TENDER FOR THE SUPPLY AND INSTALLATION OF WATERPROOFING MEMBRANE AT VARIOUS PRIMARY AND SECONDARY SCHOOLS IN GOZO

IMPORTANT NOTE:

- Participation Fee is Free
- No Bid Bond is requested for this tender
- Tenderers are bound by their offers as per the period detailed in clause 19.1 of the tender document.
- Clarifications issued after the publication of tender will be uploaded on the FTS website: www.fts.com.mt under the respective tender number.
- Submission of Financial Offer:- Tenderers must quote all components of the price inclusive of taxes/charges, customs and import duties and any discounts BUT excluding VAT. VAT shall be paid in accordance with the current VAT regulations.

FOUNDATION FOR TOMORROW'S SCHOOLS
SIR ADRIAN DINGLI STREET,
PEMBROKE
PBK 1940

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2015
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PART ONE, SECTION 1 – INSTRUCTIONS TO TENDERERS

A. GENERAL PART

1. General Instructions

1.1 There is no participation fee for this tender.

A prospective bidder shall download and print the tender document from the FTS website: www.fts.com.mt under the heading “Tenders” and the respective tender number.

When submitting an offer, bidders are to abide by the respective articles which regulate the tender submission.

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

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

The Evaluation Committee shall, after having obtained approval by the Departmental Contracts Committee, request rectifications in respect of incomplete/non-submitted information pertinent to the documentation as outlined in Article 16 (Content of Tender) of these Instructions to Tenderers. Such rectification/s must be submitted within five (5) working days from notification, and will be subject to a non-refundable administrative penalty of €50: failure to comply shall result in the tender offer not being considered any further.

No rectification shall be allowed in respect of the documentation as outlined in Article 16 (Content of Tender) of these Instructions to Tenderers.

1.2 This is a call for tenders for supply and installation of waterproofing membrane at various primary and secondary schools in Gozo.

1.3 This is a unit-price (Bill of Quantities) contract.

1.4 The tenderer will bear all costs associated with the preparation and submission of the tender. The Contracting Authority will in no case be responsible or liable for such costs, whatever the conduct or outcome of the procedure.

1.5 The Contracting Authority retains ownership of all tenders received under this tender procedure. Consequently, tenderers have no right to have their tenders returned to them.

2. Timetable

<table>
<thead>
<tr>
<th></th>
<th>DATE</th>
<th>TIME *</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clarification Meeting/Site Visit (Refer to Clauses 9.2)</td>
<td>Not Applicable</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Deadline for request for any additional information from the Contracting Authority</td>
<td>6th January 2016</td>
<td>16:30</td>
</tr>
<tr>
<td>Last date on which additional information are issued by the Contracting Authority</td>
<td>8th January 2016</td>
<td>17:00</td>
</tr>
<tr>
<td>Deadline for submission of tenders / Tender Opening Session (unless otherwise modified in terms of Clause 11.3)</td>
<td>15th January 2016</td>
<td>10:00am</td>
</tr>
</tbody>
</table>

* Malta Time
3. Lots

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

4. Financing

4.1 The project is financed by the Foundation for Tomorrow’s Schools.

4.2 The beneficiary of the financing is Foundation for Tomorrow’s Schools.

5. Eligibility

5.1 Participation in tendering is open on equal terms to all natural and legal persons of the Member States of the European Union, the beneficiary country, any other country in accordance with Regulation 76 of the Public Procurement Regulations.

5.2 Natural persons, companies or undertakings who fall under any of the conditions set out in Regulation 50 of the Public Procurement Regulations, 2010 (Legal Notice 296 of 2010) may be excluded from participation in and the award of contracts. Tenderers or candidates who have been guilty of making false declarations will also incur financial penalties representing 10% of the total value of the contract being awarded.

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

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

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

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

6. Selection Criteria

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

6.1.1 No evidence of economic and financial standing is required.

6.1.2 Information about the tenderer’s technical capacity.

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

A) A list of “Key Experts” being proposed for the execution of the contract. The Evaluation Committee reserves the right to request tenderers to substantiate their claims in respect to the staff proposed by requesting CVs of Key Experts during the evaluation stage [as per Part 5, Annex 3].

Provide data concerning key experts that will be utilised by the bidder to carry out the works as per Form “Key Experts” [as per Part 5, Annex 3]: (Note 1)

Key Experts

The list of Key Experts must include at least:

a) A Site manager / Supervisor

B) Provide data concerning subcontractors and the percentage of works to be subcontracted as per Form marked Sub-contracting:

The maximum amount of sub-contracting must not exceed 49% of the total contract value.

The main contractor must have the ability to carry out at least 51% of the contract works by his own means.

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

7. Only One Tender Per Tenderer

7.1 Submission or participation by a tenderer in more than one tender for a contract will result in the disqualification of all those tenders for that contract in which the party is involved.

7.2 A company may not tender for a given contract both individually and as a partner in a joint venture/consortium.

7.3 A company may not tender for a given contract both individually/partner in a joint venture/consortium, and at the same time be nominated as a sub-contractor by any another tenderer, or joint venture/consortium.

7.4 A company may act as a sub-contractor for any number of tenderers, and joint ventures/consortia, provided that it does not participate individually or as part of a joint venture/consortium, and that the nominations do not lead to a conflict of interest, collusion, or improper practice.

8. Tender Expenses

8.1 The tenderer will bear all costs associated with the preparation and submission of the tender.

8.2 The Contracting Authority will neither be responsible for, nor cover, any expenses or losses incurred by the tenderer through site visits and inspections or any other aspect of his tender.
9. Site Inspection

9.1 A clarification meeting and/or a site visit will not be held by the Contracting Authority.

B. TENDER DOCUMENTS

10. Content of Tender Document

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

Part 1
- Instructions to Tenderers
- Tender Form
- List of Literature / Samples
- Glossary

Part 2
- Conditions of Contract
- General Conditions

Part 3
- Technical Specifications

Part 4
- Bill of Quantities

Part 5
- Annexes

Part 6
- Drawings (If any)

10.2 Tenderers bear sole liability for examining with appropriate care the tender documents, including those design documents available for inspection, and any clarification notes to the tender documents issued during the tendering period, and for obtaining reliable information with respect to conditions and obligations that may in any way affect the amount or nature of the tender or the execution of the works. In the event that the tenderer is successful, no claim for alteration of the tender amount will be entertained on the grounds of errors or omissions in the obligations of the tenderer described above.

10.3 The tenderer must provide all documents required by the provisions of the tender document. All such documents, without exception, must comply strictly with these conditions and provisions and contain no alterations made by the tenderer.

11. Explanations/Clarification Notes Concerning Tender Documents

11.1 Tenderers may submit questions in writing to the Contracting Authority through:
- sending an email to info.fts@gov.mt
- through http://www.fts.com.mt - Contact us
- fax number +356 21387660

up to the date and time mentioned in the timetable under article 2, PART ONE, SECTION 1 – INSTRUCTIONS TO TENDERERS.

The Contracting Authority must reply to all tenderers’ questions, and amend the tender documents by publishing clarification notes, up to the date and time mentioned in the timetable under article 2, PART ONE, SECTION 1 – INSTRUCTIONS TO TENDERERS.

11.2 Any alterations to the tender document or clarifications will be published as a clarification note on the website of the Foundation for Tomorrow’s Schools (www.fts.com.mt) under the heading “Tenders” and the respective tender number.

Clarification notes will constitute an integral part of the tender documentation, and it is the responsibility of tenderers to visit the FTS’s website and be aware of the latest information published online prior to submitting their Tender.

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

12. Labour Law

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

13. Law

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

C. TENDER PREPARATION

14. Language of Tenders

14.1 The tender and all correspondence and documents related to the tender exchanged by the tenderer and the Contracting Authority must be written in English.

14.2 Supporting documents and printed literature furnished by the tenderer may be in another language, provided they are accompanied by an accurate translation into English. For the purposes of interpretation of the tender, the English language will prevail.

15. Presentation of Tenders

15.1 Tenders must satisfy the following conditions:

(a) The tender documents appearing on FTS webpage (www.fts.com.mt) are the original tender document published by the FTS. Prospective bidders are to download and print the tender document from this webpage.

The tender must be submitted on the original downloaded document duly signed in blue ink. (No copies are to be submitted).

Downloaded original documents are to be used and any instance of alteration (re-typing) or modification of tender documents used in the submission of a tender will result in disqualification.

(b) All documentation is/are to be placed in a sealed envelope/package so that the bid can be identified as one tender submission.

(c) All tenders must be received by date and time indicated in the timetable at Clause 2 and deposited in the tender box at the offices of the Foundation for Tomorrow’s Schools, Sir Adrian Dingli Street, Pembroke PBK1940, Malta.

(d) The package, as per (b) above, must bear only:

(i) the above address (vide c);
(ii) the reference of the invitation to tender concerned.

16. Content of Tender (Single-Envelope System)

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

(a) Bid-bond - Not required. (Note 1)
(b) General/Administrative Information

(i) Statement on Conditions of Employment (Part 5, Annex 1) *(Note 2)*
(ii) Occupational Health & Safety Declaration Waiver & Indemnity (Part 5, Annex 2) *(Note 2)*
(iii) Key Expert Declaration Form (Part 5, Annex 10) *(Note 2)*
(iv) Data on Joint Venture/Consortium [Part 5, Annex 8] (Where applicable) *(Note 2)*

Selection Criteria

(c) Financial and Economic Standing

No evidence is required *(Note 2)*

(d) Technical Capacity

(i) Key Experts (Part 5, Annex 3) *(Note 2)*
(ii) Subcontractors as per Form marked Sub-contracting (Part 5, Annex 11) *(Note 2)*

(e) Technical Specifications

(i) Literature as per the Form marked Literature (Part 1, Section 3) *(Note 2)*
(ii) Membrane Installer Guarantee (Part 5, Annex 12) *(Note 2)*
(iii) Tenderer’s Technical Offer in response to specifications (Part 3, Sect. 2) *(Note 3)*
(iv) Samples as listed in the table at Section 3 - Technical Specifications *(Note 3)*
(v) Works Programme (Part 5, Annex 4) *(Note 3)* - Not Applicable

(f) Financial Offer/Bill of Quantities

(i) The Tender Form in accordance with the form provided in Part 1, Section 2; a separate Tender Form is to be submitted for each option tendered, each form clearly marked ‘Option 1’, ‘Option 2’ etc. *(Note 3)*, and
(ii) A financial bid calculated on a basis of Delivered Duty Paid (DDP) 2010 for the works tendered including the breakdown of the overall price, in the form provided in Part 4 (Bill of Quantities) *(Note 3)*

Tenderers must indicate where the above documentation is to be found in their offer by using an index. All documentation is to be securely bound or filed. Tenderers are NOT required NOR expected to submit, with their offer, any components of the tender document except those specifically mentioned in Clause 16.

