ADVERT NUMBER: MEER/ITB/04/2024

Invitation to Bid (ITB) for Financial Support for Electricity from Installations Producing Electricity from Renewable Energy Sources with a Capacity from 40kW up to less than 200kW

Closing Date:	**24th June 2024**	**noon CET**
Submissions from:	**17th June 2024**	**noon CET**

IMPORTANT:

- **A Bid Bond is requested as per clause 1.3**

MINISTRY FOR THE ENVIRONMENT, ENERGY AND REGENERATION OF THE GRAND HARBOUR,
Barriera Wharf, Valletta, VLT 2000, Malta

Invitation to Bid(ITB) for Financial Support for Electricity Installations Producing Electricity from Renewable Energy Sources with a Capacity From 40kW up to less than 200kW

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VOLUME 1 SECTION 1 – INSTRUCTIONS TO BIDDERS

A. GENERAL PART

1. Information Relating to this Invitation to Bid and Interpretation

1.1 Introduction

This document is an Invitation to bid (ITB) for the award of financial support for electricity produced and exported to the grid from **NEW** installations producing electricity from renewable energy sources with a capacity from 40kW up to less than 200kW.

Bidders for whom the outcome of the bidding process is successful shall, subject to the relevant conditions and available unallocated capacity, be offered a Contract for Difference (CfD) by the Contracting Authority for a guaranteed period of support lasting twenty years from the date on which the renewable energy installation is connected to the grid and metered by the DSO, as proposed under this bidding process.

Successful bidders shall be the beneficiaries of State Aid which is granted in line with the applicable provisions of Commission Regulation (EU) No. 651/2014 of 17th June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, (OJ L 187/1, 26.6.2014) as amended by

i. Commission Regulation (EU) 2017/1084 of 14 June 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs (OJ L 156/1, 20.6.2017), and
ii. by Commission Regulation (EU) 2020/972 of 2 July 2020 amending Regulation (EU) No 1407/2013 as regards its prolongation and amending Regulation (EU) No 651/2014 as regards its prolongation and relevant adjustments (OJ L 215/3, 7.7.2020), and
iii. Commission Regulation (EU) 2021/1237 of 23 July 2021 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 270/39, 29.7.2021), and as may be subsequently amended (hereinafter referred to as Commission Regulation (EU) No. 651/2014), and
iv. Commission Regulation (EU) 2023/917 of 4 May 2023 correcting the Polish language version of Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (Text with EEA relevance)(OJL119/159 5.5.2023, and
v. Commission Regulation (EU) 2023/1315 of 23 June 2023 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty and Regulation (EU) 2022/2473 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty (Text with EEA relevance)(OJL 167/1 30.6.2023,and

vi. as may be subsequently amended (hereinafter referred to as Commission Regulation (EU) No. 651/2014)

1.2 This document consists of two main parts:

Volume 1 – Documentation relative to the pre-award process.
Volume 2 – Documentation relative to post-award contracts.

Volume 1 Section 1 is structured into clauses and consists of the information related to this competitive bidding process and the instructions required to submit a complete and compliant bid in this competitive bidding process. Where a form or a template is required for the submission of a bid, this may be found in Section 2 of this part of the document.
Volume 2: A template for the Performance Bond (required ONLY for successful bidders who are invited to sign a contract) is included together with the template for the Contract for Difference.

Any clarifications related to this ITB document issued by the Bidding Process Administrator in the course of the bidding process shall constitute an integral part hereof.

This ITB document in its entirety together with any clarifications thereof shall furthermore constitute an integral part of any contract signed by the Contracting Authority with any bidder who successfully secures support under this competitive bidding process.

In submitting a bid, bidders accept in full and in its entirety, the content of this document, including subsequent meeting minutes from the clarification meeting/s issued by the Bidding Process Administrator, whatever their own corresponding conditions may be, which they hereby waive. This competitive bidding process is governed by the provisions of the Applicable Regulations referred to in the table in clause 1.3. The contents of this ITB document serve to complement the provisions of the Applicable Regulations and to inform prospective bidders. Should any part of these instructions be in conflict with any provision of said Applicable Regulations, the provisions of the Applicable Regulations shall prevail.

Bidders are expected to familiarise themselves with the Applicable Regulations and carefully examine and comply with all instructions, forms, contract provisions and specifications contained in this document.

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

1.3 Information specific to this competitive bidding process (ITB)

Bid Reference no.	**MEER/ITB/04/2024**
Bid Bond (Clause 18.1) Bid Bond to be valid for a period of Ninety (90) days from closing date of submission of bids	€5/kW
Performance Bond (REQUIRED ONLY FOR SUCCESSFUL BIDDERS TO WHOM AN AWARD OFFER IS MADE)	€10/kW
Capacity of installations	From 40kW but less than 200kW
Allocated capacity under this call	367kW
Maximum bid price allowed	Shall not exceed **0.14€/kWh**
Guaranteed Period	TWENTY (20) YEARS
Applicable Regulations	Competitive Bidding Rules for Installations Producing Electricity from Renewable Energy Sources Regulations (S.L.545.39) link: https://legislation.mt/eli/sl/545.39/eng
Applicable Clarifications to be published at	https://www.rews.org.mt/#/en/tenders/224

DEADLINES/TIMETABLE APPLICABLE TO THIS CALL		
ACTIVITY	**DATE**	**TIME***
Bids may be submitted to the Bidding Process Administrator as from Bids to be submitted by email to procurement@rews.org.mt (Clause 13.1)	Monday, 17th June 2024	noon
Clarification Meeting to be held on (Refer to Clause 7.1) Minutes of Clarifications meetings shall be published online at: https://www.rews.org.mt/#/en/tenders/224	N/A	10:00am
Deadline for submitting interest in attending the virtual clarifications Meeting via email to: regulator@rews.org.mt (Clause 7.1)	N/A	10:00am
Deadline for the submission of a request for a pre-bid grid study and payment to Enemalta plc. Requests shall be sent by email to: resconsult.em@enemalta.com.mt	Friday, 17th May 2024	23:45
Deadline for request for any additional information from the Contracting Authority. Clarifications request to be sent via email to regulator@rews.org.mt	Friday, 31st May 2024	23:45

Last date on which additional information can be issued by the Bidding Process Administrator	Wednesday, 19th June 2024	noon
Deadline for submitting interest in attending the bids opening virtual meeting via email to: regulator@rews.org.mt (Clause 25.1)	Sunday, 23rd June 2024	noon
Deadline for submission of bids. Bids to be submitted by email to procurement@rews.org.mt Bids Opening Session (unless otherwise modified in terms of Volume 1 Section 1 Clause 9.2)	Monday, 24th June 2024	noon
Date for the submission of password and other details by sms to mobile number: **00356 79828597**(Clause 13.1)	Monday, 24th June 2024	Between noon and 12:30pm
* All times Central European Time (CET)		
Rectifications penalty payment details (Clause 15.2)	Rectification penalty to be paid within **5 working days** from the date of the email requesting the rectification. Payments shall be via internet banking at: Account: 40020097820 IBAN: MT49VALL22013000000040020097820 SWIFT code/BIC: VALLMTMT Or through the BOV or HSBC "Pay a Bill" Facility	
Deadline for the original bid bond or bank draft document to REACH the Regulator for Energy and Water Services (Clause 18)	Within **five (5) working days** from the closing date for the submission of bids for this ITB	
Deadline for bidders to reply to clarification/rectifications requests from the Evaluation Committee via email to regulator@rews.org.mt (Clause 15.2)	Reply by email within **five(5)working days** from the date of the email requesting the clarification/rectification.	
Pre-bid grid study and quote to be dated	From: Monday,22nd April 2024 To: Monday,24th June 2024	
Selected bidders to request updated grid study and quote from the DSO (Clause 33.5)	Within seven (7) calendar days from the date of issue of the formal Letter of Award	
Time allowed from the date of issue of formal Letter of Award and successful bidder to sign the contract and return it to Contracting Authority accompanied by the required Performance Bond.	Seven (7) calendar days	
Time allowed to successful bidders to fully install, commission, and submit a grid connection application to the DSO for the renewable energy installation	Eighteen (18) months from date of formal letter of award (subject to a one-time six (6) month extension.**	** Applicable
** A one-time twelve (6) month extension, if granted and availed of, shall entail a penalty through the reduction of €0.005/kWh of the awarded bid price.		

1.4 Definitions

Unless otherwise indicated, the definitions in the Applicable Regulations shall apply.

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

Applicable Regulations: means the Competitive Bidding Rules for Installations Producing Electricity from Renewable Energy Sources Regulations (S.L.545.39) applicable at the time of publication of this ITB in the Government Gazette.

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

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

Bidding process administrator: means the entity delegated with the administration of the bidding process on behalf of the Contracting Authority, which, for the purposes of this ITB, shall be the Regulator for Energy and Water Services.

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

Commission: means the European Commission.

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

Contract: means the signed and dated agreement entered into by the parties granting support to a renewable energy installation following a successful outcome in this competitive bidding process, which shall be a Contract for Difference where support shall be subject to the performance of the relevant obligations, including all attachments thereto and all documents incorporated therein.

Contract for difference (CfD): has the same meaning as in the Applicable Regulations.

Contracting Authority: means the contracting party which shall award support and which, for the purpose of this ITB, shall be the Ministry for the Environment, Energy and Regeneration of the Grand Harbour (MEER).

Contractor: means the contracting party awarded support following a successful bidding process, who enters into a contract for difference with the Contracting Authority.

Day: means a Calendar day.

DSO: DSO or Distribution system operator has the same meaning as in the Electricity Regulations (S.L.545.34).

EU: means the European Union.

Evaluation Committee: means 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 assess and rank all submitted bids.

Force majeure: means acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, whether declared or not, blockades, insurrection, riots, epidemics, landslides, earthquakes, storms, direct lighting strikes, floods, washouts, civil disorder, explosions and other similar unforeseeable events, which are unforeseen at the time of the signing of any contract between the Contracting Authority and a successful bidder, which by the exercise of all due diligence cannot be overcome and which, in the view of the Contracting Authority prevent a successful bidder from adhering to contractual obligations due to causes beyond the successful bidder's reasonable control.

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

Month: means a Calendar month.

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

Period: means 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.

Person: includes both a natural or a legal person.

Project: refers to the renewable energy installation for which aid is being requested under this ITB.

Proxy for the market price: has the same meaning as in the Applicable Regulations.

Site: Refers to the footprint of the proposed renewable energy installation as indicated on the site plan submitted with the bid.

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

Working Day: means any day which is not Saturday, Sunday or a Public Holiday in Malta.

1.5 The Contracting Authority retains ownership of all bids received under this invitation to bid procedure. Consequently, bidders have no right to have their bids returned to them.

2. Ranking

2.1 Administratively compliant bids will be ranked in accordance with bid price in ascending order with the lowest bid ranking first. Depending on the capacity (in kW) available for allocation, administratively compliant bidders will be awarded support in accordance with the ranking of their bid price, starting with the lowest bid price. One or more installations may be supported under this competitive bidding process.

For the award of aid, the capacity associated with the bid price shall be deemed to be equal to:

$$\frac{Offered\ kW \text{ x } Full\ Load\ Hours}{1600}$$

where the Full Load Hours for the type of RES Installation capacity offered shall be:

Type of RES Installation	Full Load Hours per calendar year
Solar Photovoltaic Installation	1600
Onshore wind	2190
Offshore wind	2628
Biogas CHP[1]	5256
Biomass CHP[2]	7446
Any other RES Installation type	1600

Note 1: Biogas CHP means combined heat and power generation from biogas. The full load hours apply only for the electricity generation capacity and only the electricity produced from such plant may be eligible for the award of aid.

Note 2: Biomass CHP means combined heat and power generation from biomass. The full load hours apply only for the electricity generation capacity and only the electricity produced from such plant may be eligible for the award of the aid.

2.2 The ranking of the awarded bids shall also form the basis on which the Distribution System Operator (Enemalta plc) shall assign unallocated grid capacity, giving preference to the awarded bid having the lowest bid price, and proceeding in order of bid price as reflected by the assigned rank number. If two or more bids submitted exactly at the same bid price are concurrently offered an award for support, then the order which shall be used to assign unallocated grid capacity shall be determined by the Contracting Authority by the drawing of lots. Further information can be found in Annex I.

2.3 Where necessary, drawing of lots shall be used to rank bids in line with Clauses 5.1(multiple identical bids for same site) and 30.3 (identical bids which cannot all be accommodated within the unallocated capacity for this call).

3. Eligibility

3.1 This call for bids is being issued under an open procedure as described in the Applicable Regulations.

3.2 Without prejudice to any additional constraints related to State Aid, any person is eligible to participate in this bidding process provided that the person

(i) is not bankrupt or insolvent or an undertaking in difficulty as defined in Article 2(18) of Commission Regulation (EU) No 651/2014);

(ii) is not an economic operator which has been excluded or blacklisted from participation in public procurement processes;

(iii) has not commenced works on the renewable energy installation.

3.3 Any person eligible to do so may participate in this competitive bidding process individually, as a partner or participant in a joint venture/consortium, or both, provided that no participant in the competitive bidding process, irrespective of whether such participation is individual or joint as part of a consortium or joint venture, shall meet any of the exclusionary criteria listed in Clause 3.2.

