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MP004/2010

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Management Partnership Tender MP004/2010

Tender Call for the Provision of a Coordinated Marketing Strategy for Tommy and Rosy

The cost of this tender dossier is €37,000 inclusive of VAT



Malta-EU Steering & Action Committee

*This project is financed by the European Commission – DG
Communication and is one of the Operations of the Joint
Communication Plan between the Government of Malta, the
European Commission and the European Parliament*



Note:

No bid bond is being requested for this tender.

Tenderers are bound by their offers until at least 60 days after the deadline for submission

SERVICE TENDER

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# VOLUME 1 SECTION 1 - INSTRUCTIONS TO TENDERERS

## A. GENERAL PART

### 1. General Instructions

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

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

The Evaluation Committee shall 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), 16.1(e) and 16.1(f) of these Instructions to Tenderers. Only clarifications on the submitted information in respect of the latter may be eventually requested.

- 1.2 Background

#### Scope

In a bid to bring Europe closer to its citizens and to address the communication gap between the citizens and the European Institutions, a four year agreement was signed in March 2009 between the Malta-EU Steering and Action Committee (MEUSAC) and the European Commission. The EUR 800,000 agreement aims to increase communication actions locally by creating fora for public dialogue on EU related matters. Malta was the 10th country to enter into such an agreement. Themes of European relevance addressed for 2009 included amongst other, the June 2009 European Parliament Elections, Energy and Climate Change, Job Creation and Sustainability, the future of European citizens and the role of Europe in the world. Planned activities and events target the general public in a bid to raise awareness on EU policies and help citizens understand the working methods of the EU Institutions as well as their rights as EU citizens.

The information campaigns have, up till now, included a campaign to encourage people to cast their vote in the EP elections in 2009; a road show consisting of a mobile vehicle visiting localities in Malta and Gozo providing information to citizens; development of the cartoon characters Tommy and Rosy and production of a 15-minute cartoon intended to be distributed via the web and in DVD Format to students as well as a story book featuring the cartoon characters; training teachers on EU matters; and an inter-generational camping activity on environmental issues and climate change. This agreement will, in the long run, encourage a networking system and a means by which European projects could be undertaken on a multi-national level with the involvement of a number of Member States.

#### Services required for the provision of a Coordinated Marketing Strategy for Tommy and Rosy

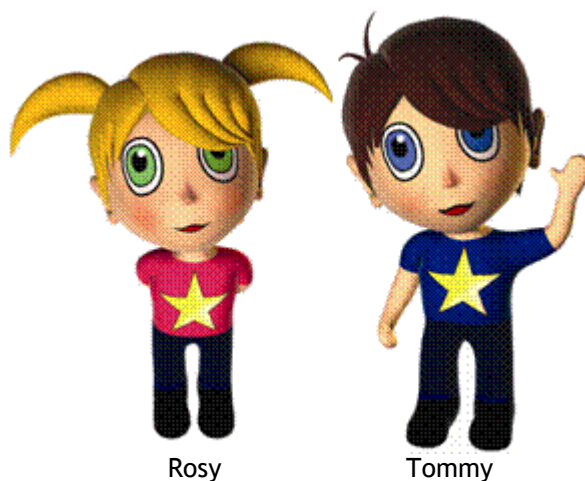
This tender calls for the provision a two-month Coordinated Marketing Strategy for the promotion of two cartoon characters, Tommy and Rosy, spread out over a period of two months. Tommy and Rosy are the main characters of a 15 minute cartoon clip (already produced on DVD) and an accompanying storybook (which have already been published in both Maltese and English languages). The cartoon targets children aged 5 to 11 residing in Malta and Gozo.

The cartoon aims at giving an overview of the European Union, its history and institutions, its functions as well as additional information of interest to children within the targeted age group. The marketing strategy aims at introducing and promoting the characters featured in the cartoon.

The aim of this call for tenders is to launch a marketing campaign which will make the cartoon characters and the cartoon itself familiar with children and the public in general. The DVD and storybook are to be distributed during marketing campaign events held during the first term of the scholastic year 2010 - 2011 that are to be organised by the successful tenderer of this call and that are to target the indicated age group.

The marketing strategy should be based on a successful, thoroughly researched, well-devised and focused campaign, while paying attention to every detail during its execution. A detailed plan of the marketing campaign must be submitted in the technical part of the bid. This is to include, and shall not be limited to, the presentation of the product to students within the stipulated age group. Tenderers are also expected to detail how the strategy is to be executed.

The successful bidder will not only contribute in terms of the operation and logistics of this call, but will also bring its expertise, competence and creativity so as to ensure an effective marketing communication plan targeting Maltese and Gozitan children and citizens at large.



The main characters of the cartoon and storybook are the two figures shown above, Tommy and Rosy. The cartoon and the storybook are available online at <http://www.tommy-rosy.eu/>

### **Deliverables**

MEUSAC will commission a reputable firm (hereinafter referred to as 'the successful tenderer') for the provision of the following deliverables.

The deliverables for this Call for Tender are:

i. A detailed marketing plan in relation to the promotion of the Tommy and Rosy cartoon and characters. The 8 week plan should include, and not be limited to:

- Exposure and promotion of the characters to the general public during children's programmes in the local media (such as TV, Radio, Internet);
- Advertisements and articles in children's sections in newspapers and magazines;
- Printing of promotional material such as bookmarks, self-adhesive stickers, character-shaped key chains, notepads, calico bags, character-themed USB pens with lanyards etc. (design. items and quantities are to be provided in proposal), amongst others;

ii. A series of presentations of the two characters are to take place simultaneously with presentations of the Storybook and DVD in venues which host students aged 5 to 11 years (being age appropriate) during the first term of the scholastic year 2010-2011 around Malta and Gozo. Alternatively, the tenderer may (and is encouraged to) provide its own marketing strategy for the presentation of the characters during distribution of the storybook and DVD. However, all

venues would require prior approval by MEUSAC as the Contracting Authority and Intermediary Body under the Management Partnership.

iii. Design and Production of Merchandise: The bidder is required to provide in the bid submission the exact quantities and illustrations (if samples are unavailable) of merchandise on which the characters are to be printed. This should include, but not be restricted to, ball pens, pencils, rulers, notepads, mobile accessories such as mobile charms, mouse mats, character-themed “do not disturb” and door hangers. All products need to be safe for child use (items and quantities are to be specified in proposal).

iv. Teaser clips edited from the DVD are also be uploaded on You Tube and EU Tube websites;

v. Promotion of the <http://www.tommy-rosy.eu/> website.