Notes to Clause 16.1:

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

17. Tender Prices

17.1 The tenderer must provide a breakdown of the overall price in Euro (€).
Before submitting their tender, tenderers are to ensure its correctness and completeness and to have taken account of all that is required for the full and proper performance of the contract, and to have included all costs in their rates and prices.

17.2 Tenderers must quote all components of the price inclusive of taxes / charges, customs and import duties and any discounts but exclusive of VAT. VAT shall be paid in accordance with the applicable VAT Regulations.

17.3 The prices for the contract must include all of the works to be provided. The prices quoted are fixed and not subject to revision or escalation in costs, except for revision of prices due to Cost of
Living Adjustment (COLA) and any other increases determined by Government in respect to its policies or as otherwise provided for in the Special Conditions.

17.4 Different options are to be clearly identifiable in the technical and financial submission; a separate Tender Form (as per Part 1, Section 2) marked ‘Option 1’, ‘Option 2’ etc. for each individual option clearly outlining the price of the relative option is to be submitted.

18. Currencies of Tender and Payments

18.1 The currency of the tender is the Euro (€). All sums in the breakdown of the overall price, in the questionnaire and in other documents must be expressed in Euro (€), with the possible exception of originals of bank and annual financial statements.

18.2 Payments will be made upon certification of works by the Contracting Authority, based on the invoice issued by the Contractor, in accordance with the timeframes, terms and conditions of the contract.

18.3 All correspondence relating to payments, including invoices and interim and final statements must be submitted as outlined in the contract.

19. Period of Validity of Tenders

19.1 Tenders must remain valid for a period of 90 days after the deadline for submission of tenders indicated in the contract notice, the tender document or as modified in accordance with Clauses 11.3 and/or 24. Any tenderer who quotes a shorter validity period will be rejected.

19.2 In exceptional circumstances the Contracting Authority may request that tenderers extend the validity of tenders for a specific period. Such requests and the responses to them must be made in writing. A tenderer may refuse to comply with such a request without forfeiting his tender guarantee (Bid Bond). However, his tender will no longer be considered for award. If the tenderer decides to accede to the extension, he may not modify his tender. He is, however, bound to extend the validity of his tender guarantee for the revised period of validity of the tender.

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

20. Tender Guarantee (Bid Bond)

20.1 No tender guarantee (bid bond) is required.

21. Variant Solutions

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

22. Preparation and Signing of Tenders

22.1 All tenders must be submitted in one original, clearly marked “original” including all other requested documentation. Tenders must comprise the documents specified in Clause 16 above.

22.2 The tenderer’s entries must be typed in, or handwritten in indelible ink. Any pages on which entries or corrections to his submission have been made must be initialled by the person or persons signing the tender. All pages must be numbered consecutively by hand, machine or in any other way acceptable to the Contracting Authority.

22.3 The tender must contain no changes or alterations (refer also to article 15.1 a above), other than those made in accordance with instructions issued by the Contracting Authority (issued as clarification notes) or necessitated by errors on the part of the tenderer. In the latter case,
SUPPLY AND INSTALLATION OF WATERPROOFING MEMBRANE AT VARIOUS PRIMARY AND SECONDARY SCHOOLS IN GOZO

22.4 The tender will be rejected if it contains any alteration / tampering (refer also to article 15.1 a above), addition or deletion to the tender documents not specified in a clarification note issued by the Contracting Authority.

D. SUBMISSION OF TENDERS

23. Sealing and Marking of Tenders

23.1 The tenders must be submitted in English and deposited in the Department’s tender box before the deadline specified in Clause 2 or as otherwise specified in accordance with Clause 11.1 and/or 24.1.

They must be submitted to:

Foundation for Tomorrow’s Schools
Sir Adrian Dingli Street,
Pembroke, PBK 1940
Malta

Tenders submitted by any other means will not be considered.

23.2 Tenderers must seal the original as outlined in Clause 15.

23.3 If the outer envelope is not sealed and marked as required in Sub clause 15.1 (including the correct FTS tender reference number), the Contracting Authority will assume no responsibility for the misplacement or premature opening of the tender.

23.4 Any variant proposal/s must be submitted in a separate, sealed inner envelope, clearly marked "variant".

24. Extension of Deadline for Submission of Tenders

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

25. Late Tenders

25.1 All tenders received after the deadline for submission specified in the contract notice or these instructions will be kept by the Contracting Authority. The associated guarantees will be returned to the tenderers.

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

26. Alterations and Withdrawal of Tenders

26.1 Tenderers may alter or withdraw their tenders by written notification prior to the above deadline. No tender may be altered after the deadline for submission.

26.2 Any notification of alteration or withdrawal must be prepared, sealed, marked and submitted in accordance with Clause 23, and the envelope must also be marked with "alteration" or "withdrawal".

26.3 The withdrawal of a tender in the period between the deadline for submission and the date of expiry of the validity of the tender will result in forfeiture of the tender guarantee provided for in Clause 20.
E. OPENING AND EVALUATION OF OFFERS

27. Opening of Tenders

27.1 Tenders will be opened in public session on the date and time indicated in the timetable at Clause 2 (or as otherwise specified in accordance with Clause 11.1 and/or 24.1) at the Foundation for Tomorrow’s Schools, Sir Adrian Dingli Street, Pembroke, PBK 1940, Malta. A ‘Schedule of Tenders’ will be published on the notice board at the FTS offices and shall also be available to view on the Foundation’s website, www.fts.com.mt, under the respective tender number.

27.2 At the tender opening, the tenderers’ names, the tender prices, variants, written notification of alterations and withdrawals, the presence of the requisite tender guarantee and any other information the Contracting Authority may consider appropriate will be published.

27.3 Envelopes marked “withdrawal” will be read out first and returned to the tenderer.

27.4 Reductions or alterations to tender prices made by tenderers after submission will not be taken into consideration during the analysis and evaluation of tenders.

28. Secrecy of the Procedure

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

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

28.3 Any attempt by a tenderer to approach any member of the Evaluation Committee/Contracting Authority directly during the evaluation period will be considered legitimate grounds for disqualifying his tender.

29. Clarification of Tenders

29.1 When checking and comparing tenders, the evaluation committee may, after obtaining approval from the Departmental Contracts Committee, ask a tenderer to clarify any aspect of his tender.

29.2 Such requests and the responses to them must be made by e-mail or fax. They may in no circumstances alter or try to change the price or content of the tender, except to correct arithmetical errors discovered by the evaluation committee when analysing tenders, in accordance with Clause 31.

30. Tender Evaluation Process

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

30.2 Part 1: Administrative Compliance

The Evaluation Committee will check the compliance of tenders with the instructions given in the tender document, and in particular the documentation submitted in respect of Clause 16.

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

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

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

(i) **Eligibility Criteria**
   - Tender Form (Part 1, Section 2)

(ii) **Selection Criteria**
   - Evidence of financial and economic standing (only if requested)
   - Evidence of technical capacity

30.4 **Part 3: Technical Compliance**

At this step of the evaluation process, the Evaluation Committee will analyse the administratively-compliant tenders’ technical conformity in relation to the technical specifications (Part 3, and the documentation requested by the Contracting Authority as per sub-Clause 16(e)), classifying them technically compliant or non-compliant.

Tenders who are deemed to be provisionally technically compliant through the evaluation of their technical offer (especially the specifications) shall be requested to submit samples (if requested) so that the Evaluation Committee will corroborate the technical compliance of the offers received.

In the case of a bidders who are already supplied/installed a product that is being offered, the tenderer may be exempted from submitting samples (if the FTS deems so). However the specific brand name and the respective reference of the Letter of Acceptance/Contract must be clearly indicated in the tender submission.

30.5 **Part 4. Financial Evaluation**

The financial offers for tenders which were not eliminated during the technical evaluation (i.e., those found to be technically compliant) will be evaluated.

The Evaluation Committee will check that the financial offers contain no arithmetical errors as outlined in Clause 31. The financial evaluation will have to identify the best financial offer.

31. **Correction of Arithmetical Errors**

31.1 Admissible tenders will be checked for arithmetical errors by the Evaluation Committee. Errors will be corrected as follows:

   (a) where there is a discrepancy between a unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will prevail.
   (b) where there is a discrepancy between amounts in figures and in words, the corrected amount in figures will prevail;

31.2 If arithmetical errors are found, the amount stated in the tender will be adjusted by the Evaluation Committee and the tenderer will be bound by the corrected amount. In this regard, the Evaluation Committee shall seek the prior approval of the Departmental Contracts Committee to communicate the revised price to the tenderer only in the event where such correction has placed the offer as the cheapest. If the tenderer does not accept the adjustment, his tender will be rejected and his tender guarantee forfeited.

31.3 When analysing the tender, the evaluation committee will determine the final tender price after adjusting it on the basis of Clause 31.1.
F. CONTRACT AWARD

32. Criteria for Award

32.1 The sole award criterion will be the price. The contract will be awarded to the cheapest priced tender satisfying the administrative and technical criteria.

33. Right of the Contracting Authority to Accept or Reject Any Tender

33.1 The Contracting Authority reserves the right to accept or reject any tender and/or to cancel the whole tender procedure and reject all tenders. The Contracting Authority reserves the right to initiate a new invitation to tender.

33.2 In the event of a tender procedure’s cancellation, tenderers will be notified by the Contracting Authority. If the tender procedure is cancelled before the outer envelope of any tender has been opened, the sealed envelopes will be returned, unopened, to the tenderers.

33.3 Cancellation may occur where:
   (a) the tender procedure has been unsuccessful, namely where no qualitatively or financially worthwhile tender has been received or there has been no response at all;
   (b) the economic or technical parameters of the project have been fundamentally altered;
   (c) exceptional circumstances or force majeure render normal performance of the project impossible;
   (d) all technically compliant tenders exceed the financial resources available;
   (e) there have been irregularities in the procedure, in particular where these have prevented fair competition.