3.4 Groups of economic operators may submit bids as a joint venture/consortium. Eligibility criteria listed in clause 3.2 and relating to State aid are applicable to each partner or participant in a joint venture/consortium. In the case of a Consortium or Joint Venture, each participant is individually required to comply with all eligibility requirements, with applicable State Aid rules and to fill in the State Aid Declaration provided in Volume 1, Section 2, Form 5.

3.5 If a successful bid is submitted by a joint venture/consortium of two or more persons, all such persons shall be jointly and severally bound to fulfil the terms of the contract, once awarded. The person designated by the joint venture/consortium to act on its behalf for the purposes of this bidding process shall have the authority to bind the joint venture/consortium. These groups are not required to assume a specific legal form at bidding stage; however, a group may be required to do so if its bid is successful and is awarded support under this competitive bidding process, to the extent that this change is deemed necessary for the satisfactory performance of the contract.

4. State Aid

4.1 Pursuant to the State Aid Declaration submitted in accordance with the form provided in Volume 1, Section 2, Form 5 the Contracting Authority may perform site-inspections to verify that there has not been any start of works prior to the submission of this invitation to bid. The Contracting Authority may delegate the inspections to third parties who will report their findings to the Contracting Authority. The Contracting Authority will use the site-inspection findings in the administrative compliance verification process in terms of this ITB.

4.2 Aid awarded under this ITB may be cumulated with:
(a) State aid for different eligible costs,
(b) State aid for the same costs provided that the highest aid intensity or aid amount applicable to the aid under GBER is not exceeded.

With regards to the cumulation of de minimis aid with the aid granted under this ITB in respect of the same eligible costs, this can be done provided that such cumulation would not lead to an aid intensity/aid amount higher than that established in the GBER.

Bidders shall declare and provide details of any other State Aid received or to be received with respect to the renewable energy installation proposed for the award of aid under this ITB.

4.3 The threshold EUR thirty (30) million applies to each undertaking per project over the total support period (which should not exceed the lifetime of the project). The aid amount should be the difference between the bid price and the proxy of the market price multiplied with the quantity of electricity sold into the grid.

No aid shall be granted/paid should the threshold of the EUR thirty (30) million be reached during the duration of the lifetime of the project.

Prospective bidders may refer to the Note on State Aid - ITB Clause 4.2 published at https://rews.org.mt/?ts=1662018800735#/en/a/512-call-for-bids-itb

Given that the actual aid payable would depend on the actual generation (as capped) and the applicable proxy of the market price at the time of payment of the aid, the above estimated maximum bid capacity shall in all cases be subject to the maximum aid of EUR thirty (30) million per project per undertaking.

5. Multiple Bids

5.1 Different bids for renewable energy installations on the same Site shall be evaluated in accordance with the evaluation criteria in Clause 30. Of all the administratively compliant bids submitted for the same Site, only the cheapest bid shall be considered for award and any other bids involving a proposed installation upon the same Site shall be eliminated from the bidding process irrespective of the capacity offered. Where multiple compliant bids involving the same site have an identical bid price, these being all equal to the cheapest offer for that Site, only one of these shall be considered for potential recommendation for award through the drawing of lots. For the avoidance

of any doubt, where any submitted bid has a proposed Site or any part thereof in common with a Site proposed in another bid, these shall be considered bids for installation upon the same Site and thus subject to the provisions of this Clause.

5.2 If the bidder intends to submit a proposal bid for more than one Site, then such bids must be presented as separate submissions.

5.3 A bidder may not submit a bid for the same Site both individually and as a partner in a joint venture/consortium.

6. Bidder Expenses

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

7. Clarification Meeting

7.1 A clarification meeting may be held if deemed necessary by the Contracting Authority/Bidding Process Administrator. For details refer to Clause 1.3.

The meeting shall be held virtually. Participation to this meeting will be by invitation and prospective bidders interested in participating in this meeting shall inform the Bidding Process Administrator by email to regulator@rews.org.mt not later than the deadline indicated in Clause 1.3. The purpose of the clarification meeting will be to answer any questions on the ITB document raised during the same meeting. Minutes will be taken during the meeting and shall be posted online as a clarification note as per Clause 9.1.

Meetings by individual prospective bidders during the bidding period in relation to this bidding process other than this clarification meeting which is intended for all prospective bidders are not permitted.

7.2 Clarification requests with respect to the ITB document may be submitted to the Bidding Process Administrator by email to regulator@rews.org.mt up to and until the date and time specified in Clause 1.3.

B. BID DOCUMENTS

8. ITB Documentation

8.1 Bidders bear sole liability for examining with appropriate care the ITB documents, including those design documents available for inspection, and any clarification notes

to the ITB documents issued during the bidding period, and for obtaining reliable information with respect to conditions and obligations that may in any way affect the amount or nature of the bid. In the event that the bid is successful, no claim for alteration of the bid amount will be entertained on any grounds whatsoever, including errors or omissions in the obligations of the bidder described above.

8.2 The bidder shall, in submitting a bid, provide all documents required by the provisions of the ITB. All such documents, without exception, must comply strictly with these conditions and provisions and contain no alterations made by the bidder. Any submissions which fail to comply with the deadlines stipulated in Clause 1.3 or any other deadline stipulated in this ITB document shall be deemed administratively non-compliant.

9. Explanations/Clarification Notes Concerning Bid Documents

9.1 Clarification notes (Meeting minutes from the clarification meeting and any alterations to the ITB document) will be published online at the location indicated in Clause 1.3. Clarification notes will constitute an integral part of the ITB documentation, and it is the responsibility of bidders to visit this website and be aware of the latest information published online prior to submitting their bid.

9.2 The Contracting Authority, at its own discretion, as necessary and in accordance with Clause 22, may extend the deadline for submission of bids to give bidders sufficient time to take clarification notes into account when preparing their bids.

9.3 Prospective bidders may submit questions in writing to the Bidding Process Administrator through the contact details and within the timeframes as detailed in Clause 1.3 of the ITB document. The Bidding Process Administrator shall reply to all the questions submitted by Prospective bidders and apply any necessary corrections to the ITB document by publishing clarification notes, as well as issue corrigenda to this document, up to **five (5) calendar days**, before the deadline for submission of bids. Clarifications requests received by other means will not be taken into consideration.

10. Labour Law

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

11. Law

11.1 By submitting their bids, bidders are accepting that this procedure is regulated by Maltese Law, and are deemed to know all relevant laws, acts and regulations of Malta that may in any way affect or govern the operations and activities covered by the bid, the resulting contract and the execution thereof.

C. BID PREPARATION

12. Language of Bids

12.1 The ITB and all correspondence and documents related to the ITB submitted by the bidder or exchanged by the bidder and the Contracting Authority shall be in the English language.

12.2 Supporting documents and printed literature (if applicable) furnished by the bidder may be in another language, provided they are accompanied by an accurate translation into English. For the purposes of interpretation of the ITB, the English language will prevail.

13. Presentation of Bids

13.1 The bids submitted must satisfy the following conditions:

(a) Each individual bid and all related documentation shall be submitted by email to procurement@rews.org.mt. Each bid and all the associated documentation shall be scanned and zipped(compressed) using the 7zip software application and password protected. **A single email may not contain multiple bids.**

Bidders submitting **different bids** shall use a **different password** for each bid.

No individual email shall exceed **20MB and where a submission exceeds this size, the bid submission shall be made in parts as indicated in point (c).**

(b) All bids shall be received by email by the date and time indicated in the timetable in Clause 1.3, or as extended in line with Clause 9.2. A scanned copy of the bid bond or bank draft as per Clause 18.1 shall be included with the documents submitted electronically by email. The original bid bond or bank draft shall reach the Regulator within **five (5) working days** from the closing date for the submission of bids for this ITB, by registered mail or by hand to the Regulator for Energy and Water Services at the address:

Zentrum Business Centre
Level 1
Mdina Road
Qormi QRM 9010
Malta

At the bidding stage the bid bond or bank draft shall be the only document which shall be submitted both by email and also in original. FAILURE TO SUBMIT THE BID BOND BY THE DEADLINE FOR DOING SO SHALL LEAD TO THE DISQUALIFICATION OF THE SUBMITTED BID.

All other bid documents shall be submitted only by email. Only bids submitted by email to procurement@rews.org.mt will be considered.

(c) The subject field of the email, as per (a) above, shall contain **only**
(i) the reference of this invitation to bid; and
(ii) the name of the bidder.

The subject of the email shall be in the form
<ITB reference><name of bidder>:
Example: MEER/ITB/04/2024-John Doe
If the bid documentation, due to the size of the file (i.e. if larger than 20MB), has to be submitted in parts, the subject of the email shall have the following format :

<ITB reference><name of bidder><Part A>
<ITB reference><name of bidder><Part B>

Example:
MEER/ITB/04/2024-John Doe-Part A
MEER/ITB/04/2024-John Doe -Part B

All parts referring to the **same bid** shall have the **same password**.

In case the same bidder submits more than one bid, each bid shall be submitted through a separate email and the email subject shall have the following format:
<ITB reference><name of bidder><1>
<ITB reference><name of bidder><2>

Example:
MEER/ITB/04/2024-John Doe-1
MEER/ITB/04/2024-John Doe-2

Each individual bid shall be submitted through a separate email and protected by its own individual password.

It is the bidder's responsibility to check that the bid sent by email (including any attachments) is not blocked or rejected by the email systems at the sending or receiving ends, respectively. A properly configured email system at the sender's end should always advise the

bidder if the email gets rejected or blocked. The bid email can be blocked or rejected for different reasons, such as: the attachment size exceeded the email size limit, incorrect file attached, security systems etc. It is recommended that the sender enables the "Request a Delivery Receipt" before sending the bid via email if the email system has this functionality.

(d) On the date and time of the opening of the bids bidders shall send an sms in line with the instructions found in Clause 1.3 containing:
(i) the subject of the email containing the bid;
(ii)the email address used to submit the bid; and
(iii) the password required to unlock the bid documents.
The receipt of the password will be acknowledged via sms sent to the phone number used to submit the password.

Bidders who fail to provide the password within the time frame specified in the table in Clause 1.3 shall be deemed to have withdrawn their bid.

Bidders are to note that the passwords will be recorded in the minutes of the opening of the bids, therefore the use of a password already used in another preceding bid should be avoided. Submissions which are not secured through the use of a password shall result in the rejection of the relative bid due to administrative non-compliance. **It is the responsibility of the bidders to ensure that the correct password is delivered in time as requested in Clause 1.3.**

14. Bids

14.1 The bid price shall be quoted as a fixed price (in euro) per kWh to be paid for electricity generated and sold directly to the market from the renewable energy installation offered in the bid, for a period which shall not exceed twenty (20) years from the date the renewable energy installation is connected to the grid and metered by the DSO, provided that until such time as an electricity market exists and is open for successful bidders to sell electricity directly to the market, electricity sold to the distribution system operator shall be deemed to have been sold directly to the market.

14.2 Bidders shall quote the bid price **excluding VAT**. VAT shall be paid in accordance with the applicable VAT legislation.

14.3 The maximum bid price for financial support (euro per kWh) shall not exceed the maximum price established in Clause 1.3.

Bids which exceed the maximum bid price for this call shall be automatically disqualified from this competitive bidding process.

15. The Bid Submission Documentation

15.1 The bid must comprise the duly completed documents, scanned and zipped(compressed) in an electronic file using 7zip software and password protected, as follows:

(i) Index
(ii) Capacity and Financial Bid Form
(iii) Bid Form
(iv) Documents pertaining to the Site
(v) Documents pertaining to the Bidder
(vi) Bid bond or bank draft

The documentation shall comply with the requirements laid down in 15.1.1 to 15.1.6 hereunder:

15.1.1 ***INDEX*** (provided as a template in Volume 1 Section 2 – FORM 1)
The bidder shall place this Index at the beginning of the bid document, and shall fill it in as and where required, including the page numbers of the submitted bid document.

15.1.2 ***Capacity and Financial Bid Form*** (provided as a template in Volume 1 Section 2 – FORM 2)

The template provided shall be used to submit the bid (bid price per kWh) and capacity offered. **With regards to this specific document, no rectification shall be allowed.** Failure to submit this required form, filled in as appropriate, shall therefore lead to immediate disqualification of the submission. Clarifications on the submitted information may be requested.

15.1.3 ***Bid Form*** (provided as a template in Volume 1 Section 2 – FORM 3)

15.1.4 ***Documents pertaining to the Site***

Documentation related to the site shall consist of five (5) documents to be submitted as follows:
(i) Permit-related Documents (15.1.4.1)
(ii) Drawings and site electricity bill (15.1.4.2)
(iii) Site Photos (15.1.4.3))
(iv) Grid Connection Study and Quotation (to be obtained from the DSO in line with the guidelines provided in Volume 1, Section 2- Annex I) (15.1.4.4)
(v) Owner/Occupier Declaration(s) – (Provided as a template in Volume 1, Section 2, FORM 4) (15.1.4.5)

Each of the above five (5) categories shall be addressed in the documentation submitted as follows:

15.1.4.1 – Permit-related Documents

The bidder shall submit one out of the following two (2) possible documents, as required:

EITHER: a) Where the proposed RES installation is one for which a development planning permission is required the bidder shall submit a copy of the valid planning permission issued by the Planning Authority including a copy of all approved drawings and documentation referred to (See 15.1.4.2).