The selected bidder is to meet all deadlines stipulated by MEUSAC. Failure to do so will automatically incur penalties. Moreover, tenderers are to prove that they are in a position to provide the requested services as listed above irrespective of whether the services are to be supplied by the bidder or subcontracted to third parties.

- 1.3 This is a global-price contract. The maximum budget allocated for this tender is **€37,000 inclusive of VAT**. The successful bidder, who will be awarded the tender, will have to perform the above tasks and any other related tasks requested by MEUSAC. **Any bidders who propose a fee that exceeds the €37,000, inclusive of VAT, will not be considered.**
- 1.4 The tenderer will bear all costs associated with the preparation and submission of the tender. The Contracting Authority will in no case be responsible or liable for such costs, whatever the conduct or outcome of the procedure.
- 1.5 The Contracting Authority retains ownership of all tenders received under this tender procedure. Consequently, tenderers have no right to have their tenders returned to them.

## 2. Timetable

|                                                                                                                 | DATE                                 | TIME*         |
|-----------------------------------------------------------------------------------------------------------------|--------------------------------------|---------------|
| Deadline for request for any additional information from the Contracting Authority                              | Monday, 2 <sup>nd</sup> August 2010  | 10 a.m. (CET) |
| Last date on which additional information are issued by the Contracting Authority                               | Friday, 06 <sup>th</sup> August 2010 | 10 a.m. (CET) |
| Deadline for submission of tenders / Tender Opening Session (unless otherwise modified in terms of Clause 11.3) | Friday, 20 <sup>th</sup> August 2010 | 10 a.m. (CET) |

\* All times Central European Time (CET)

## 3. Lots

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

## 4. Financing

- 4.1 This project is financed by the European Commission - DG Communication and is one of the Operations of the Joint Communication Plan between the Government of Malta, the European Commission and the European Parliament.

## 5. Eligibility

- 5.1 Participation in tendering is open on equal terms to all natural and legal persons of the Member States of the European Union, the beneficiary country, any other country in accordance with Regulation 75 of LN177/2005.
- 5.2 Natural persons, companies or undertakings who fall under any of the conditions set out in

Regulation 49 of the Public Contracts Regulations, 2005 (Legal Notice 177 of 2005) may be excluded from participation in and the award of contracts. Tenderers or candidates who have been guilty of making false declarations will also incur financial penalties representing 10% of the total value of the contract being awarded.

- 5.3 Tenders submitted by companies forming a joint venture/consortium must also fulfil the following requirements:

The tender must include all the information required by Form 3.3 of Volume 1, Section 3 for each partner of the joint venture/consortium.

One partner must be appointed lead partner and that appointment confirmed by submission of powers of attorney signed by legally empowered signatories representing all the individual partners. The tender must include a preliminary agreement or letter of intent stating that all partners assume joint and several liability for the execution of the contract, that the lead partner is authorised to bind, and receive instructions for and on behalf of, all partners, individually and collectively. This shall take the form of the 'Power of Attorney' form as per Form 3.2 of Volume 1, Section 3.

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 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.

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- 6.1.1 Information about the tenderer's technical capacity.

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

This information must follow the form in **Volume 1, Section 3** of the tender documents and include:

- (a) A list of the key experts and other staff (**Form 3.8 of Volume 1, Section 3**) proposed for the execution of the contract. The Evaluation Committee reserves the right to request the tenderers to substantiate their claims in respect to the staff proposed by requesting CVs of key staff and signed Declarations of Exclusivity and Availability during the evaluation stage.
- (b) Evidence of relevant experience in carrying out projects and activities of a similar nature over the past three years (**Form 3.7 of Volume 1, Section 3**) including the nature and value, as well as contracts in hand and contractually committed.

In so listing the end clients, the tenderer is giving his consent to the Evaluation Committee, so that the latter may, if it deems necessary, contact the relevant organisations / departments, with a view to obtain from them an opinion on the works provided to them, by the tenderer.

- (c) Data concerning sub-contractors (**Form 3.4 of Volume 1, Section 3**).

## 7. Only One Tender Per Tenderer

- 7.1 Submission or participation by a tenderer in more than one tender for a contract will result in

the disqualification of all those tenders for that contract in which the party is involved.

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

## **8. Tender Expenses**

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

## **9. Site Inspection**

- 9.1 No clarification meeting/site visit is planned.

# **B. TENDER DOCUMENTS**

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

- 10.1 The set of tender documents comprises the following documents and should be read in conjunction with any clarification notes issued in accordance with Clause 24:

|          |                                                                                                                  |
|----------|------------------------------------------------------------------------------------------------------------------|
| Volume 1 | Instructions to Tenderers                                                                                        |
| Volume 2 | Draft Contract <ul style="list-style-type: none"><li>• Special Conditions</li><li>• General Conditions</li></ul> |
| Volume 3 | Technical Specifications (Terms of Reference)                                                                    |
| Volume 4 | Model Financial Bid                                                                                              |
| Volume 5 | EU Declaration                                                                                                   |

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

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

- 11.1 Tenderers may submit questions in writing up to 12 p.m. (CET) of 30<sup>th</sup> of July 2010. Questions are to be e-mailed to [info.meusac@gov.mt](mailto:info.meusac@gov.mt). The Contracting Authority must reply to all tenderers' questions, and amend the tender documents by publishing clarification notes, up to at least 3<sup>rd</sup> of August 2010.
- 11.2 Questions and answers, and alterations to the tender document will be published as a clarification note on the MEUSAC website ( [www.meusac.gov.mt](http://www.meusac.gov.mt) ). Clarification notes will constitute an integral part of the tender documentation, and it is the responsibility of tenderers to check the MEUSAC website and be aware of the latest information published prior

to submitting their Tender.

- 11.3 The Contracting Authority may, at its own discretion, as necessary and in accordance with Clause 24, extend the deadline for submission of tenders to give tenderers sufficient time to take clarification notes into account when preparing their tenders.

