| YEAR 5                                                                                             |                                                                                                         |
| YEAR 6                                                                                             |                                                                                                         |
| YEAR 7                                                                                             |                                                                                                         |
| YEAR 8                                                                                             |                                                                                                         |
| YEAR 9                                                                                             |                                                                                                         |
| YEAR 10                                                                                            |                                                                                                         |
| <b>NET +/- FINANCIAL COST/(CONTRIBUTION) TO THE CONCESSION AUTHORITY IN A TEN (10) YEAR PERIOD</b> |                                                                                                         |

Signature: .....

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

Date: .....

## VOLUME 5 - DESIGN DRAWINGS

### Design Documents

#### *List of Technical Designs attached*

| No | Name           | Design Name     | Design No |
|----|----------------|-----------------|-----------|
| 1. | Design Drawing | Floating deck 1 | 1         |
| 2. | Site Plan      | Floating deck 2 | 1         |