OR: b) Where the proposed RES installation is a solar photovoltaic installation falling within Class 1 (iv) of Permitted Development in Schedule I of the Development Notification Order, 2016 and complies with Regulation 3 of the Development Notification Order 2016, the bidder shall submit a signed declaration from a Perit that RES Installation is fully compliant with the provisions of the Development Notification Order 2016, and does not require a development permission.

It is the responsibility of Bidders to ensure compliance with all the applicable legislation and adherence to relevant policies including the Solar Farm Policy. Link to the Solar Farm Policy https://www.pa.org.mt/en/supplementary-guidance-details/solar-farm-policy

Bidders shall indicate which of (a) or (b) above is applicable in their case in Section C of the Bid Form.

15.1.4.2–Drawings and site electricity bill

The bidder shall submit **drawings showing the RES Installation site location and, in case the site is already provided with an electricity service provide a copy of a recent ARMS Ltd electricity bill for this site or otherwise, in case there is no electricity service on-site yet, indicate on the drawing, the planned substation to be used for the connection to the grid in case of a dedicated substation.** For sites where a planning permit is required under 15.1.4.1, the drawings shall be those approved in the permitting process.

15.1.4.3 – Site Photos

The bidder shall **submit photos of the proposed renewable energy Installation site.**

15.1.4.4 - Grid Connection Study and Quotation

The bidder shall submit a copy of a "Preliminary Grid Connection Study" and "Quotation" for the necessary grid connection and relevant grid infrastructure costs issued by the Distribution System Operator (Enemalta plc) in respect of the proposed renewable energy installation offered in the

bid. This documentation shall be dated as detailed in clause 1.3. A deposit on the relevant grid infrastructure upgrade or allocation made by the bidder at the time of submission may be construed as constituting "start of works" as defined in Volume 1 Section 2 and invalidate the eligibility for support.

Note: *Further information about the relative procedure is to be found in Volume 1 Section 2 – Annex I.*

15.1.4.5 –Declaration by Owner/Occupier of the site

The bidder shall submit a declaration provided as a form to be filled in (Volume 1, Section 2, Form 4) by the owner/occupier of the site as follows:

EITHER:

a) **Where the bidder is the owner/occupier** of the site, a declaration to the effect that:

(i) he/she is the owner or occupier(s) of the site where the renewable energy Installation is being proposed; and

(ii) he/she is the bidder(s) (or one of the bidders in a consortium or joint/venture) for the proposed renewable energy Installation; and

(iii) the site is not subject to any legal impediment, including

- covenants,
- restrictions,
- agreements,
- planning restriction or requirement,
- contracts,
- options,
- litigation or any type of judicial action,
- rights of way,
- or other encumbrances

which hinders the use of the site for the purposes of the construction of the renewable energy installation proposed in this bid;

Where the bidder and owner/occupier of the site is a legal person, this declaration is to be signed by the individual vested with the legal representation of the legal person. In case the person signing the declaration is not the person having the authority to bind the entity in terms of its instrument of constitution, a document empowering the person signing the bid to do so, in line with the provisions of the said instrument of constitution (for example: a resolution of the board of directors signed by the board secretary in case of a company) must be submitted with the declaration

together with a copy of the identity card or passport of the person signing the board resolution empowering the signatory.

OR:
b) **Where the bidder is not the owner/occupier** of the site, a declaration from the owner/occupier to the effect that:

(i) he/she is the owner or occupier of the site upon which the renewable energy installation is being proposed; and

(ii) that he/she intends to make the site available to the bidder under a valid legal arrangement the site to the bidder for the purposes of the construction of the renewable energy installation;

(iii) the site is not subject to any legal impediment, including

- covenants,
- restrictions,
- agreements,
- planning restriction or requirement,
- contracts,
- options,
- litigation or any type of judicial action,
- rights of way,
- or other encumbrances

which hinders him/her from leasing the site to the bidder for the purposes of the construction of the renewable energy installation, identified in this bid;

The required declaration is provided as a form to be filled in (Volume 1, Section 2, Form 4).

The declaration is to be accompanied by

Where the bidder is not the owner/occupier and the owner/occupier is a legal person and the person signing the declaration is not the person having the authority to bind the entity in terms of its instrument of constitution, a document empowering the person signing the bid to do so, in line with the provisions of said instrument of constitution (for example: a resolution of the board of directors signed by the board secretary in case of a company) must be submitted with the declaration. The following shall also be submitted with the declaration:

- a copy of the I.D. Card or passport of the signatory(ies) signing any of the mentioned documents and/or bid declaration; and
- a copy of the instrument of constitution where the owner/occupier is a legal person; and

OR:

c) **Where the premises are administered by INDIS Malta Ltd** and the bidder is the tenant/emphyteuta, a declaration by the tenant/emphyteuta that it

is in possession of a letter of conditional approval for the installation of a PV system on the premises as issued by INDIS Malta Ltd in its favour. **The letter issued by INDIS Malta Ltd shall be submitted with the bid documents.**

Where the tenant/emphyteuta is a legal person this declaration is to be signed by the individual(s) vested with the legal representation of the legal person. In case that the person signing the declaration is not the person(s) having the authority to bind the entity in terms of its instrument of constitution, a document empowering the person signing the bid declaration to do so, in line with the provisions of said instrument of constitution (for example: a resolution of the board of directors signed by the board secretary in case of a company) must be submitted with the declaration. A copy of the instrument of constitution of the tenant/emphyteuta and copy of the id card or passport of the person(s) signing any of these documents and/or bid declaration must be submitted.

OR:

d) **When the premises is administered by INDIS Malta Ltd** and the bidder is a third party, the tenant/emphyteuta declares that it is in possession of a letter of conditional approval for the installation of a solar photovoltaic system on the premises, as issued by INDIS Malta Ltd in its favour, which letter also acknowledges that should INDIS issue its final approval, this may be installed by a third party following an agreement reached with a third party, INDIS and the tenant/ emphyteuta. **The letter issued by INDIS Malta Ltd shall be submitted with the bid documents**.

Where the tenant/emphyteuta is a legal person this declaration is to be signed by the individual(s) vested with the legal representation of the legal person. In case that the person signing the declaration is not the person(s) having the authority to bind the entity in terms of its instrument of constitution, a document empowering the person signing the bid declaration to do so, in line with the provisions of said instrument of constitution (for example: a resolution of the board of directors signed by the board secretary in case of a company) must be submitted with the declaration. A copy of the instrument of constitution of the tenant/emphyteuta and copy of the id card or passport of the person(s) signing any of these documents and/or bid declaration must be submitted.

Note that where the site is already provided with an electricity service, for the purposes of this declaration and this ITB, the occupier and/or owner and/or is the individual or legal person registered as the account holder with respect to the electricity service on site as appearing on the ARMS electricity bill issued with respect to that service. Where the bidder is not the individual or legal person appearing on the ARMS Ltd electricity bill, the bid shall be considered to be submitted by a third party and the declaration to be submitted is 15.1.4.5(b).

For the purposes of this declaration and this ITB, in the case of INDIS-administered premises, the tenant/emphyteuta shall be considered to be the individual or legal person registered as the account holder with

respect to the electricity service on site as appearing on the ARMS electricity bill issued with respect to that service.

15.1.5 ***<u>Documents Pertaining to the Bidder</u>***

Documentation related to the bidder shall be submitted as follows:

(i) State Aid Declaration Form including details of any other aid received or to be received on the same renewable energy Installation other than the aid being requested in response to this ITB, if applicable and in accordance with the declaration (Volume 1, Section 2, Form 5).

(ii) In the case of the bidder being a company, a copy of the Memorandum and Articles of Association of the Company;
OR In the case of an organisation, a copy of the Statute;
OR In the case of a partnership, a copy of the deed of Partnership;
OR In the case of a sole trader, a copy of the VAT certificate;

(iii) Where the person signing the bid is not the person having the authority to bind the bidding entity in terms of its instrument of constitution, a document empowering the person signing the bid to do so, in line with the provisions of said instrument of constitution (for example: a resolution of the board of directors signed by the board secretary in case of a company). A copy of the id card or passport of the person signing the board resolution shall be submitted in such case.

(iv) In case of Joint Venture/Consortium only:

- All the documents required by points (i) and (ii) of 15.1.5 shall be submitted for each participant in the Joint Venture or Consortium; and

- The form entitled Power of Attorney (Volume 1, Section 2, FORM 6) granting one participant in the joint venture or consortium the authority to bind all the participants in same joint venture or consortium for the purposes of this bidding process should be duly filled in and submitted; and

- The form entitled DATA on Joint Venture/Consortium (Volume 1, Section 2, FORM 7) should be duly filled in and submitted.

(v) copy of the I.D. Card or passport of the signatory(ies) signing any of the documents.

15.1.6 Bid bond as per Bid Bond specimen in Volume 1 Section 2 or bank draft, as per Clause 18.1, valid for ninety (90) days from the date of closing of bidding.

15.2 With reference to documentation submitted in terms of Clause 15.1, bidders will be requested to either clarify/rectify any incorrect and/or incomplete documentation, and/or submit any missing documents **within five (5) working days** from the date of the email from the Evaluation Committee to this effect. **Rectifications will be subject to a non-refundable administrative penalty of €50**, and failure to comply shall result in the offer not being considered any further. It is to be noted that **rectifications shall not be permitted in respect of the Capacity and Financial Bid Form (15.1.2.**

15.3 Bidders shall indicate where the above documentation is to be found in their offer by using the index template in Volume 1 Section 2.

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

16. Currencies of Bid and Payments

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

17. Period of Validity of Bids

17.1 Bids must remain valid for a period of ninety (90) days after the deadline for submission of bids indicated in the government notice, the ITB document or as modified in accordance with Clauses 9 and/or 22. Any bid indicating a shorter validity period will be rejected.

17.2 The Contracting Authority may consider cancelling the ITB in the event that the evaluation process has not been concluded by the end of the validity period of the submitted bids.

17.3 The Contracting Authority may request that bidders extend the validity of bid. Such requests and the responses to them must be made in writing. A bidder may refuse to comply with such a request, in which case the bid will no longer be considered for award. Where the bidder upon request from the Contracting Authority accepts to extend the validity of the bid, the bid bond or bank draft validity, shall likewise also be extended by the bidder.

18. Bid Bond (Bid Guarantee)

18.1 The submission of a bid guarantee is required as part of the competitive bidding process. The bidder shall provide a bid bond in the form of bank guarantee as per SPECIMEN BID BOND FORM in Section 2 and for the amount indicated in Clause 1.3 drawn in favour of the Regulator for Energy and Water Services. Alternatively, the bidder shall have the option to provide a bank draft drawn in favour of the Regulator

for Energy and Water Services. A scanned copy of the bid bond or bank draft shall be submitted with the other bid documents by email as per clause 13.1.

The original bid bond or bank draft document may be delivered by hand or sent via recorded delivery registered mail, provided that it shall reach the Regulator for Energy and Water Services within the time period stipulated in Clause 1.3.

Where the bidder is a partnership, joint venture or consortium, the bid bond should be in the name of the representative participant, as established by the power of attorney form required by Clause 15.1.5 (iv).

If the ORIGINAL bid bond or bank draft fails to reach the Regulator for Energy and Water Services within the time period indicated in Clause 1.3, the respective bid will be automatically disqualified.

This is without prejudice to the **PERFORMANCE BOND** which shall be required from successful bidders in the event of a bid offer being accepted and a contract signed between the bidder and the Contracting Authority.

18.2 If a bidder selected for award fails to sign and date and return the contract, other required documentation, and performance bond(guarantee) required within the prescribed periods, the Bid Bond or the bank draft, as applicable, shall be forfeited in favour of the Regulator for Energy and Water Services.

Bidders who have not been selected for award shall have their bid bond released or, in the case of a bank draft, returned within thirty (30) calendar days from the publication of the final list of award/cancellation of the ITB. The Bid bond of selected bidders shall be released or in the case of a bank draft returned to the bidder on the signing of the contract, and the submission of a valid performance bond.

19. Variant Solutions

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

20. Preparation and Signing of bids

20.1 Bids must comprise the documents specified in Clause 15.1 above.

20.2 The bidder's submission must be typed in or handwritten in indelible ink. All pages must be numbered consecutively by hand, machine or in any other way acceptable to the Contracting Authority.

20.3 The bid must contain no changes or alterations, other than those made in accordance with instructions issued by the Contracting Authority (issued as clarification notes).

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

20.5 All documents submitted as part of this bidding process which require signature shall be signed as follows:

20.5.1 Where the bid is submitted by a natural person, that document shall be signed by that person or, subject to suitable document granting authorisation to this effect, by the natural person's authorised representative.

20.5.2 Where the bid is submitted by a legal person, the document shall be signed by an individual who is granted the authority to do so in line with the instrument of constitution of the entity. Alternatively, a different individual may be appointed and authorised in terms of the same instrument of constitution to sign instead (e.g. a resolution of the board of directors in the case of a company).

20.5.3 In the case of a joint venture/consortium, documents which are to be signed by the partner representing the joint venture shall be signed by the individual (or authorised representative of the entity) being the designated lead partner, in terms of the Power of Attorney (Volume 1, Section 2, FORM 6). Any documents which are required to be signed by the individual partners, including the Power of Attorney itself, shall be signed in line with the provisions of 20.5.1 and 20.5.2.