## 12. Labour Law

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

## 13. Law

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

## C. TENDER PREPARATION

### 14. Language of Tenders

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

### 15. Presentation of Tenders

- 15.1 Tenders must satisfy the following conditions:
- (a) All tenders must be submitted in one original, clearly marked “original”, and one identical copy (including all documentation as in the original) signed in the same way as the original and clearly marked “copy”.
  - (b) Both documents are to be separately sealed and placed in another sealed envelope/package so that the bid can be identified as one tender submission. Following the tender opening session, the copy shall be kept, unopened, at the Corporate Services Directorate, for verification purposes only should the need arise.
  - (c) All tenders must be received by date and time indicated in the timetable at Clause 2 and deposited in the tender box at the MEUSAC, 280, Republic Street, Valletta.
  - (d) All tenders, as per (b) above, must bear only:
    - (a) the above address;
    - (b) the reference of the invitation to tender concerned;
    - (c) 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 1)</sup>
    - Tenderer’s Contact Details (Form 3.1 of Volume 1, Section 3)
    - Power of Attorney (Form 3.2 of Volume 1, Section 3)
    - (iii) Data on Joint Venture/Consortium (Form 3.3 of Volume 1, Section 3)
    - (iv) Statement on Conditions of Employment (Form 3.5 of Volume 1, Section 3)
    - (v) Overview of tenderer’s personnel (Form 3.6 of Volume 1, Section 3)
    - (vi) EU Declaration (Volume 5)

*Selection Criteria*

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

- Experience as Contractor (Form of Volume 1, Section 3)
- Personnel (Key Experts) to be employed on contract (Form 3.8 of Volume 1, Section 3)
- Sub-Contracting (Form 3.4 of Volume 1, Section 3)

(c) *Evaluation Criteria/Technical Specifications*<sup>(Note 2)</sup>

Tenderer's Technical Offer in response to specifications/Terms of Reference (Volume 3)

- Organisation & Methodology
- Rationale
- Strategy
- Timetable of Activities

Any other information deemed relevant

(d) *Financial Offer/Bill of Quantities*<sup>(Note 2)</sup>

1. 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.;
2. A financial bid in the form provided in Volume 4.

**Notes to Clause 16.1:**

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

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

## 17. Tender Prices

- 17.1 The tender price must cover the whole of the works as described in the tender documents.
- 17.2 The tenderer must provide a breakdown of the overall price in Euro (€).
- 17.3 Tenderers must quote all components of the price inclusive of taxes, customs and import duties, and any discounts. Except as may otherwise be provided for in the contract, no payment will be made for items which have not been costed.
- 17.4 Different options are to be clearly identifiable in the technical and financial submission; a separate Tender Form (as per Volume 1, Section 2) marked 'Option 1', 'Option 2' etc. for each individual option clearly outlining the price of the relative option is to be submitted.
- 17.5 If the tenderer offers a discount, the discount must be absorbed in the rates of the Bill of Quantities/Financial Statement.
- 17.6 The prices for the contract must include all of the works to be provided. The prices quoted are fixed and not subject to revision or escalation in costs, unless otherwise provided for in the Special Conditions.
- 17.7 The budget available for this tender is € 37,000 inclusive of VAT.

## 18. Currencies of Tender and Payments

- 18.1 The currency of the tender is the Euro (€).

- 18.2 Payments will be made upon certification of works by the Contracting Authority, based on the invoice issued by the Contractor, in accordance with the timeframes, terms and conditions of the contract.
- 18.3 All correspondence relating to payments, including invoices and interim and final statements, must be submitted as outlined in the contract.

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

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

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

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

## **21. Variant Solutions**

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

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

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

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

- 22.2 The tenderer's submission must be typed in, or handwritten in indelible ink and signed by a person or persons empowered by the power of attorney submitted in accordance with **Form 3.2 of Volume 1, Section 3** of the tender document. Any pages on which entries or corrections to his submission have been made must be initialled by the person or persons signing the tender. All pages must be numbered consecutively by hand, machine or in any other way acceptable to the Contracting Authority.
- 22.3 The tender must contain no changes or alterations, other than those made in accordance with instructions issued by the Contracting Authority (issued as clarification notes) or necessitated by errors on the part of the tenderer. In the latter case, corrections must be initialled by the person signing the tender.
- 22.4 The tender will be rejected if it contains any alteration, tampering, addition or deletion to the tender documents not specified in a clarification note issued by the Contracting Authority.

## **D. SUBMISSION OF TENDERS**

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

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

ONLY to be delivered by hand at:

**MEUSAC**  
**280, Republic Street**  
**Valletta, VLT 1112**

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.d, the Contracting Authority will assume no responsibility for the misplacement or premature opening of the tender.

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

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

## **25. Late Tenders**

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

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

- 26.1 Tenderers may alter or withdraw their tenders by written notification prior to the above deadline. No tender may be altered after the deadline for submission.
- 26.2 Any notification of alteration or withdrawal must be prepared, sealed, marked and submitted in accordance with Clause 23, and the envelope must also be marked with "alteration" or "withdrawal".

## **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 offices of MEUSAC at 280 Republic Street, Valletta, Malta by the Opening Board. They will draw up a 'Summary of Tenders Received' which will be published and affixed on MEUSAC's notice board at MEUSAC's offices in Valletta.
- 27.2 At the tender opening, the tenderers' names, the tender prices, written notification of alterations and withdrawals and any other information the Contracting Authority may consider appropriate will be published.
- 27.3 Envelopes marked "withdrawal" will be read out first and returned to the tenderer.
- 27.4 Reductions or alterations to tender prices made by tenderers after submission will not be taken into consideration during the analysis and evaluation of tenders.

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

- 28.1 After the opening of the tenders, no information about the examination, clarification, evaluation or comparison of tenders or decisions about the contract award may be disclosed before the notification of award.
- 28.2 Information concerning checking, explanation, opinions and comparison of tenders and

recommendations concerning the award of contract, may not be disclosed to tenderers or any other person not officially involved in the process unless otherwise permitted or required by law.

- 28.3 Any attempt by a tenderer to approach any member of the Evaluation Board 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, 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, 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), 16.1(e), and 16.1(f) of these Instructions to Tenderers. Only clarifications on the submitted information in respect of the latter may be eventually requested.

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

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

#### *(i) Eligibility Criteria*

- (i) Tender Form (Volume 1, Section 2)

#### *(ii) Selection Criteria*

- (i) Evidence of technical capacity (sub-Clause 6.1.1)

### 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 Terms of Reference (Volume 3, and the documentation requested by the Contracting Authority as per sub-Clause 16(c)).