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

34. Notification of Award, Contract Clarifications

34.1 Prior to the expiration of the period of validity of tenders, the Contracting Authority will notify the successful tenderer, in writing, that his tender has been recommended for award by the Departmental Contracts Committee, pending any appeal being lodged in terms of Part XIII of the Public Procurement Regulations (being reproduced in Part 1, Section 6).

34.2 Unsuccessful bidders shall be notified with the outcome of the evaluation process, and will be provided the following information:
   (i) the criteria for award;
   (ii) the name of the successful tenderer;
   (iii) the recommended price of the successful bidder;
   (iv) the reasons why the tenderer did not meet the technical specifications/notification that the offer was not the cheapest (if applicable);
   (v) the deadline for filing a notice of objection (appeal);
   (vi) the deposit required if lodging an appeal.

34.3 The recommendations of the Departmental Contracts Committee shall be published on the Notice Board of the Foundation for Tomorrow’s Schools, and published online on the FTS’s website, www.fts.com.mt under the respective tender number.

35. Letter of Acceptance and Performance Guarantee

35.1 After the lapse of the appeals period, and pending that no objections have been received and/or upheld, the FTS shall issue in writing a letter of acceptance to the successful tenderer.

No Tender shall be deemed to have been accepted until such acceptance has been notified to the Tenderer in writing by the Foundation for Tomorrow’s Schools by means of a Letter of
Acceptance’.  

35.2 The performance guarantee shall be regulated by article 2.26 of the Conditions of Contract.

35.3 If the selected tenderer fails to submit the performance guarantee required (if applicable) within the prescribed 7 calendar days, the Contracting Authority may consider the acceptance of the tender to be cancelled without prejudice to the Contracting Authority’s right to seize the guarantee, claim compensation or pursue any other remedy in respect of such failure, and the successful tenderer will have no claim whatsoever on the Contracting Authority.

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

35.4 The performance guarantee referred to in the General Conditions is set at 4% of the amount of the contract and must be presented in the form specified in Part 5, Annex 6, to the tender document the performance guarantee shall be released within 30 days of the signing of the Final Statement of Account (Final Bill), unless the Special Conditions provide otherwise.

For the purpose of clarity the amount of the performance guarantee should reflect the contract value plus the amount of the Value Added Tax (VAT).

36. Commencement of Works (Order to Start Works)

36.1 The FTS will issue a written notice of commencement of the works in accordance with the Conditions of Contract article 2.01c.

G. MISCELLANEOUS

37. Ethics Clauses

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

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

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

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

37.5 For the duration of the contract, the Contractor and his staff must respect human rights and undertake not to offend the political, cultural and religious morals of Malta.

37.6 The Contractor may accept no payment connected with the contract other than that provided for therein. The Contractor and his staff must not exercise any activity or receive any advantage inconsistent with their obligations to the Contracting Authority.

37.7 The Contractor and his staff are obliged to maintain professional secrecy for the entire duration of the contract and after its completion. All reports and documents drawn up or received by the Contractor are confidential.
37.8 The contract governs the Parties' use of all reports and documents drawn up, received or presented by them during the execution of the contract.

37.9 The Contractor shall refrain from any relationship likely to compromise his independence or that of his staff. If the Contractor ceases to be independent, the Contracting Authority may, regardless of injury, terminate the contract without further notice and without the Contractor having any claim to compensation.

37.10 The tender(s) concerned will be rejected or the contract terminated if it emerges that the award or execution of a contract has given rise to unusual commercial expenses. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commissions paid to a company which has every appearance of being a front company.

38. Data Protection and Freedom of Information

38.1 Any personal data submitted in the framework of the procurement procedure and/or subsequently included in the contract shall be processed pursuant to the Data Protection Act (2001). It shall be processed solely for the purposes of the performance, management and follow-up of the procurement procedure and/or subsequent contract by the Contracting Authority without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in conformity with National and/or Community law.

38.2 The provisions of this contract are without prejudice to the obligations of the Contracting Authority in terms of the Freedom of Information Act (Cap. 496 of the Laws of Malta). The Contracting Authority, prior to disclosure of any information to a third party in relation to any provisions of this contract which have not yet been made public, shall consult the contractor in accordance with the provisions of the said Act, pertinent subsidiary legislation and the Code of Practice issued pursuant to the Act. Such consultation shall in no way prejudice the obligations of the Contracting Authority in terms of the Act.

39. Gender Equality

39.1 In carrying out his/her obligations in pursuance of this contract, the tenderer shall ensure the application of the principle of gender equality and shall thus ‘inter alia’ refrain from discriminating on the grounds of gender, marital status or family responsibilities. Tenderers are to ensure that these principles are manifest in the organigram of the company where the principles aforementioned, including the selection criteria for access to all jobs or posts, at all levels of the occupation hierarchy are amply proven. In this document words importing one gender shall also include the other gender.
**PART 1 SECTION 2 - TENDER FORM**

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

Publication reference: FTS 194-15
Supply and Installation of Waterproofing Membrane at Various Primary and Secondary Schools in Gozo

<table>
<thead>
<tr>
<th>A. TENDER SUBMITTED BY:</th>
<th>(This will be included in the Summary of Tenders Received)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>To be filled in ONLY in case of a Joint Venture/Consortium:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Name(s) of Leader/Partner(s)</td>
<td>Nationality</td>
</tr>
<tr>
<td>Leader ¹</td>
<td></td>
</tr>
<tr>
<td>Partner ¹</td>
<td></td>
</tr>
<tr>
<td>Etc ...</td>
<td></td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>B CONTACT PERSON (for this tender)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>Surname</td>
</tr>
<tr>
<td>Telephone</td>
<td>(____) ________________________</td>
</tr>
<tr>
<td>Address</td>
<td>.............................................................................................................</td>
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<tr>
<td>E-mail</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>C TENDERER’S DECLARATION(S)</th>
<th></th>
</tr>
</thead>
</table>

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

1. We have examined, and accept in full and in its entirety, the content of this tender document (including subsequent Clarifications Notes issued by the Contracting Authority) for invitation to tender No FTS 194/2015 of (Publication Date) 24/12/2015. We hereby accept the contents thereto in their entirety, without reservation or restriction. We also understand that any disagreement, contradiction, alteration (to be read in conjunction with Articles 15 and 22 of Volume 1) or deviation shall lead to our tender offer not being considered any further.
2 We offer to execute, in accordance with the terms of the tender document and the conditions and time limits laid down in the tender document, without reserve or restriction, the following works:

Supply and Installation of Waterproofing Membrane at Various Primary and Secondary Schools in Gozo

3 The total price of our tender (inclusive of any discounts and other taxes / charges but excluding VAT (Delivered Duty Paid - DDP)) is as per the total amount in the Bills of Quantities.

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

5 If our tender is accepted, we undertake to provide a performance guarantee of 4% of the contract value as detailed in the tender document. For the purpose of clarity the amount of the performance guarantee should reflect the contract value plus the amount of the Value Added Tax (VAT).

6 We are making this application in our own right and [as partner in the consortium led by < name of the leader / ourselves>] for this tender. We confirm that we are not tendering for the same contract in any other form. [We confirm, as a partner in the consortium, that all partners are jointly and severally liable by law for the performance of the contract, that the lead partner is authorised to bind, and receive instructions for and on behalf of, each member, and that all partners in the joint venture/consortium are bound to remain in the joint venture/consortium for the entire period of the contract's performance]. We are fully aware that, in the case of a consortium, the composition of the consortium cannot be modified in the course of the tender procedure.

7 We are not bankrupt or under an administration appointed by the Court, or under proceedings leading to a declaration of bankruptcy. We also declare that we have not been convicted criminally, or found guilty of professional misconduct. Furthermore, we are up-to-date in the payment of social security contributions and other taxes.

8 We accept that we shall be excluded from participation in the award of this tender if compliance certificates in respect of declarations made under Clause 7 of this declaration are not submitted by the indicated dates.

9 We agree to abide by the ethics clauses of the instructions to tenderers and, in particular, have no potential conflict of interests or any relation with other candidates or other parties in the tender procedure at the time of the submission of this application. We have no interest of any nature whatsoever in any other tender in this procedure. We recognise that our tender may be excluded if we propose key experts who have been involved in preparing this project or engage such personnel as advisers in the preparation of our tender.

10 We will inform the Contracting Authority immediately if there is any change in the above circumstances at any stage during the implementation of the contract. We also fully recognise and accept that any false, inaccurate or incomplete information deliberately provided in this application may result in our exclusion from this and other contracts funded by the Government of Malta and the European Communities.

11 Our tender submission has been made in conformity with the Instructions to Tenderers, and in this respect we confirm having included in the appropriate packages as required, the following documentation:

(a) Tender Guarantee (Note 1)
   - Bid Bond (Annex 5) - Not Applicable

(b) General / Administrative Information
   - Statement on Conditions of Employment (Part 5, Annex 1) (Note 2)
   - Occupational Health And Safety Declaration Waiver And Indemnity (Part 5, Annex 2) (Note 2)
   - Key Expert Declaration Form (Part 5, Annex 10) (Note 2)
   - Data on Joint Venture/Consortium [Part 5, Annex 8] (Where applicable) (Note 2)
Selection Criteria
(c) Financial and Economic Standing
No evidence is required.

(d) Technical Capacity
Key Experts (Part 5, Annex 3) \(^{Note 2}\)
Subcontractors as per Form marked Sub-contracting (Part 5, Annex 11) \(^{Note 2}\)

(e) Technical Specifications
Literature as per the Form marked Literature (Part 1, Section 3) \(^{Note 2}\)
Membrane Installer Guarantee (Annex 12) \(^{Note 2}\)
Tenderer’s Technical Offer in response to specifications (Part 3, Sect. 2) \(^{Note 3}\)
Samples as listed in the table at Part 3 - Technical Specifications \(^{Note 3}\)
Works Programme (Part 5, Annex 4) \(^{Note 3}\) - Not Applicable

(f) Tender Form (Part 1 Section 2) and Bill of Quantities (Part 4)
The Tender Form (a separate Tender Form for each option tendered, each form clearly marked ‘Option 1’, ‘Option 2’ etc. \(^{Note 3}\); and
A financial bid calculated on a basis of Delivered Duty Paid (DDP) \(^{2010}\) for the works tendered including the breakdown of the overall price - Part 4 (Bill of Quantities) \(^{Note 3}\)

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

I acknowledge that the Contracting Authority shall request rectifications in respect of incomplete/non-submitted information pertinent to the documentation as per the above Clauses of this Tender Form. We understand that such rectification/s must be submitted within five (5) working days, and will be subject to a non-refundable administrative penalty of €50, and that failure to comply shall result in our offer not being considered any further.