D. SUBMISSION OF BIDS

21. Formatting and password protection

21.1 The bids and the respective passwords shall be submitted in compliance with the deadlines and timeframes specified in Clause 1.3, without prejudice to any extension which may be granted by the Contracting Authority in accordance with Clause 9.2 and shall conform to the requirements laid down in Clause 13.

21.2 If the electronic file containing the bid documents is not password protected and marked as required in Clause 13, the bid shall be rejected.

21.3 Bids are to be submitted by email to procurement@rews.org.mt
Bids submitted by other means will not be considered.

21.4 Prospective bidders may submit questions in writing to the Contracting Authority through the contact details and within the timeframes as detailed in Clause 1.3 of the ITB document. The Contracting Authority shall reply to all Prospective bidders questions, and apply any necessary corrections to the ITB documents by publishing clarification notes, as well as issue corrigenda to this document, up to **five (5) calendar days**, before the deadline for submission of bids. Clarifications requests received by other means will not be taken into consideration.

22. Extension of Deadline for Submission of Bids

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

23. Late Bids

23.1 **All bids received after the deadline for submission specified in the government notice or this document shall be rejected.**

23.2 No liability can be accepted for late delivery of bids. Late bids will be rejected and will not be evaluated.

24. Alterations and Withdrawal of Bids

24.1 Bidders may withdraw their bids by choosing not to submit a password during the opening of the bids.

24.2 Where a bidder wishes to alter a submission, the original bid shall be withdrawn in line with Clause 24.1. An altered bid shall be submitted in conformity with the provisions of Clause 13, and ALL bidding documents shall be re-submitted in their entirety. A different password from that utilized for protecting the original submission shall be used. Where two bids from the same bidder are submitted bearing the same reference in the subject line in line with Clause 13, the latter bid shall be automatically deemed to replace the earlier one. No bid may be altered after the deadline for submission.

E. OPENING AND EVALUATION OF OFFERS

25. Opening of Bids

25.1 Bids will be opened on the date and time indicated in the timetable in Clause 1.3 (or as otherwise specified in accordance with Clause 9.2). The opening of the bids will take place during a virtual meeting and participation to this meeting shall be by invitation. Interested bidders may express their interest to participate in this virtual meeting by sending an email to regulator@rews.org.mt by not later than the relative deadline indicated in clause 1.3.

25.2 At the bid opening, the bidders' names, the bid prices and any other information the Bidding Process Administrator may consider appropriate will be published on https://www.rews.org.mt/#/en/tenders/224

25.3 Withdrawn and rejected bids will be retained for five(5) years and destroyed after the lapse of such time.

25.4 Reductions or alterations to bid prices made by bidders after the submission deadline will not be taken into consideration during the analysis and evaluation of bids.

26. Secrecy of the Procedure

26.1 **After the opening of the bids, no information about the examination, clarification, evaluation or comparison of bids or decisions about the contract award may be disclosed before the notification of award.**

26.2 Information concerning checking, explanation, opinions and comparison of bids and recommendations concerning the award of contract, may not be disclosed to bidders or any other person not officially involved in the process unless otherwise permitted or required by law.

26.3 Any attempt by a bidder to approach any member of the Evaluation Committee directly during the evaluation period will be considered legitimate grounds for disqualifying any bid which that bidder has participated in, whether individually or as part of a consortium or joint venture.

27. Clarification of Bids

27.1 When checking and comparing bids, the Evaluation Committee may, ask a bidder to clarify any aspect of the submitted bid.

27.2 Such requests and the responses to them shall be made by e-mail. A bidder may under no circumstances alter or try to change the submitted bid price per kWh or content of the bid.

28. Bid Evaluation Process

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

28.2 Part 1: Administrative / Eligibility and Selection Compliance

The Evaluation Committee will check the compliance of bids with the instructions given in the ITB document and Clause 15.1.

28.3 Part 2. Financial Evaluation

Bidders who have been considered compliant with the administrative/ eligibility and selection criteria in Part 1 will have their bid for financial support evaluated.

28.4 During the bid evaluation for Parts 1 and 2, the Evaluation Committee shall request clarifications/rectifications in respect of incomplete/non-submitted information pertinent to the documentation as outlined in sub-Clause 15.1, with the exception of the **Capacity and Financial Bid Form** in respect of which ONLY clarifications of the submitted form may be requested. Responses to such clarification/rectification requests shall be submitted within **five (5) working days** from the date of notification by email, and rectifications will be subject to a non-refundable administrative penalty of €50: failure to comply shall result in the bid offer not being considered any further.

29. Correction of Arithmetical Errors

29.1 Correction of Arithmetical Errors for Admissible bids is not applicable.

29.2 Bidders are required to state the bid price per kWh in Figures and Words. For evaluation purposes the bid price as quoted **in words** shall prevail.

F. CONTRACT AWARD

30. Criteria for Award

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

The bidder shall submit a fixed bid price per kWh for electricity production and the corresponding bid capacity, as stipulated in the Applicable Regulations in line with the capacity category specific to this call.

For the award of aid the capacity associated with the bid price shall be deemed to be equal to:

$$\frac{Offered\ kW\ x\ Full\ Load\ Hours}{1600}$$

The full load hours for different RES Installation electricity producing technologies in Clause 2.1 shall be used to calculate the capacity associated with the bid price for the award of aid and for the calculation of the threshold for the payment of the aid.

30.2 If the capacity offered as part of a single bid eligible for support cannot be fully accommodated in the remaining un-allocated capacity, the Contracting Authority shall refuse the bid. The unallocated capacity shall be withheld in reserve at this stage.

30.3 In the case when two or more eligible bids with the same bid price per kWh are received, and which bids cannot be all accommodated within the unallocated capacity, the Evaluation Committee will rank the bids in question by the drawing of lots. The concerned bidders will be invited (via an email sent by the Bidding Process Administrator) to attend via an online platform for the drawing session and a notice shall be published on the **https://www.rews.org.mt/#/en/tenders/224** showing the date, time and venue of the drawing of lots. The unavailability of one or more of the bidders concerned on the date and time as determined by the Bidding Process Administrator will not prejudice the holding of the drawing of lots as scheduled. The same procedure shall be applied when establishing the ranking order for the purpose of allocating the available grid connection capacity in the case of two or more successful bids at same bid price per kWh.

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

31.1 The Contracting Authority reserves the right to accept or reject any bid and/or to cancel the whole bidding procedure and reject all bids. The Contracting Authority reserves the right to initiate a new invitation to bid.

31.2 In the event of a bid procedure's cancellation, bidders will be notified by the Contracting Authority. If the bid procedure is cancelled before any bid has been opened, the submitted bids shall be destroyed.

31.3 Cancellation may occur where:

(a) the bid procedure has been unsuccessful, namely where no qualitatively or financially worthwhile bid has been received or there has been no response at all;
(b) exceptional circumstances or *force majeure*;
(c) there have been irregularities in the procedure, in particular where these have prevented fair competition;
(d) the duration of the evaluation has exceeded the stipulated time limit in clause 17 of Instructions to Bidders.

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

31.4 The Contracting Authority further reserves the right to cancel any unallocated capacity for this competitive bidding process in line with Clause 30.2.

32. Notification of Award, Contract Clarifications

32.1 The Bidding Process Administrator will notify by email any bidder/s whose bid has/have been **recommended for award**, subject to any appeal being lodged in terms of the Public Procurement Regulations (S.L.601.03). Any appeals shall be submitted to the Public Contracts Review Board within **ten (10) calendar days** of the publishing of the recommendation for award.

32.2 Unsuccessful bidders shall be notified with the outcome of the evaluation process, and will be provided the following information:
(i) the criteria for award;
(ii) the name of the successful bidder/s;
(iii) Awarded bid price/s of the successful bidder/s;
(v) the deadline for filing a notice of objection (appeal);
(vi) the deposit required if lodging an appeal.

32.3 The deposit amount required to lodge an appeal shall be as follows: Where the bidding process is for financial support for RES installations having a capacity greater equal to or greater than 40kW but less than 200kW, the required deposit amount shall be five thousand euro (€5,000). Where the bidding process is for financial support for RES installations having a capacity equal to or greater than 200kW but less than 1000kW, the required deposit amount shall be twenty thousand euro (€20,000).

32.4 The recommendations for award shall be published on the website of the Bidding Process Administrator: **https://www.rews.org.mt/#/en/tenders/224**
Moreover, the bidders will also be notified by email of the results of the evaluation of the bids submitted.

32.5 The list of bidders recommended for award shall be formally finalised following the lapse of the appeals period where no appeals are lodged, or, following the outcome of the appeals process, should any appeals be lodged. The DSO (Enemalta plc) shall be notified of the finalised list.

32.6 Bidders whose bids are included in the formal finalised list as bidders whose bid for support can be accommodated within the capacity available for support in this bidding process shall be deemed to be successful bidders.

32.7 Successful bidders may be authorized to relocate the renewable energy installation benefiting from support to an alternative site subject to the submission of all documentation requested by the Contracting Authority as applicable to the alternative site and subsequent approval by the Contracting Authority, and provided that the new alternative site falls within the same category as the original site specified in the Award Letter and Contract of Award, and shall be subject to all relevant permits, new chargeable technical studies related to the new site and grid connection costs. The awarded support (price/kWh) and corresponding allocated capacity shall not be altered, but the rank order shall no longer apply for the purpose of grid capacity allocation.

33. Contract Signing and Performance Bond

33.1 After the lapse of the appeals period and subject to no objections having been received and/or upheld, the successful bidder/s may be invited to clarify certain contractual questions raised therein. Such clarification will be confined to issues that had no direct bearing on the choice of the successful bidder/s. The outcome of any such clarifications, if any, will be incorporated in the contract.

33.2 Bidders who are deemed successful bidders shall be formally informed of this through a formal Letter of Award which shall be accompanied by a Contract.

33.3 Before the Contracting Authority enters into a Contract for Difference with a successful bidder, the successful bidder may be requested to provide the documentary proof or statements required to show that it does not fall into any of the exclusion situations listed in Bidder's Declaration Form. The above-mentioned documents must be submitted by every member of a Joint Venture/Consortium (if applicable).

33.4 The successful bidder shall, within the number of days from the date of issue of the formal Letter of Award and contract as indicated in **Clause 1.3**, sign and date the contract and return it together with the Performance Bond.

33.5 Successful bidders are required to request an updated grid connection study from Enemalta following the issue of the formal Letter of Award. Failure to submit this request within the timeframe stipulated for doing so within **Clause 1.3** shall lead to the loss of position of their bid within the ranking order for the purpose of grid capacity allocation. A successful bidder who has signed the Contract may terminate the contract within twelve (12) weeks from the date of the formal Letter of Award if the grid connection costs as quoted by Enemalta plc after the contract award date exceed those submitted with the bid in response to this ITB, as applicable for the same installation, by at least 25%.

33.6 If a selected bidder fails to sign and date and return the contracts, other required documentation, and any bonds required within the prescribed number of days indicated in **Clause 1.3**, the Contracting Authority may consider the interest of the bidder to be withdrawn without any further notice, and without prejudice to the Contracting Authority's right to claim compensation or pursue any other remedy in respect of such failure. In this case the Bid Bond or bank draft, as applicable, shall be forfeited in favour of the Regulator for Energy and Water Services as per Clause 18.1. The successful bidder will have no claim whatsoever against the Contracting Authority.

Should an offer by a successful bidder, who was listed on the formal finalised list selected for award of support as per clause 32.4, be considered thus withdrawn, the bidder/s whose eligible bid has been ranked as next eligible may be recommended for award. For this purpose, any capacity released through such withdrawal shall be combined with any capacity reserved in terms of clause 30.2, and allocated subject to any provisions applicable to the allocation of remaining unallocated capacity for the bidding process.

33.7 Only the signed contract shall constitute an official commitment on the part of the Contracting Authority, and activities **may not begin until the contract has been signed by both the Contracting Authority and the successful bidder.**

33.8 A performance bond as described in Clause 1.3 shall be presented in the form specified in Volume 2 of this ITB document.

The performance bond shall be released within thirty (30) days from when the renewable energy installation is commissioned and an application to connect the installation to the distribution system is submitted to the distribution system operator.

33.9 An installation having an installed and commissioned capacity which is inferior to 40kW is not considered to be an installation eligible to receive support under the Applicable Regulations, and shall thus be deemed to constitute a breach of the conditions of the award, leading to the complete forfeiture of the performance bond, the **withdrawal of the award of support and the termination of the Contract.**

The complete forfeiture of the performance bond, the **withdrawal of the award of support and the termination of the Contract shall also apply where the installed and commissioned capacity of the installation is less than or equal to fifty percent (50%) of the awarded bid capacity**

An installation having an installed and commissioned capacity which is inferior to the awarded bid capacity, this being larger than fifty percent (50%) of the awarded bid capacity but smaller than eighty percent (80%) of the awarded bid capacity, whilst nevertheless having a capacity equal to or larger than 40kW, shall still be considered to be an installation eligible to receive support under the Applicable Regulations, but the breach of the conditions of the award shall trigger a partial forfeiture of the performance bond calculated as follows:

$$Forfeited\ Performance\ Bond\ (\%) = \frac{0.8 - \left(\frac{Installed\ Capacity}{Bid\ Capacity}\right)}{0.3}\ x\ 100$$

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

33.11 Subject to a third party obtaining the necessary permits, authorisation and licenses, as may be applicable, and following verification that said third party meets the eligibility criteria laid down in points (i) to (iii) of Clause 3.2, following the signing of the Contract, the support secured by the approved installation which has been awarded support through this competitive bidding process may be assigned to said third party through an agreement entered into between the Contracting Authority, the successful bidder and same third party, which agreement shall result in all obligations

which bind the successful bidder as they arise out of the Contract, this competitive bidding process and the applicable legislation being vested upon said third party.