Tenders who are deemed to be provisionally technically compliant through the evaluation of their technical offer (especially the specifications) shall be requested to submit CVs and Declarations of Exclusivity and Availability (as per **Form 3.8** of Volume 1 Section 3) so that the Evaluation Committee will corroborate the technical compliance of the offers received.

When evaluating technical offers, each evaluator awards each offer a score out of a maximum 100 points in accordance with the technical criteria and any sub-criteria as outlined below. The aggregate final score is arrived at by calculating the arithmetical average of the individual final score of each evaluator.

| Criterion                              | Maximum Score Possible |
|----------------------------------------|------------------------|
| Quality of Products                    | 10                     |
| Marketing Plan Presentation            | 20                     |
| Initiative shown in Proposal           | 10                     |
| Record of Applicant in executing tasks | 30                     |
| Creativity in concepts applied         | 30                     |
| <b>TOTAL</b>                           | <b>100</b>             |

Only tenders with average scores of at least 60 points will qualify for the financial evaluation.

Out of the tenders reaching the minimum 60 points threshold, the best technical offer is awarded 100 points. The others receive points calculated using the following formula:

$$\text{Technical score} = \frac{\text{final score of the technical offer in question}}{\text{final score of the best technical offer}} \times 100$$

### 30.5 Part 4: Financial Evaluation

The financial offers for tenders which were not eliminated during the technical evaluation (i.e., those which have achieved an average score of 60 points or more) will be evaluated.

The Evaluation Committee will check that the financial offers contain no arithmetical errors as outlined in Clause 31.

The tender with the lowest financial offer receives 100 points. The others are awarded points by means of the following formula:

$$\text{Financial score} = \frac{\text{lowest financial offer}}{\text{financial offer of the tender being considered}} \times 100$$

## 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 communicate the revised price to the tenderer. If the tenderer does not accept the adjustment, his tender will be rejected.
- 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 quality of each technical offer will be evaluated in accordance with the award criteria and the associated weighting as detailed in the evaluation grid of this tender document. No other award criteria will be used. The award criteria will be examined in accordance with the requirements as indicated in the Technical Specifications

The Most Economically Advantageous Tender (MEAT) is established by weighing technical quality against price on an 80/20 basis respectively. This is done by multiplying:

- a) the technical scores awarded to the offers by 0.80
- b) the financial scores awarded to the offers by 0.20

### **33. Right of the Contracting Authority to accept or reject any Tender**

- 33.1 The Contracting Authority reserves the right to accept or reject any tender and/or to cancel the whole tender procedure and reject all tenders. The Contracting Authority reserves the right to initiate a new invitation to tender.
- 33.2 In the event of a tender procedure's cancellation, tenderers will be notified by the Contracting Authority. If the tender procedure is cancelled before the outer envelope of any tender has been opened, the sealed envelopes will be returned, unopened, to the tenderers.
- 33.3 Cancellation may occur where:
- (i) 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;
  - (ii) the economic or technical parameters of the project have been fundamentally altered;
  - (iii) exceptional circumstances or force majeure render normal performance of the project impossible;
  - (iv) all technically compliant tenders exceed the financial resources available;
  - (v) there have been irregularities in the procedure, in particular where these have prevented fair competition.

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

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

- 34.1 Prior to the expiration of the period of validity of tenders, the Contracting Authority will notify the successful tenderer, in writing, that his tender has been recommended for award by the Evaluation Committee, pending any appeal being lodged in terms of Part II of the Public Contracts 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 score obtained by the unsuccessful bidder, and the score of the successful bidder;
  - (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 affixed on MEUSAC's notice board at MEUSAC's offices in Valletta..

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

- 35.1 After the lapse of the appeals period, and pending that no objections have been received and/or upheld, the successful tenderer may be invited to clarify certain contractual questions raised therein. Such clarification will be confined to issues that had no direct bearing on the choice of the successful tender. The outcome of any such clarifications will be set out in a Memorandum of Understanding, to be signed by both parties and incorporated into the contract.
- 35.2 Within 15 calendar days of receiving the contract (against acknowledgment of receipt) from the Contracting Authority, the successful tenderer will sign and date the contract and return it to the Contracting Authority with the performance guarantee and the Financial Identification Form (if applicable). On signing of the contract by the Contracting Authority, the successful tenderer will become the Contractor and the contract will enter into force.
- 35.3 Before the Contracting Authority signs the contract with the successful tenderer, the successful tenderer may be requested to provide the documentary proof or statements required to show that it does not fall into any of the exclusion situations listed in Clause 7 of the Tender Form (Volume 1, Section 2). The above mentioned documents must be submitted by every member of a Joint Venture/Consortium (if applicable).
- 35.4 If the selected tenderer fails to sign and return the contract, other required documentation, and any guarantees required within the prescribed 15 calendar days, the Contracting Authority may consider the acceptance of the tender to be cancelled without prejudice to the Contracting Authority's right to seize the guarantee, claim compensation or pursue any other remedy in respect of such failure, and the successful tenderer will have no claim whatsoever on the Contracting Authority.

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

- 35.5 Only the signed contract will constitute an official commitment on the part of the Contracting Authority, and activities may not begin until the contract has been signed by the Contracting Authority and the successful tenderer.
- 35.6 The performance guarantee referred to in the General Conditions is set at 15% of the amount of the contract and must be presented in the form specified in Volume 2, Section 4, to the tender document the performance guarantee shall be released within 30 days of the signing of the Final Statement of Account (Final Bill), unless the Special Conditions provide otherwise.
- 35.7 The pre-financing guarantee referred to in the General Conditions is set at 20% of the amount of the contract and must be presented in the form specified in Volume 2, Section 5, to the tender document.

### **36. Commencement of Services**

- 36.1 Following the signing of the contract by both parties, the Contracting Authority will issue a written notice of commencement of the services in accordance with the General Conditions, as specified by the Special Conditions.
- 36.2 The Contractor must inform the Contracting Authority's representative by return that he has received the notice.