We note that the Contracting Authority is not bound to proceed with this invitation to tender and that it reserves the right to cancel or award only part of the contract. It will incur no liability towards us should it do so.

Name and Surname: ____________________________________________
I.D. / Passport Number: ____________________________________________
Signature of tenderer: ____________________________________________
Duly authorised to sign this tender on behalf of: ________________________
Company/Lead Partner VAT No (if applicable): ________________________
Stamp of the firm/company: ________________________________________
Place and date: ________________________________________
PART 1 SECTION 3 – LITERATURE

1. **List of manufacturer’s technical literature to be submitted with the tender:**

Supporting documents and printed manufacturer’s technical literature furnished by the tenderer may be in another language, provided they are accompanied by an accurate translation into English. For the purposes of interpretation of the tender, the English language will prevail.

ALL BIDDERS ARE TO NOTE THAT PHOTOS SUBMITTED AS MANUFACTURER’S TECHNICAL LITERATURE SHALL NOT SUFFICE AND ACCORDINGLY THESE MUST BE DULY ACCOMPANIED BY THE RESPECTIVE DETAILED MANUFACTURER’S TECHNICAL LITERATURE.

The submission shall be in a structured form and is to be in the same sequence as listed hereunder for ease of reference and evaluation.

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Reference in Technical Specifications</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
<td>Technical Literature of the waterproof membrane</td>
<td>Spec 29</td>
</tr>
</tbody>
</table>

Signature: ................................................................. Date: .........................

(The person or persons authorised to sign on behalf of the tenderer)
PART 1 SECTION 4 – GLOSSARY

Definitions

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

Administrative order: Any instruction or order issued by the Engineer to the Contractor in writing regarding the execution of the works.

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

Contracting Authority: means the final beneficiary - Foundation for Tomorrow’s Schools

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

Contract: The letter of acceptance or signed agreement by which the two parties enter into agreement for the performance of the works, including all attachments thereto and all documents incorporated therein.

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

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

Day: Calendar day.

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

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

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

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

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

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

Final acceptance certificate: Certificate(s) issued by the Engineer to the Contractor at the end of the defects notification period stating that the Contractor has completed his obligations to construct, complete, and maintain the works concerned.

Final Beneficiary: The Department/Entity or other government body on whose behalf the Department of Contracts has issued this tender.
Foreign currency: Any currency permissible under the applicable provisions and regulations other than the Euro, which has been indicated in the tender.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Written communications: Certificates, notices, orders and instructions issued in writing under the contract.
PART TWO – CONDITIONS OF CONTRACT

These conditions amplify and supplement, if necessary, the General Conditions governing the contract. Unless the Conditions of Contract provide otherwise, those General Conditions remain fully applicable. The numbering of the Articles of the Conditions of Contract is consecutive but do not follow the numbering of the Articles of the General Conditions.

2.0 Conditions of Contract.

2.01 a) General responsibility of the contractor

The successful bidder shall be considered and held responsible for all types of materials and equipment as described in the Bill of Quantities, the Specifications, Instructions to Tenderers, Conditions of Contract, Annexes and Drawings (if any).

2.01 b) Completion of Works / Period of Performance

The period of performance (duration of this contract) will expire either within twelve (12) Months from the date of the order to start works or when the value of the contract has been reached, whichever is the earliest. The FTS reserves the right to extend the duration of the contract by a further period of three (3) months.

The successful bidder has to commence works as detailed in article 2.01 c below (Commencement Date).

The FTS representative will determine the completion date of each portion of work and the Contractor will have to abide by that date. Should the Contractor not finish the work in time, a penalty for delay shall be applied as per article 2.10 of the Conditions of Contract (Part 2, Section 1)

The successful contractor is also bound with the following conditions:

1. The quantities given in the bill of quantities are provisional and reflect the estimates made at the time of approval to provide a basis for this document and tenders.

2. There is no guarantee to the successful Contractor that he will be required to carry out all the quantities indicated under any one particular item in the bill of quantities or that the quantities will not differ in magnitude from those stated. In this respect, articles 2.09 and 2.25 in the Conditions of Contract shall also apply.

3. Therefore, when pricing the items, reference should be made to the conditions of contract, the specifications and relevant directions and descriptions of items / materials or equipment involved or required to fulfil all obligations listed in this tender.

2.01 c) Commencement Date

After the contractor abides with article 2.26 (performance guarantee) of these conditions, a written notification will be issued to the contractor stating that works have to commence within five (5) working days.

Should there be no queries from the Contractor, the necessary work shall proceed and be completed as soon as possible, respecting the deadlines specified in the tender document.

2.02 Drawings and Specifications.

The extent of the work shall be in accordance with the Bills of Quantities, Drawings (if any) and Specifications or as directed by the Architect / Engineer, and such further work or direction as may from time to time be given by the Architect / Engineer. If the work indicated is in the opinion of the contractor, extra to that described in the Specifications, Bill of Quantities and Drawings (if
any) he shall, before proceeding with such work, give notice to this effect to the Architect / Engineer; but if no notice is given to the Architect / Engineer before the execution of the work, the contractor shall have no claim to any extra payment. All works shall be carried out to the instructions and to the satisfaction of the Architect / Engineer.

2.03 Documents for use by Contractor.

A copy of the Tender Document shall be furnished to the Contractor for his own use. The Foundation for Tomorrow’s Schools shall furnish to the Contractor at his request, any details which, in the opinion of the Architect / Engineer are necessary for the execution of any part of the work. Such request shall be made only within a reasonable time (not more than 48 hours) before it is necessary to execute such work in order to fulfil the contract.

2.04 Interpretation of Drawings.

The Contractor shall provide everything necessary for the proper execution of the works according to the true intent and meaning of the Drawings, General Clauses and Conditions, Bills of Quantities and Specifications taken together provided that the same be reasonably inferred there from; and if the Contractor finds any discrepancy in the drawings or between the Drawings and the Specifications, he shall immediately refer the matter to the Foundation for Tomorrow’s Schools who shall decide which shall be followed, and the Contractor shall be held responsible for any errors that may occur in the work through the neglect of this precaution. Figured dimensions and particulars are to be taken in preference to scaled dimensions, and all dimensions and particulars are to be taken from the actual work. It must be distinctly understood that the whole Specification is intended to be strictly enforced and that no extra charge in respect of extra work will be allowed unless they are clearly outside the spirit of this Specification.

2.05 Tendered rate to include.

The tendered rates shall be inclusive of all work as described in the Specifications, Bills of Quantities and Drawings (if any) as well as other works which are of a contingent or indispensable nature for completing the work in its entirety. The rates shall be inclusive of all materials necessary, all expenses, profits, use of plant and machinery required, inclusive of any discounts and other taxes / charges but excluding VAT (Delivered Duty Paid - DDP\textsuperscript{2010}) as well as transporting of material from site to where directed.

2.06 Contractor To Keep The Site Clean

During the progress of the Works the Contractor shall, at his own cost, take all steps to keep the Site clean at all times and free from all unnecessary obstruction and shall store or dispose of any materials and clear away and remove from the Site any temporary works no longer required, and any debris or rubbish.

On completion of the Works or part thereof, the Contractor shall, at his own cost, clear away and remove from the Site all surplus, debris and rubbish and leave the whole of the Works clean and in a workmanlike condition to the satisfaction of the Client.

Should the Contractor fail to comply with the provisions of this clause, the Client shall be empowered to employ other persons to carry out the removal of the surplus material, debris and rubbish, and the relative cost shall be deducted from moneys due to the Contractor under the Agreement. Moreover, no Certificate of Practical Completion will be issued until the above mentioned works are completed.

2.07 Fixed tender rates

The tendered rates shall be fixed rates except for variations allowed within this Contract but otherwise no allowance will be made for fluctuations in rates, prices, or for any increase in the cost of labour (excluding COLA) and materials, and any discounts and other taxes / charges but excluding VAT (Delivered Duty Paid - DDP\textsuperscript{2010}) and Eco Contribution.
2.08 Compliance with the Law and Regulations to be observed

The Contractor shall comply with and fulfil all obligations imposed by Art. 19 of the Police Laws and shall give all notices, obtain all permits, pay all fees that may be lawfully demanded by Public Officers in respect of works and comply with all requirements of the law and lawful authority.

The Contractor further understands and agrees that if, in the course of the duration of the contract, the Contractor is charged before a court of criminal jurisdiction with an alleged breach of any of the provisions of the Employment and Industrial Relations Act, the Occupational Health and Safety Authority Act, the Employment and Training Services Act or any of the provisions of their subsidiary legislation, (hereinafter referred to as “labour laws”),

a) the contract may, at the sole discretion of the Contracting Authority be suspended or terminated. No action for damages shall lie against the entity issuing the tender with respect to any such suspension;

b) where the contract has been suspended in accordance with (a) above, if the judicial decision becomes res judicata and the Contractor is found guilty of the charges brought against the person,

   I. the contract shall be terminated with effect from the date of suspension of the contract, or from the date of the judicial decision, as appropriate, and no action for damages shall lie against the Contracting Authority with respect to such termination;

   II. the Contractor will be precluded from submitting offers for any eventual tender/tenders issued by the government for a period of two years commencing, as applicable, from the date of the suspension of the contract, or from the date of the judicial decision which has become res judicata, whichever is the earlier;

   III. any bids submitted by the Contractor for any other tender/s which are pending on the date of the judicial decision will not be considered in, and be excluded from, the tendering process/es;

   IV. the government may, at its sole discretion, after giving one month’s notice, either terminate any other contract which had already been awarded to the Contractor or exact a financial penalty equivalent to up to 20% of the total value of the contract or contracts;

c) the person in whose favour the contract is awarded shall under all circumstances be responsible to ensure that all his subcontractors and other persons engaged to do work or to render services in terms of the awarded contract are aware of the penalties provided in this clause, which penalties are also applicable to them.

2.09 Variations to the Contract Sum

Variations or extra work which individually and collectively, imply an increase in excess of 5% on the original contract value, require the prior written approval of the Chief Finance Officer of the Foundation for Tomorrow’s Schools.