G. MISCELLANEOUS

34. Ethics Clauses

34.1 Any attempt by a bidder to obtain confidential information, enter into unlawful agreements with competitors or influence the Evaluation Committee or the Contracting Authority during the process of examining, clarifying, evaluating and comparing bids will lead to the rejection of any bid which the bidder is participating in, whether individually or as part of a consortium or joint venture bid and may result in administrative penalties.

34.2 When putting forward a bid, the bidder must declare that there is no potential conflict of interest, and that no particular links with other bidders or parties submitting bids which the bidder is not participating in.

34.3 The bidder/Contractor and their staff shall not exercise any activity or receive any advantage inconsistent with their obligations to the Contracting Authority.

34.4 The contract, if entered into, shall govern the Parties' use of all reports and documents drawn up, received or presented by them during the execution of the contract.

35. Data Protection and Freedom of Information

35.1 Any personal data submitted in the framework of the competitive bidding rules and/or subsequently included in the contract shall be processed pursuant to 'Data Protection Legislation / Data Protection Regime', meaning the Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the "GDPR Regulation"), and all applicable laws and regulations relating to processing of personal data and privacy. Data shall be processed solely for the purposes of the performance, management and follow-up of the bidding procedure and/or subsequent contract by the Contracting Authority without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in conformity with National and/or EU law.

35.2 The provisions of this document/contract are without prejudice to the obligations of the Contracting Authority in terms of the Freedom of Information Act (Cap. 496 of the Laws of Malta). The Contracting Authority, prior to disclosure of any information to a third party in relation to any provisions of this document/contract which have not yet been made public, shall consult the contractor in accordance with the provisions of the said Act, pertinent subsidiary legislation and the Code of Practice issued pursuant

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

36. Gender Equality

36.1 In carrying out the obligations in pursuance of any contract awarded as a result of this competitive bidding process the bidder shall ensure the application of the principle of gender equality and shall thus 'inter alia' refrain from discriminating on the grounds of gender, marital status or family responsibilities. Bidders are to ensure that these principles are manifest in the organigram of the company where the principles aforementioned, including the selection criteria for access to all jobs or posts, at all levels of the occupation hierarchy are amply proven. In this document words importing one gender shall also include the other gender.

VOLUME 1 SECTION 2: FORMS AND TEMPLATES

FORM 1: INDEX

FORM 1: INDEX Document No	Description	ITB Vol 1 Section 1 Reference	Page	Note	Confirm as Included or Not Applicable
1	Index	15.1 (i) Vol 1 Section 2 FORM 1	1	ONE PER BID	
2	Capacity and Financial Bid Form	15.1 (ii) Vol 1 Section 2 FORM 2		ONE PER BID	
3	Bid Form	15.1 (iii) Vol 1 Section 2 FORM 3		ONE PER BID Part C to be filled in by each partner in case of joint venture or consortium	
4	Bid Bond or bank draft	15.1.6 Vol 1 Section 2		ONE PER BID	
Documents Pertaining to the Site					
5	Permit related document	15.1.4 (i)		ONE PER BID	
6	Drawings and where applicable a site ARMS electricity bill	15.1.4 (ii)		ONE PER BID	
7	Site Photos	15.1.4 (iii)		ONE SET PER BID	
8	Grid Connection Study and Quotation	15.1.4 (iv) and Annex I		ONE PER BID	
9*	Declaration from Owner/Occupier or tenant/emphyteuta(in case of INDIS premises) and documentation requested as applicable	15.1.4 (v) Vol 1 Section 2 FORM 4		ONE PER BID One option to be chosen	
Documents Pertaining to the Bidder					
10*	State Aid Declaration Form Details for any other aid received or to be received	15.1.5 (i) and Vol 1 Section 2 FORM 5		ONE PER BIDDER/PARTNER	
11*	Instrument of Constitution	15.1.5 (ii)			
12	Signatory Authorisation	15.1.5 (iii)		Applicable only where individual signing the bid is not the authorised signatory in terms of instrument of constitution	
13	Copy of ID card or passport	15.1.5 (v)		One per signatory	
Additional Documents **REQUIRED ONLY IN CASE WHERE BIDDER IS JOINT VENTURE/CONSORTIUM**					
14	Representation of Joint Venture/Consortium Power of Attorney	Vol 1 Section 2 FORM 6		ONE, only if applicable	
15	Data on Joint Venture/Consortium	Vol 1 Section 2 FORM 7		ONE, only if applicable	
* In case of Consortium or Joint Venture, documents 9-10 and, where applicable, 11 to be submitted for each partner.					

FORM 2: CAPACITY AND FINANCIAL BID FORM

Bid Reference: MEER/ITB/04/2024

The payment of the bid price* is subject to the relevant annual thresholds and applies to electricity generated and sold to the distribution system operator from a commissioned new renewable energy installation as described hereunder:

Nominal electricity generating capacity in kiloWatts (kW) of the Installation					
RES Generator type					
Bid Price per kilowatt hour (kWh) as specified in the Applicable Regulations **IN FIGURES**	**Euro Cents**			.	
Bid Price per kilowatt hour (kWh) as specified in the Applicable Regulations **IN WORDS**					

The support is being requested for a period of twenty (20) years.
*The price quoted is inclusive of duties, other taxes but exclusive of VAT.

For the sake of clarity, the bid price shall be deemed to be the arithmetic sum total of the proxy for the market price and the premium.

Notes:

- Bids shall be in figures and words and in the case of discrepancy, the words shall prevail.
- The maximum bid price (in euro per kWh) shall not exceed the cap specified in the Table in Clause 1.3.
- Bidders who quote a bid price higher than the maximum bid price shall have their offer deemed non-compliant and such offer shall be rejected.
- The settlement of the difference between the awarded bid price and the proxy for the market price may be delegated by the Contracting Authority to a paying agent (example Arms Ltd).
- Support shall be limited to the renewable electricity generated by the commissioned capacity or bid capacity, whichever is the lowest, in line with the Applicable Regulations.
- In the case of solar photovoltaic installations, the nominal electricity generating capacity(bid capacity) would be the kWp DC rating.
- Without prejudice to the Applicable Regulations, the awarded bid price per kWh with respect to an approved renewable energy installation shall be payable for the actual number of units of electricity generated by such installation and sold to the distribution system operator, up to the annual threshold (in kWh) calculated as “commissioned kW x Full Load Hours/kW”, provided that the commissioned capacity is equal to or lower than the awarded (bid) capacity. Should the commissioned capacity be larger than the awarded (bid) capacity, the annual threshold (in kWh) shall be calculated as “awarded(bid) capacity in kW x Full Load Hours/kW. The Full Load Hours shall be dependent on the technology offered, and refer to a full calendar year generation. For the first and last year of the guaranteed period this threshold shall be applied on a pro rata basis for the payment of the awarded bid price.

FORM 3: BID FORM

Publication reference: MEER/ITB/04/2024

A. BIDDER NAME	*(This will be included in the Summary of Bids Received)*		
<u>In case of a Joint Venture/Consortium:</u> **Name(s) of Leader/Partner(s)**		**Nationality**	Proportion of Responsibilities[2]
Leader [1]			
Partner [1]			
Etc …			

1. Add/delete additional lines for partners as appropriate. Note that a sub-contractor is not considered to be a partner for the purposes of this bidding procedure. If this bid is being submitted by an individual bidder, the name of the bidder should be entered as 'leader' (and all other lines should be deleted)
2. Proposed proportion of responsibilities between partners (in %) with indication of the type of the works to be performed by each partner.

B CONTACT PERSON (for this bid)

Name		**Surname**	
Telephone	(____) _____	**Mobile**	(____) _____
Address	……		
E-mail			

C BIDDER'S DECLARATION(S)

This Part C to be completed and signed by the bidder, and by each partner/participant where the bidder is a joint venture/ consortium.

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

Tick one:
☐ **I** am making this declaration in my own right and in my own personal capacity.
or
☐ I am making this declaration as the legal representative of an undertaking: <name of company>.

Tick one:
☐ This bid is submitted by an individual natural or legal person
Or
☐ This bid is submitted as a **joint venture/consortium** led by < name of the leader >

Tick to demonstrate agreement if the bid is submitted by a joint venture/consortium:
☐ I confirm, as a partner in the joint venture/consortium responsible for this submission, that I am aware and understand that all partners are jointly and severally liable at law for the performance of the contract, if awarded, and that the lead partner is authorized to bind all members/partners, and may receive instructions for and on behalf of, each member. I am furthermore aware and understand that, any modifications to the composition of the joint venture/consortium are subject to the approval of the Contracting Authority.

1 **I** have examined, and accept in full and in its entirety, the content of this bid document (including subsequent Clarifications Notes issued by the Contracting Authority) for invitation to bid reference **MEER/ITB/04/2024**. I hereby accept the contents thereof in their entirety, without reservation or restriction. I also understand that any disagreement, contradiction, alteration or deviation shall lead to the bid offer not being considered any further.

2 I offer to provide, in accordance with the terms of the bid document and the conditions and time limits laid down, without reserve or restriction, the requirements stated in the contract.

3 The total bid price per kWh of the bid is: as per *FORM 2- CAPACITY AND FINANCIAL BID* form (inclusive of duties, other taxes but exclusive of VAT).

4 This bid is valid for a period of 90 days from the final date for submission of bids.

5 If the bid price per kWh and corresponding bid capacity is accepted, an undertaking is hereby made to provide a performance bond as specified in the conditions.

6 Neither I in my personal capacity nor any undertaking involved in this competitive bidding process which is represented by me, if any, is bankrupt or under an administration appointed by the Court, or under proceedings leading to a declaration

of bankruptcy. I also declare that I have not been convicted criminally, or found guilty of fraud or professional misconduct. Furthermore, I in my personal capacity am up-to-date in the payment of social security contributions and other taxes as is and any undertaking involved in this competitive bidding process which is represented by me, if any. I understand that documentary evidence to this effect may be requested to be produced during the evaluation stage and I hereby commit to complying with such request, should it materialise.

7 I agree to abide by the ethics clauses of the instructions to bidders and, in particular, have no potential conflict of interests or any relation with other candidates or other parties in the bid procedure at the time of the submission of this application.

8 I will inform the Contracting Authority immediately if there is any change in the above circumstances at any stage during the implementation of the contract. I also fully recognize and accept that any false, inaccurate or incomplete information deliberately provided in this application may result in my exclusion or the exclusion of any undertaking involved in this competitive bidding process which is represented by me, if any, from this and other contracts funded by the Government of Malta and/or the European Union.

9 The bid submission has been made in conformity with the Instructions to Bidders.

10 I acknowledge that the Contracting Authority may request clarification/rectification(s) as stipulated in Clause 15.1 of the ITB.

11 I note that the Contracting Authority is not bound to proceed with this invitation to bid and that it reserves the right to cancel or award only part of the contract. It will incur no liability towards me personally or towards any undertaking involved in this competitive bidding process which is represented by me, if any, should it do so.

12 Specific Declarations

a. I/We declare that I/we (tick as appropriate):

((i) have a development permission issued by the Planning Authority for the renewable energy Installation) : OR	☐ (***tick if applicable***)
(ii) confirm that the renewable energy Installation is a solar photovoltaic installation and is fully compliant with the provisions of the Development Notification Order, 2016 and the Planning Authority's procedures and guidelines including "Development Control Policy and Design Guidance and Standards 2015" and/or any later updates. I/we am/are submitting a declaration from a Perit that the renewable energy Installation(solar photovoltaic installation) does not require a development permission.	☐ (***tick if applicable)***

b. I/We confirm

(i) that the proposed renewable energy installation will be grid connected according to the requirements set by the Distribution System Operator; and

(ii) that I/we am/are aware that a "no objection" from the Distribution System Operator for connecting to the grid is required; and

(iii) that I/we will apply for and obtain an authorisation prior to the construction of the renewable energy installation and a licence once this installation is commissioned, from the Regulator for Energy and Water Services.

c. I/We confirm that I/we are/am aware that all the information submitted in this application may be cross checked with other government entities and authorise the Contracting Authority/Bidding Process Administrator to ask any other government entity to provide the required information.

d. I/We shall give access to all relevant government entities to inspect the renewable energy installation after due notice is given by the Contracting authority.

e. I/We am/are aware that personal information provided in this submission is protected and used in accordance with the Data Protection Act. This personal information will be processed by the Ministry for the Environment, Energy and Regeneration of the Grand Harbour with the Energy and Water Agency, Regulator for Energy and Water Services (REWS), Planning Authority, Enemalta plc, ARMS Ltd, INDIS and State Aid Monitoring Board.

f. I/We am/are aware that the information being provided will be used and shared by the Ministry for the Environment, Energy and Regeneration of the Grand Harbour and its agencies, the Regulator for Energy and Water Services (REWS) with the Planning Authority, Enemalta plc and ARMS Ltd, INDIS, State Aid Monitoring Board and relevant organisations involved in the administration, supervision and auditing of the support scheme. The information may also be used to demonstrate market transformation trends.

g. I declare that neither I in my personal capacity nor any undertaking involved in this competitive bidding process which is represented by me, if any, have previously received aid which has been declared incompatible by a Decision of the European Commission and understand that should such a Decision be published subsequent to aid being granted under this competitive bidding process, this shall result in the suspension of any aid payment until such time as the total amount of unlawful and incompatible aid and the corresponding recovery interest has been reimbursed. If this submission is by a consortium or joint venture, I further understand that this shall also apply should incompatible aid have previously been received by any partner or participant in such joint venture or consortium.