## **G. MISCELLANEOUS**

### **37. Ethics Clauses**

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

- 37.2 Without the Contracting Authority's prior written authorisation, the Contractor and his staff or any other company with which the Contractor is associated or linked may not, even on an ancillary or sub-contracting basis, supply other services, carry out works or supply equipment for the project. This prohibition also applies to any other programmes or projects that could, owing to the nature of the contract, give rise to a conflict of interest on the part of the Contractor.
- 37.3 When putting forward a candidacy or tender, the candidate or tenderer must declare that he is affected by no potential conflict of interest, and that he has no particular link with other tenderers or parties involved in the project.
- 37.4 The Contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of his profession. He must refrain from making public statements about the project or services without the Contracting Authority's prior approval. He may not commit the Contracting Authority in any way without its prior written consent.
- 37.5 For the duration of the contract, the Contractor and his staff must respect human rights and undertake not to offend the political, cultural and religious morals of Malta.
- 37.6 The Contractor may accept no payment connected with the contract other than that provided for therein. The Contractor and his staff must not exercise any activity or receive any advantage inconsistent with their obligations to the Contracting Authority.
- 37.7 The Contractor and his staff are obliged to maintain professional secrecy for the entire duration of the contract and after its completion. All reports and documents drawn up or received by the Contractor are confidential.
- 37.8 The contract governs the Parties' use of all reports and documents drawn up, received or presented by them during the execution of the contract.
- 37.9 The Contractor shall refrain from any relationship likely to compromise his independence or that of his staff. If the Contractor ceases to be independent, the Contracting Authority may, regardless of injury, terminate the contract without further notice and without the Contractor having any claim to compensation.
- 37.10 The tender(s) concerned will be rejected or the contract terminated if it emerges that the award or execution of a contract has given rise to unusual commercial expenses. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commissions paid to a company which has every appearance of being a front company.

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

- 38.1 Any personal data submitted in the framework of the procurement procedure and/or subsequently included in the contract shall be processed pursuant to the Data Protection Act (2001). It shall be processed solely for the purposes of the performance, management and follow-up of the procurement procedure and/or subsequent contract by the Contracting 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 Contracting Authority in terms of the Freedom of Information Act (Cap. 496 of the Laws of Malta). The Contracting Authority, prior to disclosure of any information to a third party in relations to any provisions of this contract which have not yet been made public, shall consult the contractor in accordance with the provisions of the said Act, pertinent subsidiary legislation and the Code of Practice issued pursuant to the Act. Such consultation shall in no way prejudice the obligations of the Contracting Authority in terms of the Act.

### **39. Gender Equality**

- 39.1 In carrying out his/her obligations in pursuance of this contract, the tenderer shall ensure the application of the principle of gender equality and shall thus 'inter alia' refrain from

discriminating on the grounds of gender, marital status or family responsibilities. Tenderers are to ensure that these principles are manifest in the organigram of the company where the principles aforementioned, including the selection criteria for access to all jobs or posts, at all levels of the occupation hierarchy are amply proven. In this document words importing one gender shall also include the other gender.

## VOLUME 1 SECTION 2 - TENDER FORM

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

Place and Date: .....  
 Publication reference: **MP004/2010**

**MEUSAC**  
**280**  
**Republic Street**  
**Valletta**

**Service Tender for the Provision of a Coordinated Marketing Strategy for Tommy and Rosy**

**A TENDER SUBMITTED BY**

|                   | Name(s) of tenderer(s) | Nationality |
|-------------------|------------------------|-------------|
| <b>Leader</b>     |                        |             |
| <b>Partner 2*</b> |                        |             |
| <b>Etc ... *</b>  |                        |             |

\* add/delete additional lines for partners as appropriate. Note that a sub-contractor is not considered to be a partner for the purposes of this tender procedure. If this tender is being submitted by an individual tenderer, the name of the tenderer should be entered as 'leader' (and all other lines should be deleted)

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

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

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

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

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

- 1 We have examined, and accept in full and in its entirety, the content of this tender document (including subsequent Clarifications Notes issued by the Contracting Authority) for invitation to tender No. MP 004/2010 of 20/07/10. We hereby accept the contents thereto in their entirety, without reservation or restriction. We also understand that any disagreement, contradiction, alteration or deviation shall lead to our tender offer not being considered any further.
- 2 We offer to provide, in accordance with the terms of the tender document and the conditions and time limits laid down, without reserve or restriction, the following services:  
  
[.....] [*description of services*]
- 3 The price of our tender (inclusive of duties, VAT, other taxes and any discounts) is:  
  
.....
- 4 This tender is valid for a period of 60 days from the final date for submission of tenders.
- 5 If our tender is accepted, we undertake to provide a performance guarantee of 15% of the contract value as required by the General Conditions.
- 6 We are making this application in our own right and **[as partner in the consortium led by < name of the leader / ourselves > ]** for this tender. We confirm that we are not tendering for the same contract in any other form. [We confirm, as a partner in the consortium, that all partners are jointly and severally liable by law for the performance of the contract, that the lead partner is authorised to bind, and receive instructions for and on behalf of, each member, and that all partners in the joint venture/consortium are bound to remain in the joint venture/consortium for the entire period of the contract's performance]. We are fully aware that, in the case of a consortium, the composition of the consortium cannot be modified in the course of the tender procedure.
- 7 We are not bankrupt or under an administration appointed by the Court, or under proceedings leading to a declaration of bankruptcy. We also declare that we have not been convicted criminally, or found guilty of professional misconduct. Furthermore, we are up-to-date in the payment of social security contributions and other taxes.
- 8 We accept that we shall be excluded from participation in the award of this tender if compliance certificates in respect of declarations made under Clause 7 of this declaration are not submitted by the indicated dates.
- 9 We agree to abide by the ethics clauses of the instructions to tenderers and, in particular, have no potential conflict of interests or any relation with other candidates or other parties in the tender procedure at the time of the submission of this application. We have no interest of any nature whatsoever in any other tender in this procedure. We recognise that our tender may be excluded if we propose key experts who have been involved in preparing this project or engage such personnel as advisers in the preparation of our tender.
- 10 We will inform the Contracting Authority immediately if there is any change in the above circumstances at any stage during the implementation of the contract. We also fully recognise and accept that any false, inaccurate or incomplete information deliberately provided in this application may result in our exclusion from this and other contracts funded by the Government of Malta and the European Communities.
- 11 Our tender submission has been made in conformity with the Instructions to Tenderers, and in this respect we confirm having included in the appropriate packages as required, the following documentation:
  - (a) **General Information** <sup>(Note 1)</sup>
    - a. Contact Details
    - b. Data on Joint Venture/Consortium