2.10 Penalties for Delays in Performance / Execution

The works shall be completed within the stipulated period as stated in clause 2.01b from the date of order to start work issued in writing to the Contractor.

If the Contractor fails to mobilise and start work when envisaged in the plan of works mentioned in Annex 4- Works Programme, a penalty of five hundred Euros (€500) per day including Sundays and public holidays shall be imposed until the works have commenced.

Moreover, should the Contractor not complete the works within the stipulated period as stated in clause 2.01b, a penalty of Two Hundred Euro (€200) per day inclusive of Sundays and Public Holidays shall apply.
2.11 Payment to the Contractor.

a) Payments shall be authorised and paid by the Contracting Authority in Euro currency.

b) Payments due by the Contracting Authority shall be made to the Contractor.

c) Payment shall be made on the following conditions and shall be made for permanent work only as indicated hereunder:

1) No advances will be made for materials purchase and availability on site, for formwork, installation, the hiring or purchase of plant and machinery and temporary works. Payments will only be effected in respect of actual permanent works completed;

2) An interim payment certificate may be issued as per the following conditions:

i) The Contractor shall be entitled to be paid from time to time during the progress of the execution of the works up to 85% (eighty-five percent) of the value of permanent works carried out to the satisfaction of the FTS.

ii) Ten percent (10%) of the value of the works executed / installed on site on the issue of the Interim Payment Certificate or the Final Payment Certificate as applicable.

iii) the balance i.e. 5 percent of the contract sum will be retained for twelve (12) months after completion (starting from the date of the Final Payment Certificate) and refunded only if defective work, if any, had been made good to the satisfaction of the Foundation for Tomorrow’s School. Final measurements of all the works carried out shall be prepared within a reasonable period after the works are completed.

d) The Contractor shall submit his claim for progress payments to the FTS in writing. Such claims are to be supported by evaluation of the works delivered to site. All claims shall be evaluated by the FTS in relation to the Bills of Quantities and contract rates and documentation produced by the Contractor and on the basis that such works have been executed in accordance with the Contract Documents and to the satisfaction of the FTS.

e) Claims for payments are subject to a credit term of sixty calendar days starting from the day on which the claim is received at the Contracting Authority.

f) VAT shall be paid in accordance with the current VAT regulations.

2.12 General Conditions.

The General Conditions in Part 2, Section 2 shall also apply in so far as they are not inconsistent with the conditions set in this tender document.

2.13 Scaffolding And Other Equipment/Watchman

The Contractor shall provide the whole of the necessary equipment, scaffolding, tackle, cartage and labour necessary for the prompt and efficient execution of the Works, and remove the said equipment, etc., at the completion thereof. It shall be the Contractor’s obligation to ensure that such equipment, scaffolding, tackle, cartage will not damage any or all parts of the totality of the completed Works included in the programme. Should any such damage ensue, then the Client shall, without prejudice to any other rights competent to him, have the right to deduct the costs for effecting the necessary repairs or replacements of the damage parts from moneys which may be due to the Contractor under the Contract.
The Contractor shall also provide his own watchman and his own watchman’s access to the Site all at his own cost. The Client undertakes to impose the same condition regarding watchmen of other contractors directly engaged by them on other works on the Site.

The Contractor shall provide proper signage during the course of work and sufficient light during the night to illuminate the excavations and the site occupied by the works.

2.14 Misconduct of workmen.

The Contractor shall, at the request of the Architect / Engineer, immediately dismiss from the works any of his employees who, in the opinion of the Architect / Engineer, is incompetent or for misbehaviour. Such persons shall not be employed again on the works without permission of the Architect / Engineer.

2.15 Work Instructions

The Client may issue to the Contractor such instructions as they think fit in regard to the Works and the Contractor shall forthwith comply with such instructions.

2.16 Workmanship

2.16.1 Without prejudice to the generality of the provisions of Clause 2.15, the Client may:

(a) Order the removal from the Site, within such time or times as may be specified in the order, of any materials which in the opinion of the Client are not in accordance with the Contract;

(b) Order the substitution for improper or unsuitable materials or proper and suitable materials;

(c) Order the removal and proper re-execution of any work which, in respect of materials or workmanship is not in the opinion of the Client in accordance with the Contract.

2.16.2 Without prejudice to the generality of the provisions of Clause 2.15, should it appear to the Client that any work in progress is being executed in a faulty manner, with unsuitable materials, by unskilled workmen (when skilled workmen should be employed), or by any means or manner not in accordance with the Contract Documents, then he or they may order immediate suspension of such faulty work, by direct written order to the Contractor’s senior supervisory staff on site at the time, until such time as the Contractor shall adopt remedial measures to the satisfaction of the Client. Such orders shall be complied with immediately, and the Contractor will not be entitled to any extra payment, compensation or extension of time, for the completion, on account of such suspension.

2.16.3 Any instructions by the Client if not issued in writing shall be so confirmed as soon as possible, but in no case later than three (3) working days after being given.

2.16.4 If within seven (7) days from receipt of a written notice from the Client requiring compliance with an instruction, the Contractor does not comply therewith or does not give a justifiable reason to the Client for not complying, then the Client may employ and pay other persons to execute any work whatsoever which may be necessary to give effect to such instruction and all costs incurred in connection with such employment shall be recoverable from the Contractor by the Client as a debt due or may be deducted by him from any moneys due or to become due to the Contractor under the Contract.

2.16.5 Failure on the part of the Client to exercise any of his powers under this clause shall not in any way relieve the Contractor from his obligations to satisfy the requirements of the specifications listed out in the Contracts Documents and to achieve the purpose for which the Works are intended.

2.16.6 In the event that faulty work has been carried out by the Contractor and it has been unnoticed by the Client, then the Client can issue a late instruction to the Contractor to rectify such work, including the rebuilding of all work built thereon, all to the satisfaction of the Client. All costs of rectifying such faults and reconstruction of work thereon shall be borne by the Contractor.
2.17 **Method of Tendering.**

The tendering process shall be the rate per delivered item and the tender shall be the sum total of the items in the Bills of Quantities.

2.18 **Measurements.**

All works shall be measured as specified in the Specifications, Bills of Quantities or any other part of this tender document.

2.19 **Detailed Programme of works.**

*Before proceeding with the execution of the work, the contractor shall obtain the Foundation for Tomorrow’s Schools’ approval for the manner in which he proposes to carry out each portion of the work.*

*In this respect,* a detailed programme of works showing how, week by week, the contractor proposes to divide his work from the time of the award of this contract up to the completion date as herein indicated.

2.20 **General requirements.**

2.20.1 Whenever possible, the tenderer is to submit with his tender all possible information regarding the materials which are to be employed in the finishing of this project.

2.20.2 All materials and methods of finishing shall be in the form and nature as specified herein or indicated in the drawings and no variations whatsoever will be permitted unless it has been previously agreed to in writing with the Client.

2.20.3 All imported materials (except where otherwise stated) shall conform to the relevant European Standard as indicated by the Client.

2.21 **Temporary suspension of works.**

The Contractor shall, if ordered in writing by the Client, suspend the works or any part thereof for such periods and at such times as so ordered and shall not, after receiving order, proceed with the work until he receives written authority from the Client to proceed therewith. The Contractor shall not be entitled to claim compensation for any loss or damage sustained as aforesaid provided, however, that the Foundation for Tomorrow’s Schools shall be liable to pay to the Contractor any cost incurred by him on the site by way of normal running expenditure resulting from the suspension of the works on the order of the Architect / Engineer as aforesaid unless such suspension is:-

(a) necessary for the proper execution or by reason of weather conditions threatening to affect the safety, or by reason of some default on the part of the Contractor,

or

(b) necessary for the safety of the works or any part thereof.

The Client shall decide the normal running expenditure and the amount of such expenditure. With some exceptions, an extension of time for completion, corresponding with the delay caused by suspension of the works as aforesaid, will be granted to the Contractor should he apply for same.

2.22 **Extension of time for completion of contract.**

Should the amount of extra or additional work of any kind or other special circumstances of any kind whatsoever which may occur, be such as fairly entitle the Contractor to an extension of time for the completion of the works, the Foundation for Tomorrow’s Schools shall determine the amount of such extension. Such approval is not to be unreasonably withheld.
2.23 Guarantee, Retention Sum and Retention Guarantee

(a) The Contractor shall guarantee the works for a minimum period of twelve (12) calendar months or for longer periods as per Specifications or the Special Conditions against any defects. The guarantee period shall commence from the date of the Final Payment Certificate (i.e. the Final Bill issued by the FTS).

(b) The Tenderer shall guarantee that within a reasonably short time and at his own expense he makes good, repairs or replaces any defects and defective parts.

(c) Any defects or other faults which may appear within twelve (12) calendar months or any other periods that may be specified in the Specifications from the date of issue of the Final Payment Certificate (guarantee period) and arising in the opinion of the Architect / Engineer from materials and workmanship not in accordance with the Drawings, Specifications or instructions of the Architect / Engineer, shall within such reasonable time as specified by the Foundation for Tomorrow’s Schools be rectified, replaced, or made good by the Contractor at his own expense.

(d) Should the Contractor fail to replace, make good or repair defects in the equipment or in case of default, the Foundation for Tomorrow’s Schools shall reserve the right to engage Third Parties to amend and make good such effects, faults or damages or to carry out all necessary works. All such expenses incurred shall be borne by the Contractor and shall be deducted from any monies due to the Contractor.

(e) A sum amounting to 5% (five percent) of the Contract value shall be retained after delivery until the guarantee period of twelve months expires.

(f) Retention Guarantee

Once the Final Certificate (Bill) of payment is issued (as per article 2.23 a), the Contractor is required to present a retention guarantee issued by a local bank guaranteeing repayment of the full amount of the balance [vide article 2.23 (e)]. As soon as the Contractor has presented the original retention guarantee at the Contracting Authority, the balance retained shall released.

The Retention guarantee shall be valid for 30 days after the warranty period expires. Should the Contractor fail to fulfil his obligations during the guarantee period, the Contracting Authority will request that the retention guarantee is extended. The expenses related to the extension shall be borne by the Contractor. If such extension cannot be arranged, the amount guaranteed would be remitted to the Contracting Authority.