Date (dd/mm/yyyy): _____/_____/_____

Signature[1]	Full Name(s) of Signatory / Signatories	Capacity[2]:	Identity Card No / Passport No	Contact Tel No / Mobile No

Note 1: The signature of the bidder (or all legal representatives in the case of a company/Partnership/organisation or of the person duly authorised to act on their behalf) is required.

Note 2: Signatory to identify whether the declaration is being signed in personal capacity, or as legal representative of an entity, in which case, the position held and the name of the entity to be listed.

FORM 4: DECLARATION OF SITE OWNER/OCCUPIER

DETAILS		
1.	SITE ADDRESS	
BIDDER DETAILS		
2.1	BIDDER STATUS	Individual Bidder ☐ (***tick if applicable***) Joint Venture/Consortium ☐ (***tick if applicable***)
2.2	Bidder NAME (Where bidder is a Joint Venture/Consortium, name of Leader to be inserted)	
OWNER/OCCUPIER DETAILS		
3.1	OWNER/OCCUPIER or tenant/emphyteuta(in case of INDIS premises)	Individual ☐ (***tick if applicable***) Legal Entity ☐ (***tick if applicable***)
3.2	Where OWNER/OCCUPIER or tenant/emphyteuta(in case of INDIS premises) is a legal entity, include entity name and registration number/ entity identifier	ENTITY NAME
		REG. No:
3.3	FULL NAME and ID Card Number of owner or authorised signatory of legal entity named in 3.2	Name and Surname:
		Role within entity (if applicable):
		ID Card Number:
DECLARATION – to be signed by the person whose details appear in 3.3		
4.	I, the undersigned, hereby declare the following:	
4.1	**a)** I am / We are the bidder and I/we own/occupy the site appearing in point 1 under a legally valid title. I/ We declare that without prejudice to required permits and authorisations, the site is not subject to any legal impediment, including covenants, restrictions, agreements, planning restriction or requirement, contracts, options, litigation or any type of judicial action, rights of way or other encumbrances, which hinders the use of the site for the purposes of the construction of the renewable energy installation identified in this bid; ☐ **(tick if applicable);** OR **b)** I am/we are the owner and/or occupier of the Site appearing in point 1 under a legally valid title. I/we intend to make available to the bidder the Site appearing in point 1 under a legally valid arrangement for the purpose of the construction of a renewable energy installation. I/We declare that without prejudice to required permits and authorisations, the site is not subject to any legal impediment, including covenants, restrictions, agreements, planning restriction or requirement, contracts, options, litigation or any type of judicial action, rights of way or other encumbrances, which hinders the use of the site for the purposes of the construction of the renewable energy installation identified in this bid; ☐**(tick if applicable)** OR **c)** I am in possession of a letter of conditional approval for the installation of a PV system on the premises as issued by INDIS Malta Ltd in my favour, which letter is hereby attached ☐ **(tick if applicable)**; OR **d)** I am in possession of a letter of conditional approval for the installation of a PV system on the premises, as issued by INDIS Malta Ltd in my favour, which letter also acknowledges that should INDIS issue its final approval, this may be installed by a third party following an agreement reached with such third party, INDIS and the tenant/ Emphyteuta, which letter is hereby attached. ☐ **(tick if applicable);**	
	Signature(s)	
	Date	

FORM 5: STATE AID DECLARATION FORM

SECTION A	
1.0 Details of the Applicant	
Please insert your personal details if applying as an individual or those of the Legal Representative if bid is submitted on behalf of an Undertaking [(1)]. In the case of a consortium/joint venture, insert the details of the person/s holding power of attorney as submitted in Form 1.	
Full Name of Individual or Legal Representative:	
Contact Address:	
I.D. / Passport No.:	
Tel. No. (Fixed Line):	
Tel. No. (Mobile):	
Email:	
Name of Undertaking (if applicable):	
VAT No. (if applicable):	
Company (or equivalent) Reg. No. / Trading License No: (if applicable):	
Size of Undertaking (if applicable)[(2)]:	☐SME ☐Large
NACE code of Undertaking's main economic activity (if applicable)[(3)]:	

2.0 Declaration of the Applicant(s)[4]

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

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

I/We declare that the undertaking/s in 1.0 above, is(are) not an "undertaking in difficulty"[5] as defined in Article 2(18) of Commission Regulation (EU) No 651/2014;

I/We are applying for the award of aid under this ITB and as applicable on the date of submission of this application, we confirm that

(i) no financial incentives / grants have been or will be assigned to this RES Installation other than the aid being requested in response to this ITB : ☐ (***tick if applicable***); OR

(ii) I/we have received investment aid for this RES installation (or part thereof) identified in this bid and understand that such investment aid will be deducted from the aid granted under this scheme, details of the aid attached: ☐ (***tick if applicable***).

An aid component shall apply when the premium, which is equal to the difference between the applicable bid price (as awarded) and the applicable proxy for the market price as determined by the Regulator (which may vary) over the 20 years of the guaranteed support period, is positive.

Date (dd/mm/yyyy): _____/_____/_____

Signature[1]	**Full Name(s) of Signatory / Signatories**	**Capacity[2]:**	**Identity Card No / Passport No**	**Contact Tel No / Mobile No**

Note 1: The signature of the bidder (or all legal representatives in the case of a company/Partnership/organisation or of the person duly authorised to act on their behalf) is required.

Note 2: Signatory to identify whether the declaration is being signed in personal capacity, or as legal representative of an entity, in which case, the position held and the name of the entity to be listed.

SECTION B – Declaration by Warranted Auditor	
This is to report that we have carried out an assessment based on the agreed-upon procedures outlined in Annex II of this Tender Document in relation to the Undertaking defined in Section A, with Name: _____ VAT No / Registration No: _____ to be able to confirm that the undertaking is not an "undertaking in difficulty" as defined in Article 2(18) of Commission Regulation (EU) No 651/2014. These procedures were carried out in accordance with the International Standard of Related Services 4400 (Revised), Agreed-Upon Procedures Engagements for the purposes of the Invitation to Bid. The factual findings report dated _____was submitted to the Applicant. Based on the findings of this report, we can confirm that no exceptions were identified that would indicate that the Undertaking is an "undertaking in difficulty" as defined in Article 2(18) of Commission Regulation (EU) No 651/2014. This report is being submitted solely for the purposes of the Invitation to Bid.	
Signature:	
Name & Surname:	
Firm Registration No (if applicable):	
ID No:	
Warrant No:	
Telephone/Mobile No:	
E/mail:	
Address:	
Date (dd/mmm/yyyy):	
Rubber Stamp:	

NOTES:

(1) "Undertaking" means any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed. For the purposes of this definition "entity" includes any natural or legal person engaged in the provision of a good or service on the market". Please note that definition of an undertaking includes a natural person who has a generator and intends to sell electricity through this scheme.

(2) Please indicate the size of your undertaking by choosing from small and medium-sized enterprises ('SMEs') or large in terms of Article 2 of Annex I of Commission Regulation (EU) No 651/2014, hereunder reproduced:

The category of micro, small and medium-sized enterprises ('SMEs') is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.

Tick “SME” if you are a natural person or enterprise employing fewer than 250 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million; or otherwise Tick “Large” if you are an enterprise that employs 250 persons or more and which has an annual turnover of EUR 50 million or more, and/or an annual balance sheet total of EUR 43 million or more.

(3) NACE code: Please indicate the NACE code of your main activity. The list of the NACE codes may be found in NACE Rev. 2 statistical classification of economic activities as laid down in Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006, establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains.(http://ec.europa.eu/eurostat/documents/3859598/5902521/KS-RA-07-015-EN.PDF)

(4) In the case when the applicant is an organisation / company, the required number of Legal Representatives are also making the declaration on behalf of the directors of the Undertaking.

(5) ‘Undertaking in difficulty’- In line with Article 2(18) of Commission Regulation (EU) No 651/2014, means an undertaking in respect of which at least one of the following circumstances occurs:

(a) In the case of a limited liability company (other than an SME that has been in existence for less than three years), where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital. For the purposes of this provision, ‘limited liability company’ refers in particular to the types of company mentioned in Annex I of Directive 2013/34/EU and ‘share capital’ includes, where relevant, any share premium.

(b) In the case of a company where at least some members have unlimited liability for the debt of the company (other than an SME that has been in existence for less than three years), where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses. For the purposes of this provision, ‘a company where at least some members have unlimited liability for the debt of the company’ refers in particular to the types of company mentioned in Annex II of Directive 2013/34/EU.

(c) Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.

(d) Where the undertaking has received rescue aid and has not yet reimbursed the loan or terminated the guarantee, or has received restructuring aid and is still subject to a restructuring plan.

(e) In the case of an undertaking that is not an SME, where, for the past two years:
(1) the undertaking's book debt to equity ratio has been greater than 7.5 and
(2) the undertaking's EBITDA interest coverage ratio has been below 1.0.

FORM 6: POWER OF ATTORNEY

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

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

Date:.....

FORM 7: DATA ON JOINT VENTURE/CONSORTIUM

(Where applicable)

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

Signature:.....

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

Date:.....

SPECIMEN BID BOND FORM

(LETTERHEAD OF THE REGISTERED FINANCIAL INSTITUTION PROVIDING THE BOND)

Regulator for Energy and Water Services
Zentrum Business Centre,Level 1
Mdina Road
Qormi, QRM 9010
Malta

[Date]

Dear Sir,

Our Bond Number ..... for €.....

Account: [Account Holder's Name]

Whereas ..... has invited bidders ....., and whereas Messrs ..... [Name of bidder] (hereinafter referred to as the Bidders) is submitting such a bid in accordance with such invitation, we ..... [Name of Bank], hereby guarantee to pay you on your first demand in writing a maximum sum of ..... Euro (€.....) in the case the Bidder fails to provide the Performance bond, if called upon to do so in accordance with the Conditions of Contract.

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

This guarantee is valid for a period of ninety (90) days from the original closing date of submission of bids and expires on the ..... Unless it is extended by us or returned to us for cancellation before that date, any demand made by you for payment must be received at this office in writing not later than the above-mentioned expiry date.

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

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

Yours faithfully,

.....
Bank Manager

Annex I – Procedure for Grid Allocation

Grid Connection Study and Estimate of Costs (Quotation)

1. Under this competitive bidding process each bidder is required to present a recent grid connection study issued by Enemalta plc, dated as detailed in Clause 1.3. Bidders must note that this pre-bid grid connection study will only be performed upon receipt of payment of the established fee by Enemalta plc. Requests for a grid connection study and the applicable payment must reach Enemalta plc by the date indicated in Clause 1.3. Any requests received by Enemalta plc after the date indicated in Clause 1.3 will not be considered for this ITB. Bidders must ensure that they receive an acknowledgment from Enemalta plc on submitting their request for the grid study. Requests for grid studies shall be sent to resconsult.em@enemalta.com.mt

2. The pre-bid grid connection study referred to in this paragraph of this Annex will be performed by Enemalta for each bidder separately and taking into account only the individual bidder proposal and any other connected and committed renewable energy installations at the time of the study. Other proposed installations with a capacity between 40kW and 200kW will not be taken into account by Enemalta at this pre-bid stage.

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

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

   After the bidding process is concluded, successful bidders should request an updated grid connection study from Enemalta plc **within seven (7) calendar days** of the award under this ITB. This is necessary to determine and reflect updated conditions and connection costs for connection of the renewable energy installation to the grid. The grid connection study update will only be performed upon receipt of the applicable payment for the updated grid connection study by Enemalta. Enemalta plc will perform the updated studies for the successful bidders in the ranking order resulting from the competitive process, starting with the successful bidder with the highest ranking but taking into consideration all relevant installations proposed as a result of the bidding process and committed/connected installations.

3. **Successful bidders who do not request an updated grid study within the stipulated period (within seven (7) calendar days of the award under this ITB) will lose their ranking order for the purpose of grid connection, and will be considered independently, after all the other successful bidders have been processed and the necessary grid capacity for the connection of their renewable energy installations has been committed.**

4. The results of the updated grid connection study for successful bidders will be valid for a period of one (1) year and Enemalta plc will reserve the grid capacity (up to a maximum of the awarded capacity) for the connection of the renewable energy installation for this period.

5. Grid capacity will be committed permanently when the successful bidder applies and pays the 50% legal deposit for the execution of the necessary works to connect the renewable energy installation to the grid.

6. In order to avoid disruption to the grid connection process of successful bidders, Enemalta will not alter the results of any updated grid connection study/ies, should one or more successful bidders connect a lower capacity renewable energy installation than that awarded through the competitive bidding process.

7. Any dispute, whether contractual or otherwise, which arises in connection with this Annex shall be governed by the Laws of the Republic of Malta.