- c. Power of Attorney
- d. Statement on Conditions of Employment
- e. Overview of tenderer's personnel

**Selection Criteria** <sup>(Note 1)</sup>

- (b) **Technical Capacity** <sup>(Note 2)</sup>
  - Experience as Contractor
  - Key Experts/Personnel to be employed on contract
  - Sub-Contracting
- (c) **Evaluation Criteria/Technical Specifications** <sup>(Note 2)</sup>
  - Tenderer's Technical Offer
    - Organization & Methodology
    - Rationale
    - Strategy
    - Timetable of Activities
- (d) **Tender Form, and Financial Offer** <sup>(Note 2)</sup>

**Notes:**

*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 ◦*

*No rectification shall be allowed. Only clarifications on the submitted information may be requested. This is indicated by the symbol ●*

- 12 I acknowledge that the Contracting Authority shall request rectifications in respect of incomplete/non-submitted information pertinent to the documentation listed in Clause 11(a), 11(b), and 11(c) of this Tender Form. We understand that such rectification/s must be submitted within two (2) working days, and will be subject to a non-refundable administrative penalty of €50, and that failure to comply shall result in our offer not being considered any further.
- 13 We note that the Contracting Authority is not bound to proceed with this invitation to tender and that it reserves the right to cancel or award only part of the contract. It will incur no liability towards us should it do so.

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

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

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

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

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

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

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

### VOLUME 1 SECTION 3

#### Form 3.1 -Tenderer's Contact Details

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

## Form 3.2 - Power of Attorney

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

Signature: .....

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

Date: .....

**Form 3.3 - Data on Joint Venture/Consortium (Where applicable)**

|       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                        |
|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|
| 4.4.1 | Name                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | .....                                                                  |
| 4.4.2 | Managing Board's Contact Details                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Address: .....<br>.....<br>Telephone: ..... Fax: .....<br>Email: ..... |
| 4.4.3 | Agency in the state of the Contracting Authority, if any<br><i>(in the case of a Joint Venture/Consortium with a foreign lead partner)</i>                                                                                                                                                                                                                                                                                                                                                    | Address: .....<br>.....<br>Telephone: ..... Fax: .....<br>Email: ..... |
| 4.4.4 | Names of Partners                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | • .....<br>• .....<br>• .....<br>• .....                               |
| 4.4.5 | Name of Lead Partner                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | .....                                                                  |
| 4.4.6 | 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>.....                                            |
| 4.4.7 | 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 3.5 - Statement on Conditions of Employment

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

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

Signature: .....

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

Date: .....

### Form 3.6 - Overview of Tenderer's Personnel

|          | Description                  | Number |
|----------|------------------------------|--------|
|          |                              |        |
| <b>A</b> | <b>Managerial</b>            |        |
|          | 1. Director/s and Management |        |
|          |                              |        |
| <b>B</b> | <b>Administrative</b>        |        |
|          | 2. Administrative Staff      |        |
|          |                              |        |
| <b>C</b> | <b>Key Experts</b>           |        |
|          | 3. Project Manager/s         |        |
|          | 4.                           |        |
|          | 5.                           |        |
|          | 6.                           |        |
|          | 7.                           |        |
|          |                              |        |
| <b>D</b> | <b>Other Experts</b>         |        |
|          | 8. Researchers               |        |
|          | 9.                           |        |
|          | 10.                          |        |
|          | 11.                          |        |
|          | 12.                          |        |
|          |                              |        |
|          | <b>TOTAL</b>                 |        |

Signature: .....

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

Date: .....

### Form 3.7- Experience as Contractor

List of contracts of similar nature and extent performed during the past 3 years:

| Description of Services | Total Value of Services | Period of Execution | Client/<br>Contracting Authority |
|-------------------------|-------------------------|---------------------|----------------------------------|
|                         |                         |                     |                                  |
|                         |                         |                     |                                  |
|                         |                         |                     |                                  |
|                         |                         |                     |                                  |
|                         |                         |                     |                                  |
|                         |                         |                     |                                  |
|                         |                         |                     |                                  |
|                         |                         |                     |                                  |
|                         |                         |                     |                                  |

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

Date: .....

### Form 3.8 - Key Experts

The Evaluation Committee reserves the right to request the tenderers to substantiate their claims in respect to the staff proposed by requesting CVs of Key Experts during the evaluation stage. Key Experts shall also be requested to submit a filled-in Statement of Exclusivity and Availability (specimen as per Form 3.8.1) during the evaluation stage.

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

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

Date: .....

**Form 3.8.1 - Statement on Exclusivity and Availability**

**TO BE COMPLETED BY EACH INDIVIDUAL KEY EXPERT IF REQUIRED**

**PUBLICATION REF: MP 004/2010**

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

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

| From           | To            |
|----------------|---------------|
| September 2010 | December 2010 |

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

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

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

Name of Key Expert: .....

Signature: .....

Date: .....

## Form 3.9 - Further Information

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

## VOLUME 1 SECTION 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 written or oral instruction or order issued by the Project Manager to the Contractor regarding the execution of the services.

**Beneficiary Country:** The Maltese Islands.

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

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

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

**Commission:** The European Commission.

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

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

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

**Contracting Authority:** means the Corporate Services Directorate.

**Contractor:** The party which contracts to perform the services.

**Day:** Calendar day.

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

**EC:** The European Community.

**EU:** The European Union.

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

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

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

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

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

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

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

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

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

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

**Month:** Calendar month.

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

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

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

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

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

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

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

**Special conditions:** The special conditions laid down by the Contracting Authority as an integral part of the tender document, amplifying and supplementing the general conditions, clauses specific to the contract and the terms of reference.