2.24 Instructions in Writing

Instruction by the Architect / Engineer shall be in writing provided that if for any reason the Architect / Engineer consider it necessary to give any such instructions orally, the Contractor shall comply with such instructions. Conformation in writing of such oral instructions given by the Architect / Engineer, whether before or after the carrying out of the instruction, shall be deemed to be instruction within the meaning of this Sub-Clause. Provided further that if the Contractor, within 7 days confirms in writing to the Architect / Engineer, any oral instruction of the Architect / Engineer and such confirmation is not contradicted in writing within 7 days by the Architect / Engineer, it shall be deemed to be an instruction of the Architect / Engineer.

The provisions of this Sub-Clause shall equally apply to instructions given by the Architect / Engineer’s representative and any of the assistants of the Architect / Engineer.

2.25 Variations

The Client shall make any variation of the form, quality or quantity of the Works or any part thereof that, may in his opinion be necessary for that purpose or if for any other reason it shall, in
his opinion be appropriate, he shall have the authority to instruct the Contractor to do and the Contractor shall do any of the following:

a) increase or decrease the quantity of any work included in the Contract subject to the condition in Article 2.09.
b) omit any such work
c) change the character or quality or kind of any such work
d) change the levels, lines, positions and dimensions of any part of the works
e) execute additional work of any kind necessary for the completion of the Works
f) change any specified sequence or timing of delivery of any part of the Works
g) No such variations shall in any way vitiate or invalidate the Contract. Provided that where the issue of an instruction to vary the Works is necessitated by some default of or breach of contract by the Contractor or for which he is responsible, any additional cost attributable to such default shall be borne by the Contractor.
h) The Contractor shall not make any such variation without written instructions by the FTS.

2.26 Performance Bond

a) For the due performance of the Contractor, the Contractor shall submit an irrevocable and unconditional Performance Bond (as per the specimen provided with this tender document) from a local bank approved by the Chairman of the Foundation for Tomorrow’s Schools. The said performance Bond shall warrant the Contractor’s obligations in terms hereof. The Contractor authorises the Foundation for Tomorrow’s Schools who accepts to call upon the Bank issuing the said Bond for payment of any sum that may become due by the Foundation for Tomorrow’s Schools by virtue of this Contract.

b) The Performance Bond shall represent 4% (four percent) of the total Contract Price. Should such total Contract Price be duly increased, the Contractor undertakes to increase the amount of the Performance Bond by 4% (four percent) of this increase. For the purpose of clarity the amount of the performance guarantee should reflect the contract value plus the amount of the Value Added Tax (VAT).

c) The Performance Bond shall be delivered by hand to the Foundation for Tomorrow’s Schools within 7 (seven) days from the day following the day of receipt of the Letter of Acceptance.

d) The Performance Bond shall be retained by the Foundation for Tomorrow’s Schools during the period of the Contract and if not called upon shall be released within 30 calendar days after the Works are satisfactorily completed.

e) The validity of the Performance Bond will be extended to the extent of any delays in the Works, whether or not an extension of time has been granted, without affecting any of the rights of the Foundation for Tomorrow’s Schools under this Contract.

f) The Performance Bond shall be issued, extended or renewed at the sole expense of the Contractor.

2.27 Arbitration

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with rules of the Malta Arbitration Centre as at present in force. Any reference in the attached General Conditions to other arbitration procedures shall not apply.

2.28 Occupational Health and Safety

The Contractor shall comply with all safety regulations and shall be solely responsible for the safety of his workmen or subcontractors, the general public, and employees of the Foundation for Tomorrow’s Schools and Education Division. He shall also be responsible for any damage to the Education Division, or Third Party property that may be caused by him or his employees.
The contractor shall be bound to conform and comply with Chapter 424 of the Laws of Malta (Occupational Health and Safety Authority Act) as well as any national legislation, regulations, standards and/or codes of practice, in effect during the execution of the contract, regarding health and safety issues, as they apply for the contractor’s particular operating situation and nature of work activities.

Each Tenderer is to Fill in and submit the attached Form “OCCUPATIONAL HEALTH AND SAFETY DECLARATION WAIVER AND INDEMNITY” with the Tender Document/Offer.

2.29 Special Controls

a) Dust Control
The Contractor shall, for the duration of the Contract, maintain all roads, plant sites, waste disposal areas and all other work resulting from finishing works. Dust shall be controlled by the sprinkling of water.

b) Noise Control
The Contractor shall acquaint himself with the recommendations set out in BS5228- Noise Control on Construction and Open Sites together with any mandatory specific requirements as may be stipulated by the Architect / Engineer-in-Charge.

c) Housekeeping
The Contractor shall keep the site orderly, clean and in a safe condition at all times, immediately removing all waste and rubbish. The Contractor shall provide on-site containers for the collection of rubbish or dispose of rubbish off site at frequent and regular intervals during the progress of the works.

During the progress of the Works, the Contractor shall keep the Site free from all unnecessary construction and shall store or dispose of any constructional plant, scaffolding and surplus materials and clear away and remove without delay any items no longer required.

d) Clearance of Site on Completion
Prior to the date of Substantial Completion, the Contractor shall clear away and remove from Site all constructional plant, surplus materials, rubbish and temporary works of every kind, and leave the whole of the Site and the works clean and in a condition to the satisfaction of the Architect / Engineer-in-Charge.

e) Storage of Materials and Equipment
No equipment, materials, vehicles, temporary works or construction plant of the Contractor shall at any time be placed or stored other than the Site. It shall be placed or stored behind a visual barrier or fence of such design and construction as to screen it from view.

f) Noise and Dust Pollution
No machine dressing of stone blocks shall be allowed on site. All masonry blocks shall be brought to the site on pallets already machine dressed and ready for laying. The Contractor shall take all necessary precautions to keep noise and dust pollution to the minimum. The Architect / Engineer shall have the right to stop the Contractor from proceeding with the works if he considers that the Contractor has not taken the necessary precautions and / or has not followed his instructions to reduce noise and dust pollution.

g) Safety
The Contractor shall take every precaution to ensure safety of the pupils and staff at the School. He shall be responsible to erect such fences and scaffolding as may be necessary and in accordance with the instructions issued from time to time by the Architect / Engineer.

h) Fencing
The Contractor shall erect suitable fencing around the site of works to provide protection of the works and to ensure that no unauthorised personnel have access to the site.

i) Temporary Sanitary Facilities
The Contractor shall provide temporary sanitary facilities for the duration of the project.
SUPPLY AND INSTALLATION OF WATERPROOFING MEMBRANE AT VARIOUS PRIMARY AND SECONDARY SCHOOLS IN GOZO

j) Cleaning of Site
The Contractor shall on completion of all works be responsible for cleaning of the whole premises and external areas including roofs, floors, aluminium, joinery works, glazing, etc., such as to leave the site tidy and ready for occupation.

In the event that such actions or steps as ordered by the Architect / Engineer-in-Charge are not carried out within the specified time required, the Foundation for Tomorrow’s School shall, without further notice, appoint others to carry out such instructions at the Contractor’s expense.

2.30 Progress Reports
The Contractor shall submit to the Architect / Engineer-in-Charge on approved forms, progress reports, at agreed intervals, giving the date, weather conditions, the number and classification of the staff employed, the number and classification of sub-contractors on site, quantities of materials delivered on-site and incorporated into the Works and the progress of the Works. These reports shall be submitted at the time and in a manner as directed by the Architect / Engineer-in-Charge.

2.31 As-built Drawings / Manuals (if applicable)
a) The Contractor shall, at all times, keep on Site one copy of all Drawings, Specifications and approved Shop Drawings.

b) In addition, the Contractor shall at all times keep at the site a separate set of prints on which he shall note neatly, accurately and promptly as the work progresses, all significant changes between the work shown on the Drawings and that which is actually constructed.

c) The Contractor shall each keep at the Site at all times, a separate set of prints of the Drawings showing the parts of his Work on which the Contractor, if any, shall note neatly, accurately and promptly as Work progresses, the exact physical location and configuration of works completed as actually installed, including any revisions or deviations from the Contract Drawings.

d) On the completion of the works, the Contractor shall at his expense, supply the Chairman, Foundation for Tomorrow’s Schools with reproducible hard and electronic copies of the as-built Drawings (if applicable). The Contractor shall revise these reproducible copies neatly and legibly, so as to show clearly the way in which the work was finally executed. The Contractor shall provide, in the same format as the original Drawings, any additional sheets required to record the work.

e) The as-built drawings must be fully detailed and accurately dimensioned.

f) On completion of the works (if applicable), the Contractor shall handover to the Foundation for Tomorrow’s Schools:
   i. One original and two bound copies of the operating and maintenance manuals and other relevant technical literature of all equipment used in the works in the English Language.

   ii. a spare parts lists as may normally be supplied by the manufacturer.

2.32 Testing and Commissioning
(a) The Contractor shall carry out the necessary tests on all the works covered under this Contract to ensure correct functioning, freedom from faults and safety. All systems, equipment, and the whole installation shall be tested in accordance with the IEE Regulations and the relevant British Standards and Codes.

(b) The Contractor shall provide all necessary skilled personnel, testing instruments and other equipment for the proper testing of their systems and equipment installed under this Contract. The standard reached shall not be lower than that called for in these Specifications, Regulations and Codes.
(c) All tests shall be carried out in the presence of and to the satisfaction of the Architect / Engineer or his representative.

(d) The tests shall be carried out and a record made and submitted to the Architect / Engineer on the completion of the Works before handover or at any time as requested by the Architect / Engineer. All defects which become apparent during the tests shall be logged and rectified by the Contractor at his own expense and in accordance with the instructions issued by the Architect / Engineer.

(e) Each part of the installation shall be commissioned for performance. This shall include the adjustment of circuit breaker trips, thermostats, settings and other control devices to ensure safe and efficient operation of the entire installation.

2.33 Test Certificates

(a) Whenever a test has been successfully carried out and on completion of the Works, the Contractor shall issue and submit to the Architect / Engineer, tests certificates together with details of test results upon which the certificates are based. Test certificates shall bear the date, time of test and relevant technical parameters as requested by the Architect / Engineer.

(b) All fees and expenses in connection with tests and certification including the rectification of faults and defects arising thereof shall be borne by the Contractor. All approval certificates shall be submitted to the Architect / Engineer before taking over.

(c) The Architect / Engineer will only assume and take full responsibility for the Works after being satisfied that all test certificates and that all Works are in accordance with the Tender Documents.