ANNEX II – AGREED UPON PROCEDURES SECTION B

Agreed Upon procedures to be followed by the Auditor signing the report in Section B of *the Invitation to bid (ITB) for the award of financial support for electricity from installations producing electricity from renewable energy sources with a capacity from 40kW but less than 200kW*

Section B of the *Invitation to bid (ITB) for the award of financial support for electricity from installations producing electricity from renewable energy sources with a capacity from 40kW up to less than 200kW* requires that an auditor certifies that the undertaking making the application is not an "undertaking in difficulty" as defined in Article 2(18) of the Commission Regulation (EU) No 651/2014 of 17 June 2014.

Procedures and Findings

Procedures

The auditor signing the report in Section B must perform, as a minimum, the procedures in relation to the Undertaking defined in Section A as summarised below:

1. To establish whether half of the Company's subscribed share capital has not disappeared as a result of accumulated losses, the auditor must have performed the below:
    - Agreed the accumulated results and subscribed share capital to the Company's underlying books and records and/or the Company's last available financial statements
2. To establish whether the Company is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors, the auditor must have performed the below:
    - Enquired of management and inspected the Malta Business Registry on collective insolvency proceedings
3. To establish whether the Company's book debt to equity ratio has been greater than 7.5 and whether the Company's EBITDA interest coverage ratio has been below 1.0, for the past 2 years, the auditor must have performed:
    - Agreed the debt and equity to the Company's underlying books and records and/or financial statements as at the two most recent financial year ends (where applicable)
    - Re-computed the debt-to-equity ratio
    - Agreed the Profit/(loss) before tax, Depreciation and Finance costs (EBITDA) to the Company's underlying books and records and/or financial statements for the two most recent financial year ends (where applicable)
    - Re-computed the EBITDA interest coverage ratio

Findings

Based on the above, the auditor must have confirmed that:

1. As at the last available financial year end, half the Company's subscribed share capital has not disappeared as a result of accumulated losses.
2. Based on the enquiries and inspections carried out, the Company is not subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.
3. As at the two most recent financial year ends (where applicable), the Company's book debt to equity ratio was not greater than 7.5 and the Company's EBITDA interest coverage ratio was not below 1.0.

The above does not exclude any other further procedure that the auditor may deem appropriate in order to provide the report in Section B.

VOLUME 2 SPECIMEN PERFORMANCE BOND FORM

(LETTERHEAD OF THE REGISTERED FINANCIAL INSTITUTION PROVIDING THE BOND)

Name of Contracting Authority
(Address)

[Date]

Dear Sir,

Our Bond Number ..... for €.....

Account: [Account Holder's Name]

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

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

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

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

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

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

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

Yours Faithfully,

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

CONTRACT AGREEMENT

Contract for Difference for Financial Support for Electricity from Installations Producing Electricity from Renewable Sources

Contract Ref No:

This contract is concluded between:

The Ministry for the Environment, Energy, and Regeneration of the Grand Harbour (MEER)
Office of the Permanent Secretary, 6, Qormi Road, Santa Venera, SVR 1301
Tel: 23316200

e-mail: contracts.meer@gov.mt

which shall hereinafter referred to as "the Contracting Authority", and which shall, for the purposes of this Contract, be taken to refer to any successor at law which may succeed the MEER in the performance of its functions and obligations insofar as the long-term administration of this Contract is concerned, on the one part, and

[Name] (C ####)

Tel:

Mobile:

e-mail:

which shall hereinafter be referred to as "the Contractor",

on the other part,

Whereas the Contracting Authority issued a public Invitation to Bid, via a competitive bidding process, for the support of installations having a capacity of one megawatt or more producing energy from renewable sources;

Whereas the Contractor submitted a proposal for a renewable energy installation together with a bid price, which submission was successful and secured an offer of aid as outlined in the formal Letter of Award dated [insert date of letter] issued to the Contractor, a copy of which is annexed to this Contract;

Whereas the Contracting Authority, by means of this Contract seeks to formalize its offer of support, whereby the Contractor shall receive a fixed price per kWh of electricity up to the annual cap for each year of the guaranteed period of twenty (20) years;

It is hereby agreed as follows:

By means of this Contract for Difference, the Parties seek to formalise the award of financial support in respect of renewable electricity generated by a renewable energy installation which has been approved for this purpose through a competitive bidding process, through the payment of the fixed price per kilowatt hour awarded to the Contractor for electricity generated by the approved installation and sold to the market up to the limit established in this Contract, which award shall be subject to the following terms:

1. Interpretation

1.1 In this Contract, unless the context otherwise requires, all the definitions found in the Applicable Regulations and the Invitation to Bid Document shall apply.

1.2 The following definitions shall also apply:

"Applicable annual cap" means the annual cap calculated on the basis of the approved installation's installed and commissioned capacity, provided that it shall in no case be larger than the annual cap as calculated on the basis of awarded capacity for the approved installation;

"Applicable competitive bidding process" means the Invitation to Bid(ITB) for Support for Electricity from Installations producing Electricity from Renewable Energy Sources with a Capacity from 40kW but less than 200kW in this ITB.

"Applicable Regulations" shall mean the Competitive Bidding Rules for Installations Producing Electricity from Renewable Energy Sources Regulations (S.L.545.39) as applicable at the time of publication of this ITB in the Government Gazette.

"Approved Renewable Energy Installation" or "**Approved installation"** shall mean the renewable energy installation proposed by the Contractor in the applicable competitive bidding process, having those characteristics laid down in Clause 3.1 of this Contract, which has received an offer to be awarded support to be governed by this Contract;

"Awarded bid price per kWh" means the bid price as laid down in Clause 3.1.4;

"Awarded Capacity" means the approved capacity allocated to the approved installation in the applicable competitive bidding process and shall be the capacity laid down in Clause 3.1.5;

"Invitation To Bid (ITB) Document" means the document regulating the applicable competitive bidding process;

"Installed and commissioned capacity" means the capacity of the approved installation as certified following its complete installation and commissioning, provided that:

(i) where this is larger than the awarded capacity, this shall not result in an increase the annual cap; and

(ii) where this is smaller than the awarded capacity, the provisions of Clause 3.2 to 3.8 shall apply.

1.3 Headings and titles used to structure this document shall not be considered part thereof, and shall not be taken into consideration in the interpretation of this Contract.

1.4 Where the context so requires, words importing the singular shall be deemed to include the plural, and words importing the masculine shall be deemed to include the feminine, and vice-versa.

2. Documentation

2.1 The Contractor hereby undertakes to execute any and all obligations related to the approved renewable energy installation and its construction, commissioning and operation as they arise out of this Contract, provided that in the execution of the Contract, the Contractor shall also be bound by any and all relevant provisions of any applicable laws and regulations.

2.2 This Contract is made up of the following documents, which shall be construed as integral parts of this Contract, in the following order of precedence:

(a) this Contract Agreement including the formal Letter of Award;

(b) Invitation to Bid document *(terms and conditions including any clarification notes thereto issued by the Contracting Authority) and the Applicable Regulations*;

(c) the Technical Offer (*including any clarifications made during evaluation)*;

(d) the Bid Form *(after arithmetical corrections/breakdown)*;

(e) the State Aid Declaration; and

(f) Any Other Documents *(related to the subject of the contract)*.

2.3 Any Clarifications, Rectifications and Addenda shall have the order of precedence of the document according to the article they are modifying.

2.4 Any reference to 'contract' or 'contract for difference' in any of the above-mentioned documents shall be construed as being a reference to this Contract and the breach of any of the terms, or the failure to fulfil any obligations, which result from the provisions thereof shall also constitute a breach of this Contract.

3. The Approved Renewable Energy Installation

3.1 The financial support awarded through the competitive bidding process and governed by means of this Contract shall be for electricity exported from a renewable energy installation which meets the characteristics and specifications laid down hereunder:

3.1.1	Renewable Technology Proposed in Capacity and Financial Bid Form and the associated Full Load Hours (*Full load hours as in clause 2.1 of Volume 1 of the ITB document*)	
3.1.2	Location/Address of Installation Site	
3.1.3	Awarded Bid Price	
3.1.4	Awarded Capacity	
3.1.5	Minimum percentage of Awarded Capacity to be installed and commissioned to retain validity of award	
3.1.6	Fifty percent of Awarded Capacity	
3.1.7	Eighty percent of Awarded Capacity	
3.1.8	Maximum annual Cap (subject to downward revision based on installed and commissioned capacity)	

3.2 An installed and commissioned capacity which is either
(i) less than or equal to fifty percent (50%) of the awarded capacity; or
(ii) less than forty kilowatts (40kW)
shall result in the termination of this Contract, the withdrawal of the award for support and the complete forfeiture of the performance bond referred to in Clauses 5.1 and 7.

3.3 Where the installed and commissioned capacity is smaller than the awarded capacity but is at least eighty percent (80%) of it, provided that it is not inferior to forty kilowatts (40kW), the award for support shall still be valid, subject to the applicable annual cap being recalculated.

3.4 Where the installed and commissioned capacity is greater than fifty percent (50%) but less than eighty percent (80%) of the awarded capacity, provided that it is not inferior to forty kilowatts (40kW), the award for support shall still be valid, subject to the applicable annual cap being recalculated and to the partial forfeiture of the performance bond.

3.5 The applicable annual cap referred to in clauses 3.3 and 3.4 shall be calculated as:

(Commissioned capacity in kW x Applicable Full Load Hours)

3.6 The partial forfeiture of the performance bond referred to in clause 3.4 shall be calculated as follows:

$$Forfeited\ Performance\ Bond\ (\%) = \frac{0.8 - \left(\frac{Installed\ Capacity}{Bid\ Capacity}\right)}{0.3}\ x\ 100$$

4. Execution of this Contract

4.1 The obligations arising from this Contract for Difference shall be executed in two phases, these being the construction and commissioning phase, hereinafter referred to as Phase 1, having a duration of eighteen (18) months, which may, at the Contracting Authority's discretion, be extended to twenty four (24) months upon a timely request to this effect in writing, followed by the twenty (20)-year operational period, during which, without prejudice to any of the provisions of this Contract, the Contractor shall receive payment of the fixed awarded price per kilowatt hour, as limited by the applicable annual cap, through a payment agent appointed by the Contracting Authority.

4.2 The dates and timelines applicable to this Contract are as follows:

Phase 1		
4.2.1	Start of Phase 1: Issuing of Letter of Award	
4.2.2	Deadline by which the Contractor shall submit this signed Contract and the Performance Bond to the Contracting Authority	Seven(7) days from the date of the formal letter of award
4.2.3	Deadline by which the Contractor shall request an updated grid study and quote from the Distribution System Operator.	Seven(7) days from the date of the formal letter of award (or as alternatively provided in the ITB)]
4.2.4	Deadline for the Contractor to terminate the Contract if the updated grid connection costs applicable to the approved installation quoted by the Distribution System Operator after the award offer exceed those submitted with the Contractor's proposal for the same installation by at least twenty-five percent (25%)	Twelve(12) weeks from the date of the formal letter of award
4.2.5	Deadline by which the first progress schedule shall reach the Contracting Authority*	Three(3) months from the date of the formal letter of award
4.2.6	Deadline by which a request in writing for an extension of Phase 1 shall reach the Contracting Authority	Seventeen (17) months from the date of the formal letter of award
4.2.7	Deadline by which the Contracting Authority shall respond to a request for an extension	Fifteen(15) working days from the date on which the request is received

4.2.8	Deadline by which the Contractor shall fully construct, install and commission the approved installation described in clause 3.1 and submit an application to the Distribution System Operator to connect same installation to the distribution system (if no extension is requested and,or granted)	Eighteen (18)) months from date of the formal letter of award
4.2.9	Latest possible deadline by which the Contractor shall fully construct, install and commission the approved installation described in clause 3.1 and submit an application to the Distribution System Operator to connect same installation to the distribution system if the maximum allowable extension of twelve (12) months is requested, granted and fully availed of**	Twenty-four (24) months from date of formal letter of award
4.2.10	Value of Performance Bond applicable to Phase 1	€10/kW
4.2.11	Deadline for release of Performance Bond***	Thirty (30) days from the submission of the application to the distribution system operator to connect the installation to the distribution network.
* An updated version of the progress schedule shall be due every three (3) months for the duration of Phase 1. ** Subject to a zero point five euro cents per kilowatt hour (€0.005/kWh) reduction of the awarded bid price for the duration of the guaranteed period. *** In part or in full, in line with the provisions of clause 3		
Phase 2		
4.2.12	Start of Phase 2:	Date upon which the metering equipment is installed by the distribution system operator
4.2.13	Duration of Phase 2:.	Twenty (20) years reckoned from the date upon which the metering equipment is installed

(NOTE: 4.3 to be deleted if Contractor is not a JV/Consortium)

4.3 All members of the joint venture/Consortium shall be jointly and severally bound to fulfil the terms of this Contract, provided that the person designated by the joint venture/consortium to act on its behalf for the purpose of the submission of the proposal during the competitive bidding process and this Contract shall have the authority to bind the joint venture/Consortium.

5. Obligations arising during Phase 1 – Construction, Installation and Commissioning

5.1 The Contractor shall, within the timeframe indicated in Clause 4.2.2, sign and date this Contract and submit it to the Contracting Authority together with the original Performance Bond document, provided that failure to do so shall result in the withdrawal of the award offer,

without prejudice to the Contracting Authority's right to claim compensation or pursue any other remedy in respect of such failure, and shall, furthermore, within the timeframe indicated in Clause 4.2.3 request an updated grid study and quote from the distribution system operator.