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

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

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

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

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

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

### *Appeals (Right to Recourse)*

The procedure for the submission of appeals is stipulated in Part II of the Public Contracts Regulations (Legal Notice 296/2010), reproduced hereunder for ease of reference. Part II (Rules governing public contracts whose value does not exceed €120,000) of the Public Contracts Regulations - Regulation 21

- 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.
- 21.2 (a) The contracting authority shall be obliged to issue a notice and affix an advertisement, in a prominent place at its premises, indicating the awarded public contract, the financial aspect of the award and the name of the successful tenderer. The contracting authority shall, by electronic means or by fax, inform the tenderer or candidate concerned of the publication of the award. The contracting authority shall be precluded from concluding the contract during the period allowed for the submission of appeals.
- (b) The award process shall be completely suspended if an appeal is eventually submitted.
- 21.3 Any tenderer or candidate concerned who is aggrieved by the award indicated by the contract authority may, within five working days from the publication of the notice, file a letter of objection, together with a deposit, with the contracting authority, clearly setting forth any reason for his complaint. The deposit to be paid in respect of tenders valued at less than forty-seven thousand euro (€47,000) shall be four hundred euro (€400), while those between forty-seven thousand euro (€47,000) and one hundred and twenty thousand euro (€120,000) shall be 0.5% of the estimated value of the tender, with a minimum deposit of four hundred euro (€400). The letter by the complaining tenderer shall be affixed on the notice board of the contracting authority and shall be brought to the attention of the recommended tenderer.
- 21.4 After the expiry of the period allowed for the submission of a complaint, the contracting authority shall deliver the letter of complaint, the deposit receipt and all documents relating to the public contract in question to the Review Board who shall examine the matter in a fair and equitable manner. In its deliberation the Review Board shall have the authority to obtain, in any manner it deems appropriate, any other information not already provided by the contracting authority. The Review Board shall determine the complaint by upholding or rejecting it. The written decision of the Review Board shall be affixed on the notice board of the contracting authority and copies thereof shall be forwarded to the Director of Contracts and all the parties involved. Cap. 12.
- 21.5 The tenderer or candidate concerned who is not satisfied with the decision granted by the Review Board may refer the matter to the Court of Appeal (Inferior Jurisdiction) in terms of article 41(6) of the Code of Organization and Civil Procedure within a period of sixty days. Such recourse however may not delay the Head of the contracting authority from implementing the Review Board's decision.

## VOLUME 2

### VOLUME 2 SECTION 1 - DRAFT CONTRACT FORM

Financed by: DG Communications, European Commission  
Project: Service Tender for the Provision of a Marketing Strategy  
Contract Number: MP004/2010

This contract is concluded between:

MEUSAC Head  
Malta-EU Steering and Action Committee (MEUSAC)  
280, Republic Street,  
Valletta, VLT 1117  
Malta

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

[Name of Contractor]  
[Address]

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

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

Service Tender for the Provision of a Marketing Strategy

and has accepted a tender by the Contractor for the execution and completion of such services and the remedying of any defects therein.

**It is hereby agreed as follows:**

1. In this contract words and expressions shall have the meanings assigned to them in the contractual conditions set out below.
2. The following documents shall be deemed to form and be read and construed as part of this contract, in the following order of precedence:
  - (a) this Contract,
  - (b) the Special Conditions,
  - (c) the General Conditions,
  - (d) the Terms of Reference,
  - (e) the Contractor’s technical offer (Organization & Methodology) including any clarifications
  - (f) the Financial Offer (after arithmetical corrections)/breakdown,
  - (g) the Tender Form,
  - (h) any other documents forming part of the contract.Addenda shall have the order of precedence of the document they are modifying.
3. In consideration of the payments to be made by the Contracting Authority to the Contractor as hereinafter mentioned, the Contractor undertakes to execute and complete the works and remedy defects therein in full compliance with the provisions of the contract.

4. The Contracting Authority hereby agrees to pay the Contractor in consideration of the execution and completion of the works and remedying of defects therein the amount of:

Contract price (*excluding/including* VAT/other taxes): €.....

Contract price in words:..... Euro

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

5. The Contractor hereby agrees to submit a performance guarantee amounting to €..... equivalent to 10% of the contract value together with the signed contract.
6. In witness whereof the parties hereto have signed the contract. This contract shall take effect on the date on which it is signed by the last party.

Done in English in three originals: one for the Central Government Authority, one for the Contracting Authority, and one for the Contractor.

**Contracting Authority:**

**Contractor:**

Signed by:

Signed by:

.....

.....

In the capacity of:

In the capacity of:

.....

.....

Being fully authorized by and acting on behalf of

Being fully authorized by and acting on behalf of

.....

.....

Date: .....

Date: .....

## VOLUME 2 SECTION 2 - GENERAL CONDITIONS

The full set of General Conditions for Services Contracts (Version 1.01 dated 24 March 2010) can be viewed/downloaded from:

[www.contracts.gov.mt/conditions](http://www.contracts.gov.mt/conditions)

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

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

## VOLUME 2 SECTION 3 - SPECIAL CONDITIONS

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

### *Article 2: Notices and Written Communications*

2.2 Any communications with regards to this tender is to be addressed to:

Head  
280, MEUSAC  
Republic Street,  
Valletta, VLT 1112  
Contact e-mail: [info.meusac@gov.mt](mailto:info.meusac@gov.mt)

### *Article 7: Obligations of the Contractor*

7.8 The performance guarantee is set at 10% and must be provided in the form of a bank guarantee (in the format given in Volume 2, Section 4). It shall be issued by a bank in accordance with the eligibility criteria applicable for the award of the contract. It must be submitted to the Contracting Authority within 15 days of receipt of notification of award.

### *Article 15: Scope of the Services*

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

### *Article 19: Execution of the Contract*

19.1 The execution of the Contract is due to start on Monday, 6<sup>th</sup> of September, 2010.

### *Article 24: Interim and Final Progress Reports*

24.1 The first interim report is to be prepared one month after signing of the contract. The second report is to be submitted two months after the interim report and it will serve as a final draft document. These reports have to be prepared as soft and hard bound copies (five hard copies to be presented of each report).

### *Article 26: Payments and Interest on Late Payment*

26.1 This is a global-price contract.

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

| Month            | Narrative             | Euro (€) or Percentage (%) |
|------------------|-----------------------|----------------------------|
| October<br>2010  | Pre-financing Payment | 15% of the contract value  |
| November<br>2010 | Interim Payment       | 35% of contract value      |
| December<br>2010 | Balance               | 50% of the contract value  |
| <b>TOTAL</b>     |                       | <b>100%</b>                |

26.5 Payments shall be made in Euro (€).

### *Article 27: Financial Guarantee*

27.2 The pre-financing guarantee is set at 15% and must be provided in the form of a bank

guarantee (in the format given in Volume 2, Section 5). It shall be issued by a bank in accordance with the eligibility criteria applicable for the award of the contract. It must be submitted to the Contracting Authority within 15 days of receipt of notification of award. The guarantee shall enter into force from September 2010 and shall be valid until full delivery of services of the same amount by the Contractor.