2.34 Take-Over Inspection

1) The Contractor shall advise the Architect / Engineer of a suitable date for the final inspection after the Works have been completed in accordance with the Specifications, Drawings and any subsequent details. Should the Contractor receive, during the progress of Works any instructions for carrying out additional works which he maintains he will not be able to complete within the Contract period he shall advise the Architect / Engineer in writing within 7 days of receipt of such instructions.

2) The Works will not be considered ready for inspection unless the following items are completed:

   a. All equipment and installations have been cleaned inside and outside and any damages, faults, defects, adjustments and damages to the building and paintwork made good.

   b. All tests have been adequately carried out in accordance with the relevant Regulations and Codes and records of these tests produced.

   c. The Architect / Engineer may also call for any or all tests to be repeated in his presence to verify the recorded results.

   d. All labelling on the Switchgear, cabling and other apparatus and equipment has been completed.

   e. All equipment and outlets are in situ and trucking lids and equipment and accessories covers are in place and secured.

   f. All cables and wires securely fixed and properly terminated, all cable glands well tightened and earthing and bonding of switchgear, metal enclosures and cable sheaths completed in compliance with the Regulations.

   g. All builders’ work made good around outlets.
2.35 **Co-ordination**

The Contractor shall be responsible to coordinate and dovetail his work with that of the subcontractors.

In case of problems occurring which affect the quality and progress of works, these shall be referred immediately to the Architect / Engineer-in-Charge and a meeting held with the parties concerned to find a solution.

The decision of the Architect / Engineer-in-Charge in such matters shall be final.

2.36 **Design and implementation of a Quality Assurance Plan**

The following clauses are to be read in conjunction with the conditions set out in the Conditions of Contract (Part Two).

2.36.1 **Quality Representative**

The Contractor shall appoint a senior staff member who, irrespective of other duties, shall be his Quality Representative with responsibility for the design and implementation of a Quality Assurance Plan.

2.36.2 **Quality Personnel**

The Contractor’s Quality Representative shall be assisted by qualified inspection and testing staff who, irrespective of other duties, shall be deployed in ensuring compliance of the works with approved Contract Documents. Their number shall be such that the provision of the Quality Plan can be met inclusive of any activities carried out outside normal work hours. They shall be the sole signatories of inspection request submitted to the Architect / Engineer. A register of such staff shall be maintained by the Contractor.

2.36.3 **Material Testing Laboratory**

The Contractor shall provide certification for the testing of materials in the Contractor’s own in-house laboratory. Sub-contracting of tests to external testing facilities shall be subject to such facilities having been approved by the Architect / Engineer-in-Charge.

2.36.4 **Measuring and Test Equipment**

All such equipment shall be covered by a calibration and maintenance schedule as approved by the Architect / Engineer-in-Charge.

2.36.5 **Inspection and Testing**

Notification for inspection and testing of the works shall generally be made in writing to the Architect / Engineer-in-Charge or his representative. Adequate time shall be allotted for inspection or testing of the works commensurate with the relevant task complexity and duration. Minimum times shall be established and agreed with the Architect / Engineer-in-Charge. Inspection shall cover all processes identified in the approved Quality Plan. Specific “Hold” points for inspection and testing shall be agreed and established for all processes. The Contractor shall present detailed list of processes and related “Hold” points for the Architect / Engineer-in-Charge’s approval. Work procedures shall be provided for all approved processes and shall include any relevant checklists / approval sheets. No materials shall be allowed to be integrated in the permanent works unless inspected / tested / certified.

2.36.6 **Inspection and Test Status**

Irrespective of any provisions contained in the project Quality Plan, the Contractor shall provide for suitable means which clearly indicate to all operations and at all times, the conformance or otherwise of all products with regards to inspection and testing.
2.37 Material / Product Non-Conformances and Preventive Action

All such non-conformances shall be investigated and action taken for prevention of recurrence. Clear provisions for dealing with non-conformance and related re-work and re-approvals shall exist.

2.38 Responsibility

The Contractor shall be responsible for the safety of the works including materials and plant until they are taken possession of by the Foundation for Tomorrow’s Schools and shall stand the risk and be responsible for, and must with all possible speed make good, all damage caused by accident, weather, storm or any other cause at his own expense.

All materials and methods of installation shall be in the form and nature specified herein and/or as indicated in the Drawings to the satisfaction of the Architect / Engineer-in-Charge.

All materials and methods (except where otherwise stated) shall conform to the relevant BSS or its continental equivalent.

2.39 Protection of the Works

The Contractor must cover up and protect from damage from any cause existing buildings which are to be retained. He must supply protection for the whole works executed, and any damage caused must be made good by the Contractor at his own expense. The Contractor shall erect temporary protective walls, hoardings, screens, guard rails and the like as may be necessary for the protection of persons and property for the proper execution of the works and for meeting the requirements of the Planning Authority or other Authority.

2.40 Insurance Policies

2.40.1 The Contractor shall take out insurance in both his own name and of the Contracting Authority’s against any loss or damage for which he is liable under the contract. Such insurance shall provide cover as detailed hereunder:

a) All risks insurance:

The contractor is to insure in the joint names of the Contracting Authority (the Foundation for Tomorrow’s Schools), the works against loss and damage by fire, storm tempest, lightning, floods, earthquake, aircraft or anything dropped there from aerial objects, riot and civil commotion for the full value thereof plus 15% of all the works executed and all unfixed materials intended for, delivered to or placed on or adjacent to the works and shall keep such works, materials so insured until the completion of the works.

b) Third party insurance:

Without in any way limiting his responsibility under paragraph (a) above, the contractor shall effect a policy of insurance against the risks mentioned therein to cover an amount of not less than € 1,200,000 (one million two hundred thousand Euros) for any one occurrence with the number of occurrences unlimited. The policy shall be in the joint names of the Contracting Authority (the Foundation for Tomorrow’s Schools) and the contractor and shall include cross liabilities clauses.

2.40.2 If no insurance policy will be in place and an accident occurs, the contractor will be held responsible to make good all damage at his own expense.
PART TWO, SECTION 2 - GENERAL CONDITIONS

General Conditions of Contract

The full set of General Conditions for Works Contracts (Version 1.05 dated 20 January 2015), can be viewed/downloaded from www.etenders.gov.mt under the section Resources.

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

These general conditions will form an integral part as part of the contractual obligations with the successful tenderer.
PART THREE - TECHNICAL SPECIFICATIONS

PART 3, SECTION 1

3.1.1 As specified by the Contracting Authority.

The following documents form an integral part of this tender document.

<table>
<thead>
<tr>
<th>FTS Ref</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>FTS/Specs/029</td>
<td>Waterproofing Membrane</td>
</tr>
</tbody>
</table>

NOTE:

ALL THE BRITISH STANDARDS OR ANY OTHER STANDARDS QUOTED IN THE SPECIFICATIONS MAY BE REPLACED BY THE EQUIVALENT EUROPEAN STANDARD. However, it will be the responsibility of the respective bidders to prove that the standards they quoted are equivalent to the standards requested by the Contracting Authority.
**29 SPECIFICATIONS FOR WATERPROOFING**

**29.1 Compliance – Sample Size and Frequency of Sampling (Where Applicable)**

29.1.1 Where applicable, sample size and frequency of sampling for compliance shall be established on the basis of standard statistical guidelines.

**29.2 Compliance – Testing and Certification**

29.2.1 Compliance shall be demonstrated through testing and/or certification of products and/or processes as outlined in the ensuing clauses.

**29.3 Plastic and Rubber Vapour Control Layers**

29.3.1 Plastic and vapour control layers for waterproofing shall comply with EN 13984.

**29.4 Flexible Sheets (Membrane) for Roof Waterproofing**

29.4.1 Reinforced flexible sheets shall comply with EC Directive 89/106/EEC as implemented by decision 99/90/EC.

29.4.2 The membrane shall be laid and installed strictly as per manufacturer’s instructions. The Contractor shall submit a copy (in English) of the installation methodology before the start of the Works.

29.4.2.1 Technical properties shall comply with prEN 13707.

**29.5 Roof Waterproofing Membrane – Test Characteristics**

29.5.1 Performance characteristics shall be as follows:

<table>
<thead>
<tr>
<th>PROPERTY</th>
<th>TEST METHOD</th>
<th>TYPICAL VALUE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reinforcement</td>
<td>NA</td>
<td>Polyester/Fibreglass or Fibreglass</td>
</tr>
<tr>
<td>Weight (kg/m²)</td>
<td>NA</td>
<td>4 (Min.)</td>
</tr>
<tr>
<td>Flow resistance at 100°C</td>
<td>EN 1110</td>
<td>Stable</td>
</tr>
<tr>
<td>Tensile Strength at Break (Long. / Transverse)</td>
<td>EN 12311-1</td>
<td>&gt; 400 N/50mm</td>
</tr>
</tbody>
</table>

29.5.1.1 Polyester reinforced waterproofing membrane laid horizontally over concrete screeds that shall remain exposed is to incorporate a mineral chippings surface of approved colour and quality.

29.5.2 Where the waterproof membranes is to be covered over, a layer of not less than 25 mm of fine graded material is to be laid directly over the waterproof membranes (i.e. before laying the ground slab concrete slab) to ensure that the membrane is not in any way damaged. This layer is to be wetted to its optimum moisture value and tamped to a site density of at least 95%.

29.5.3 The Contractor shall make good at his expense any damage which results in the waterproof membrane as well as any damage to the building and/or finishes and fixtures which results from failure of the waterproof membranes.

29.5.4 The membrane shall extend over any cement/sand fillets and up all upstands and sides of parapet walls to a height of not less than 230 mm above finished
roof level. The membrane shall be lapped and heat welded at all joints so as to give a continuously unbroken, impermeable surface.

29.6 Site Conditions

29.6.1 The Contractor shall verify the site conditions by inspecting the surface to be treated prior to the execution of the works. The Contractor shall also be responsible for the provision of any additional technical expert assistance, if this is required.

29.6.2 The surface to receive the membrane should be dry, free from standing water, sharp protrusions and hollows. The surface shall be primed with 2 coats of bituminous primer (min. 55% penetration grade bitumen residue) before applying the membrane.