5.2 The Contractor hereby warrants that a workable and practicable plan is in place for the entirety of Phase 1, in particular for obtaining all necessary licenses, permits and authorisations required to construct, install, commission and operate the approved renewable energy installation, and that there are no known reasons as a result of which this obligation cannot be complied with, and furthermore undertakes to comply with all the conditions established in same licenses, permits and authorisations, once obtained, for the duration of this Contract.

5.3 The formal letter of award and this contract as signed shall not be, nor shall they be deemed to constitute a valid replacement of, or a right or an automatic entitlement to, any or all licenses, permits and authorisations which are or may be required for the construction or commissioning of the installation, its connection to the grid, its operation and the exportation of electricity therefrom, which licenses, permits and authorisations shall be issued at the discretion of the entities or authorities responsible therefor, nor shall the formal letter of award or this signed contract be considered to constitute an obligation on said entities or authorities to issue, or to expedite the due process required for the issuing of, such licenses, permits or authorisation.

5.4 By not later than three (3) months from the date of the letter of award, the Contractor shall submit a schedule for the construction and commissioning of the installation described in Clause 3.1 to the Contracting Authority, which schedule shall contain an indication of projected timeframes for:
(i) obtaining all necessary licenses, permits and authorisations;
(ii) commencement of the construction work;
(iii) connection of the installation to the grid.

5.5 The Contractor shall submit an updated version of the schedule described in Clause 5.4 to the Contracting Authority every three (3) months.

5.6 Within eighteen (18) months from the date of the formal Letter of Award, the Contractor shall:

(i) fully commission the approved installation described in Clause 3.1; and
(ii) submit an application to the distribution system operator to connect the installation to the distribution system.

5.7 Should the rate of progress indicated in the progress schedules submitted in line with clause 5.5 indicate that Phase 1 cannot be completed within the eighteen (18) month timeframe, the Contractor may, by not later than one (1) month before this deadline, submit a one-time request in writing for an extension, which may be granted at the Contracting Authority's discretion.

5.8 The Contracting Authority shall immediately and in writing acknowledge any request for an extension submitted in line with the provisions of Clause 5.7 and shall give a decision thereon

within the deadline established in Clause 4.2.7 through the issuing of a letter to this effect, which letter shall be deemed to constitute an integral part of this Contract.

5.9 If granted, an extension requested in line with the provisions of Clause 5.7 shall in no case be of a duration greater than six (6) months and, if availed of, shall result in the awarded bid price being reduced by zero point five euro cents per kilowatt hour (€0.005/kWh) for the duration of the guaranteed period.

5.10 Without prejudice to any other licenses, permits and authorisations, including planning and construction permits which may be required to construct, install and operate the renewable energy installation described in Clause 3.1, the Contractor shall obtain from the Regulator for Energy and Water Services (REWS):

(i) an authorisation for the construction of the approved installation;

(ii) a license to generate electricity; and

(iii) any necessary documentation which may be required from the REWS for the submission of an application to the distribution system operator to connect the approved installation to the distribution system.

5.11 The Contracting Authority reserves the right to monitor the progress of the construction, installation, and commissioning of the approved installation which is being awarded support through this Contract for Difference and the Contractor may be required to submit documentation related to the approved installation for this purpose, including presentation of evidence related to the procurement of the relative material.

5.12 Failure to comply with the obligations arising out of clause 5.6 within the indicated timeframe, or the timeframe as extended, as applicable, shall result in the termination of this Contract, the withdrawal of the award for support and the complete forfeiture of the performance bond referred to in Clauses 5.1 and 7, provided that the award for support may still be valid where non-compliance is partial and limited to point (i) of clause 5.6, resulting in the installed and commissioned capacity being inferior to the awarded capacity, in which case the provisions of Clauses 3.2 to 3.8 shall apply.

6. Obligations arising during Phase 2 – Operation of the Installation

6.1 The Contractor shall operate the approved installation for the duration of the guaranteed period of twenty (20) years, for which period the Contracting Authority guarantees the payment of the fixed awarded bid price as limited by the applicable annual cap.

6.2 The Contractor shall sell the electricity generated by the approved installation directly to the market at arm's length conditions, provided that until a liquid wholesale electricity market is established in Malta, enabling a direct sale of electricity into the market, the distribution system operator shall offer to purchase any electricity produced and exported to the grid by the approved installation, and any electricity thus sold and purchased shall be deemed to have been sold directly to the market for the purposes of this Contract.

6.3 The fixed price per kWh generated by the approved installation and sold directly to the market, or in the absence thereof, to the distribution system operator, as the case may be, shall be that indicated in Clause 3.1.4, and shall be payable for the actual number of units generated by the approved installation, up to the applicable annual cap, subject to any applicable reduction thereto in line with Clause 5.9.

6.4 The fixed price per kWh shall become payable as from the date of installation of the metering equipment by the distribution system operator, and shall, without prejudice to the provisions of Clause 5.9 and without prejudice to the withholding of the payment of any premium in line with Clauses 6.5 or in line with the provisions of the Applicable Regulations, be guaranteed for a period of twenty (20) years.

6.5 The maximum amount of State Aid per project that may be received by the Contractor under this Contract shall not exceed thirty (30) Million Euro over the total duration of 20 years of this Contract. For the avoidance of any doubt the "State Aid" amount should be the difference between the bid price and the proxy of the market price multiplied with the quantity of electricity sold into the grid. The thirty (30) Million Euro state aid threshold shall include any other aid received with respect to the same project benefitting from aid under this contract.

No aid shall be paid should the threshold of the EUR 30 million be reached during the duration of 20 years of this contract.

6.6 The payment of the fixed price per kWh shall be settled through a payment agent appointed by the Contracting Authority.

6.7 The fixed price per kWh payable shall be the awarded price per kWh established during the competitive bidding process irrespective of market price volatility and conditions, for the entire duration of the guaranteed period.

6.8 The Contractor shall bear the standard balancing responsibility applicable to the operation of the approved installation in line with the relative regulations and legislation, provided that until a wholesale liquid intra-day electricity market is established, this obligation shall remain suspended.

6.9 Any units of electricity generated by the approved installation and exported to the grid which are in excess of the applicable annual cap established in this Contract, or generated and exported prior to the commencement of, or following the lapse of the guaranteed period, shall be deemed to be outside of the scope of this Contract and shall not be eligible for any payment or support under its terms, provided that nothing in this Contract precludes that such units of electricity generated and exported should be subject to market conditions applicable at the time of their generation and export.

6.10 The Contracting Authority shall immediately terminate this Contract if the approved installation generates less than 800kWh per kW of licensed capacity for any three (3) years in a row.

7. The Performance Bond

7.1 The Performance Bond shall be in the format required by the ITB document, and shall be provided in the form of a bank guarantee denominated in Euro.

7.2 The Contractor shall ensure that the Performance Bond shall continue to remain valid for a period of nineteen (19) months commencing from the date of the formal letter of award, provided that where an extension has been requested in line with Clause 5.7, and has been granted, the Contractor shall ensure that the validity of the Performance Bond is extended by the same number of months as the extension granted plus one month.

7.3 Without prejudice to any other liabilities, the Contractor shall become liable for and pay to the Contracting Authority a financial penalty equal to the value of the performance bond in the event of failure to submit a valid performance bond during the timeframes referred to in clause 7.2.

7.4 In the event that the Contractor fails to submit a valid Performance Bond, in terms of clauses 7.1 and 7.2, the Contractor, shall be barred from participating in another competitive bidding procedure for the award of financial support with respect to renewable energy sources installations for a period of two years to be reckoned from the due date of completion of the project in terms of clause 5.6 or clause 5.7 of the contract, as the case may be.

8. Force Majeure

8.1 Neither party shall be considered to be in breach of its obligations under this Contract if the performance of such obligations is prevented by any circumstances of force majeure which arise after the date of signature of the contract by both parties.

8.2 A party affected by an event of force majeure shall, without delay, take all reasonable measures to overcome its inability to fulfil its obligations.

8.3 The Contractor shall not be liable for liquidated damages or termination for default if, and to the extent that, its delay in performance or other failure to perform its obligations under the contract is the result of an event of force majeure.

8.4 The Contracting Authority shall not be liable to payment of interest on delayed payments, for non-performance or for termination by the Contractor for default, if, and to the extent that, the Contracting Authority's delay or other failure to perform its obligations is the result of force majeure.

8.5 If either party considers that any circumstances of force majeure have occurred which may affect performance of its obligations it shall notify the other party immediately giving details of the nature, the probable duration and likely effect of the circumstances.

8.6 A verified event of force majeure may be invoked by the Contractor to request a suspension of the time periods indicated in Clauses 5.6 and 5.9, which request may be granted at the Contracting Authority’s discretion.

8.7 If circumstances of force majeure have occurred and persist for a period of one hundred and eighty (180) days then, notwithstanding any suspension which the Contractor may by reason thereof have been granted, in line with Clause 8.6, either party shall be entitled to serve upon the other thirty (30) days' notice to terminate the contract.

8.8 If at the expiry of the period of thirty (30) days the situation of *force majeure* persists, the contract shall be terminated and, in consequence thereof, the parties shall be released from further performance of the contract.

9. Communication

9.1 Communication between the parties shall be writing, provided that communication by email shall suffice other than for a request for an extension in line with Clause 5.6 and for the communications required under Clause 8.6, 8.7 and 13.4 or unless otherwise specified in the provisions of this Contract.

9.2 In any circumstances where a deadline is applicable to the receipt of a written communication (including Emails), the sending party shall ask for an acknowledgement of receipt of its communication, and a sending party cannot claim a communication has been sent unless such acknowledgement has been requested and received.

10. Conduct, Applicable Laws and Regulations

10.1 The Contractor shall refrain from engaging in any activity which conflicts with its obligations towards the Contracting Authority under this Contract and shall furthermore, where appropriate, make such obligations clear to third parties.

10.2 The Contractor shall respect and abide by all laws and regulations in force in Malta.

10.3 The Contractor shall indemnify the Contracting Authority against any claims and proceedings arising from any infringement by the Contractor and its employees of such laws and regulations.

10.4 The Contractor shall perform the requirements under this Contract with due care, efficiency, diligence and in accordance with the best professional practice.

11. Inspection, Audit and Information

11. 1 The Contractor shall allow all auditing bodies identified by the Contracting Authority to carry out checks and verifications in accordance with the procedures set out in respective legislation.

11.2 The Contractor shall give appropriate access to staff or agents of auditing bodies to any relevant site.

11.3 Access given to the agents of auditing bodies shall be on the basis of confidentiality with respect to third parties, without prejudice to the obligations of public law to which they are subject.

11.4 The Contractor shall furnish any person authorised by the Contracting Authority, the European Commission or the European Court of Auditors with such information relating to the approved installation as they may at any time request.

12. Breach of Contract and Termination

Suspension

12.1 The Contracting Authority is entitled to suspend the payment of the premium in line with the provisions of this Contract.

12.2 Where the competitive bidding process, or the execution of the Contract is found to have been vitiated by substantial errors, irregularities or by fraud, the Contracting Authority shall suspend the Contract.

12.3 Where such errors, irregularities or fraud are attributable to the Contractor, the Contracting Authority may refuse to make payments and may recover amounts already paid and any applicable interest, as well as terminate the contract.

12.4 The suspension of the contract is intended to allow the Contracting Authority to verify whether presumed substantial errors or irregularities or fraud have actually occurred, and if these are not confirmed, the execution of this contract shall resume as soon as possible.

Termination

12.5 In addition to any grounds for termination established in other provisions of this Contract, the Contracting Authority may terminate the contract after giving seven (7) days' notice to the Contractor in any of the following cases:

(i) the Contractor fails substantially to carry out its obligations under the contract;

(ii) the Contractor fails to comply with timeframes, administrative requirements, and reporting obligations established by this contract and relevant legislation;

(iii) The Contractor assigns the Contract to a third party without the authorisation of the Contracting Authority and/or other relevant authorities and without fulfilling the obligations in this regard as they arise from the Applicable Regulations;

12.6 The Contractor may terminate this Contract within twelve (12) weeks from the date of the letter of award if the grid connection costs as quoted by the Distribution System Operator after the award date exceed those submitted during the applicable competitive bidding process for the same approved installation by at least twenty-five percent. (25%).

12.7 Termination of this Contract by any party shall be without prejudice to any other rights of either party acquired under the contract.

13. Governing law and Settlement of Disputes

13.1 This Contract is governed by Maltese Law.

13.2 Should a dispute arise, the parties shall notify each other in writing of their positions on the dispute, as well as of any solution which they envisage possible, with a view to a speedy amicable settlement.

13.3 Each party shall respond to a request for amicable settlement within thirty (30) days of such request, provided that the period to reach such amicable settlement shall be one hundred and twenty (120) days from the date of such request.

13.4 Should an attempt at amicable settlement as described in Clause 13.3 prove unsuccessful, either party shall be free to proceed to the next stage resolving the dispute by notifying the other party.

13.5 In the absence of an amicable settlement, any dispute shall be submitted either to the Law Courts of Malta or, should both parties agree thereto, the matter may be referred the Malta Arbitration Centre.

14. Freedom of Information

14.1 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).

14.2 The Contracting Authority, prior to disclosure of any information to a third party in relation to any provision of this contract, which has 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, provided that such consultation shall in no way prejudice the obligations of the Contracting Authority in terms of the Act.