## VOLUME 2 SECTION 4 - SPECIMEN PERFORMANCE GUARANTEE

(LETTERHEAD OF THE REGISTERED FINANCIAL INSTITUTION PROVIDING THE GUARANTEE)

[Address of Financial Institution]

[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 Corporate Services and [Name and Address of Contractor] hereinafter referred to as "the Contractor" as per the latter's tender and your acceptance under **MP004/2010**, whereby the contractor undertook the Service Tender for MP Project Number 7 in accordance with Article 13 of the Special Conditions the services as mentioned, enumerated or referred to in the Specification and/or Bills of Quantities forming part of the contract documents, we hereby guarantee to pay you on demand a maximum sum of €[amount in 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 **31<sup>st</sup> of January 2011** 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 PREFINANCING PAYMENT GUARANTEE

(LETTERHEAD OF THE REGISTERED FINANCIAL INSTITUTION PROVIDING THE GUARANTEE)

[Address of Financial Institution]

[Date]

Re: MP004/2010

Dear Sir,

We the undersigned, [*name, company name, address*], hereby declare that we will guarantee, as principal debtor, to Head, 280, MEUSAC, Republic Street, Valletta on behalf of [*Contractor's name and address*], the payment of [*indicate the amount*], corresponding to the guarantee mentioned in Article 27 of the Special Conditions (20% of contract value) without dispute, on receipt of a first written request from the beneficiary.

We further agree that no change or addition to or other modification of the terms of the contract or of the works to be performed there under or of any of the contract documents which may be made between you and the Contractor shall in any way release us from any liability under this guarantee. We hereby waive notice of any such change, addition or modification.

The guarantee will enter into force and take effect from June 2010 and shall be valid until full delivery of services of the same amount by the Contractor.

We note that you will release the guarantee and notify us of the fact at the latest within thirty days of this date.

Done at ...../.../..

Name and first name: ..... On behalf of: .....

Signature: .....

[stamp of the body providing the guarantee]

# VOLUME 3 SECTION 1 - TENDERER'S TECHNICAL OFFER

## (ORGANIZATION & METHODOLOGY)

To be completed by the tenderer

### RATIONALE

Any comments on the Terms of reference of importance for the successful execution of activities, in particular its objectives and expected results, thus demonstrating the degree of understanding of the contract. **Any comments contradicting the Terms of reference or falling outside their scope will not form part of the final contract**

An opinion on the key issues related to the achievement of the contract objectives and expected results

An explanation of the risks and assumptions affecting the execution of the contract

### STRATEGY

An outline of the approach proposed for contract implementation

A list of the proposed activities considered to be necessary to achieve the contract objectives

The related inputs and outputs

In the case of a tender being submitted by a consortium, a description of the input from each of the consortium partners and the distribution and interaction of tasks and responsibilities between them

A description of the support facilities (back-stopping) that the team of experts will have from the contractor during the execution of the contract

A description of sub-contracting arrangements foreseen, if any and within the limit indicated in clause 3 of the Instructions to tenderers, with a clear indication of the tasks that will be entrusted to a sub-contractor and a statement by the tenderer guaranteeing the eligibility of any sub-contractor

### TIMETABLE OF ACTIVITIES

The timing, sequence and duration of the proposed activities, taking into account mobilisation time

The identification and timing of major milestones in execution of the contract, including an indication of how the achievement of these would be reflected in any reports, particularly those stipulated in the Terms of reference

## VOLUME 4 - FINANCIAL BID

Global price for MP Project Number 004/2010 as outlined in the Tender Document, Advert Number MP 004/2010.

|                | Amount in figures | Amount in words |
|----------------|-------------------|-----------------|
| Price exc VAT  | €.....            |                 |
| VAT            | €.....            |                 |
| Price incl VAT | €.....            |                 |

The above amount must not be broken down further

## VOLUME 5 - EU DECLARATION

### STATEMENT ON EXCLUDING CIRCUMSTANCES OF ARTICLE 49 OF PUBLIC CONTRACTS REGULATIONS 2005.

This declaration, duly completed, must be submitted by all tenderers and returned with the tender submission.

---

Name of Tenderer: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please tick Yes or No as appropriate to the following statements relating to the current status of your organization:

The tenderer is bankrupt or is being wound up; or whose affairs are being administered by the court, who has entered into arrangement with creditors or who has suspended business activities or who is in any analogous situation arising from a similar procedure under national law and regulations.

[YES]                      [NO]

The tenderer is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court for an arrangement with creditors or of any other similar proceedings under national laws or regulations.

[YES]                      [NO]

The tenderer has been convicted of an offence concerning professional conduct by a judgment which had the force of *res judicata* in accordance with the laws of Malta.

[YES]                      [NO]

The tenderer has been declared guilty of grave professional misconduct proven by any means which the contracting authorities can demonstrate.

[YES]                      [NO]

The tenderer has not fulfilled the obligations relating to the payment of social security contributions in accordance with the law of Malta or the country in which he is established.

[YES]                      [NO]

The tenderer has not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of Malta or the country in which he is established.

[YES]                      [NO]

The tenderer is guilty of serious misrepresentation in supplying the information required under these regulations or has not supplied such information.

[YES]                      [NO]

The tenderer is the subject of conviction by final judgment for one or more reasons listed below:

participation in a criminal organization, as defined in Article 2(1) of Council Joint Action 98/733/JHA;  
corruption, as defined in Article 3 of the Council Act of 26 May 1997 and Article 3(1) of Council Joint Action 98/742/JHA respectively;

fraud within the meaning of Article 1 of the Convention relating to the protection of the financial interests of the European Communities;

money laundering, as defined in Article 1 of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering.

[YES]

[NO]

I certify that the information provided above is accurate and complete to the best of my knowledge and belief. I understand that the provision of inaccurate or misleading information in this declaration may lead to my organization being excluded from participation in future tenders.

Tenderers who have been guilty of making false declarations will incur financial penalties representing 10% of the total value of the contract being awarded. The rate may increase to 20% in the event of a repeat offence within five years of the first infringement.

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

NAME: \_\_\_\_\_

TEL: \_\_\_\_\_