29.6.3 Vertical surfaces shall be smooth, regular, dry and free from nails and primed with a bituminous primer (min. 55% penetration grade bitumen residue) at the rate depending on the porosity of the surface and allowed to dry completely before the application of the membrane. Masonry work and brickwork shall be flush pointed and rendered respectively to provide a smooth surface before priming. Any adhering paintwork shall be removed.

29.6.4 All cracks, expansion and construction joints and blisters shall be raked out, thoroughly swept, washed, cleaned and made good with an approved joint sealer before the application of the waterproofing treatment by the Contractor.

29.6.5 The membrane shall be installed in such a manner that:
   a) would allow for differential thermal and structural movement between the membrane and the roof.
   b) would include all necessary accessories such as edge flashings, funnel inserts for down pipes, and air-vents.

29.6.6 Parapet wall to roof slab junctions shall be filleted with a sand/cement in order to eliminate right angled corners.

29.7 Base Granular Material for Roofing Screed (Serving as the Base for Concrete Surfacing)

29.7.1 The base granular material shall consist of selected granular franka graded chippings (“Torba”) free of any organic soil, clay or deleterious substances, spread, laid to levels, falls or currents, wetted to its optimum moisture content, tamped and adequately consolidated to the thicknesses described and detailed to provide a suitable surface to receive the concrete screed.

29.7.2 The material shall have the following typical grading:

<table>
<thead>
<tr>
<th>Sieve (mm)</th>
<th>Passing (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>75</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>100</td>
</tr>
<tr>
<td>2</td>
<td>&lt; 75</td>
</tr>
<tr>
<td>0.3</td>
<td>&lt; 50</td>
</tr>
<tr>
<td>0.63</td>
<td>&lt; 20</td>
</tr>
</tbody>
</table>

29.7.3 The base granular material shall be compacted to a site density of 95%.
29.7.4 Before consolidation of the bedding layer the Contractor is to liaise with the M&E Contractors to ensure that all services (if any) that are required to pass through the granular bed have been laid, covered and tested, and that no other work on them is required prior to casting of the concrete screed. The minimum consolidated thicknesses of torba beds at outlet points (into rain water pipes) are to be 75 mm and a slope as indicated in the Drawings is to be provided for in the compacted thickness.
PART THREE - TECHNICAL SPECIFICATIONS

PART 3, SECTION 1

LIST OF SAMPLES

3.1.2 List of samples to be submitted within five (5) working days of being notified to do so:

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Reference in Technical Specifications</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>A sample of the waterproofing membrane</td>
<td>Spec 29</td>
</tr>
</tbody>
</table>

The above samples will have to be submitted when requested by the FTS during adjudication stage and these will need to be submitted within five (5) working days of being notified to do so. Samples are not subject to rectifications \( \text{Note 3} \).

The Foundation for Tomorrow’s Schools reserves the right to demand the samples listed above. The samples are to correspond with the literature/s that has been submitted with the offer or whenever requested to do so.

Samples are to be properly marked with the tender number and the name of the tenderer. These have to be delivered to the offices of the Foundation for Tomorrow’s Schools, Sir Adrian Dingli Street, Pembroke (in the vicinity of Sir Adrian Dingli Girls Junior Lyceum) by the closing time and date set by the Contracting Authority.
PART 3

TECHNICAL SPECIFICATIONS

SECTION 2

The Contractor’s Technical Offer
BILL OF QUANTITIES

I. Preamble

Tenderers must price each item in the bill of quantities separately and follow the instructions regarding the transfer of various totals in the summary.

The bill of quantities must be read with all the other contract documents and the Contractor shall be deemed to have thoroughly acquainted himself with the detailed descriptions of the works to be done and the way in which they are to be carried out. All the works must be executed to the satisfaction of the Engineer.

1.1. Quantity of Items

The quantities set forth against the items in the bill of quantities are an estimate of the quantity of each kind of the work likely to be carried out under the contract and are given to provide a common basis for bids. There is no guarantee to the Contractor that he will be required to carry out the quantities of work indicated under any one particular item in the bill of quantities or that the quantities will not differ in magnitude from those stated.

When pricing items, reference should be made to the conditions of contract, the specifications and relevant drawings for directions and descriptions of work and materials involved.

The quantities given in the bill of quantities are provisional and reflect the estimates made at the time of approval to provide a basis for this document and tenders. Tenderers must consider every aspect of the tender document carefully.

Any comments concerning the quantities must be made in the form of an attachment, following the system of itemisation, quoting the codes and brief descriptions, as in the present documents, including the rates and prices.

Save where the technical specifications or the bill of quantities specifically and expressly state otherwise, only permanent works are to be measured. Works will be measured net to the dimensions shown on the drawings or ordered in writing by the Engineer, save where described or prescribed elsewhere in the contract.

In adjusting extras or variations on the contract, works will be measured on the same basis as that on which the quantities were prepared. All works not specifically mentioned in the bill of quantities will be taken as included in the prices of various items.

Where, in the opinion of the Engineer, extra works cannot be properly measured or valued, the Contractor may, if so directed by the Engineer, carry out the work at the day work rates shown in the schedule of day work. All completed day work sheets must be signed by the Engineer on or before the end of the week in which the works are executed.

No allowance will be made for loss of materials or volume thereof during transport or compaction.

1.2. Units of Measurement

The units of measurement used in the annexed technical documentation are those of the International System of Units (SI). No other units may be used for measurements, pricing, detail drawings etc. (Any units not mentioned in the technical documentation must also be expressed in terms of the SI.)

Abbreviations used in the bill of quantities are to be interpreted as follows:

<table>
<thead>
<tr>
<th>Unit</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>mm</td>
<td>millimetre</td>
</tr>
<tr>
<td>m</td>
<td>metre</td>
</tr>
<tr>
<td>mm²</td>
<td>square millimetre</td>
</tr>
<tr>
<td>m²</td>
<td>square metre</td>
</tr>
</tbody>
</table>
II. Terms Relating To Payments

The method for measuring completed works for payment must be in accordance with the Contract.

The provisional sums in the bill of quantities must be used in whole or in part at the discretion of the Engineer or as otherwise set out in the contract.

Each item in the bill of quantities for which payment is to be made in a lump sum, and for which no payment schedule is provided, must be paid after the work covered by the lump sum has been completed to the satisfaction of the Engineer.

III. Pricing

The prices and rates inserted in the bill of quantities are to be the full inclusive values of the works described under the items, including all costs and expenses which may be required in and for the construction of the works described together with any temporary works and installations which may be necessary and all general risks, liabilities and obligations set forth or implied in the documents on which the tender is based. It will be assumed that establishment charges, profit and allowances for all obligations are spread evenly over all the unit rates.

The rates and prices tendered in the priced bill of quantities will be quoted at the rates current prior to the date of submission.

Rates and prices must be entered against each item in the bill of quantities. The rates will cover all tax, duty or other liabilities which are not stated separately in the bill of quantities and the tender.

IV. Completing the bill of quantities

In the bill of quantities, rates and prices will be entered in the appropriate columns in Euro.

Errors will be corrected as follows:

a) where there is a discrepancy between amounts in figures and in words, the amount in words will prevail; and
b) where there is a discrepancy between the unit rate and the total amount derived from the multiplication of the unit price and the quantity, the unit rate as quoted will prevail.

V. Description Of Unit Prices

The tables that follow give the description of the rates (or unit prices) by using the relevant clauses of the Technical specifications.

N.B. - Three decimal points do not exist as currency; therefore such offers cannot be accepted. Offers are to be submitted up to two decimal points.

The following are the detailed Bill of Quantities that are to be filled in by the Tenderer.
Preambles
Rates are deemed to include the following:

A. This Bill of Quantities should be read in conjunction with the Tender documents.
B. ECO tax, dumping fees, and other taxes and expenses but excluding VAT are deemed to be included in the rates.
C. FTS reserves the right to request for a detailed breakdown of rates.
E. The Contractor is to allow in his rates for the costs of complying with the Conditions of Contract and he is to set out his price for so complying under each of the items as indicated below. Should any heading be left unpriced, then it shall be deemed that the Contractor is not placing any value for the item concerned.
F. The Contractor is to allow in his rates for working after school hours (if instructed to do so) during normal days; and for working on Saturdays and Sundays, as directed by the project manager in-charge, in order to minimise disruption for the school.
G. The Contractor is to allow in his rates for complying with all the Maltese Laws and Regulations, including fees to cover permissions both on and off site in connection with the Contract.
H. The Contractor is to allow in his rates for the general cleaning of the site during and at the end of the works. This shall include for dumping charges at an authorised dumping site.

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>Qty</th>
<th>Unit</th>
<th>UNIT RATE including Taxes, Other Duties &amp; Discounts but excluding VAT</th>
<th>Total Amount including Taxes, Other Duties &amp; Discounts but excluding VAT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subtotal Carried Forward</td>
<td></td>
<td></td>
<td></td>
<td>0.00</td>
<td></td>
</tr>
</tbody>
</table>
## Bill of Quantities for the Supply and Installation of Waterproofing Membrane at Various Primary and Secondary Schools in Gozo

### Item No. | Description |
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>UNIT RATE including Taxes, Other Duties &amp; Discounts but excluding VAT</strong></td>
</tr>
<tr>
<td></td>
<td>€</td>
</tr>
<tr>
<td><strong>Subtotal Brought Forward</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Bill 1: Waterproofing Membrane</strong></td>
<td></td>
</tr>
<tr>
<td>a</td>
<td>Cleaning of the roofs prior to and after the completion of the works</td>
</tr>
<tr>
<td>b</td>
<td>Scraping and re-pointing of parapet walls with sand/cement mortar in areas to be covered by the membrane.</td>
</tr>
<tr>
<td>c</td>
<td>Formation of a sand/cement (1:5 ratio) triangular fillet at the junction areas of the roof to parapet wall.</td>
</tr>
<tr>
<td><strong>New installation and/or replacement of existing membrane.</strong></td>
<td></td>
</tr>
<tr>
<td>Colour of Membrane to be decided by the Architect in Charge</td>
<td></td>
</tr>
<tr>
<td>1.01</td>
<td>Take-up damaged waterproofing membrane over areas and cart away to an approved dumping site. Rate to include for all dumping tariffs.</td>
</tr>
<tr>
<td>1.02</td>
<td>Thoroughly clean exposed surface of roof, supply and apply one coat of bituminous tack coat as indicated by the membrane manufacture</td>
</tr>
<tr>
<td>1.03</td>
<td>Supply and apply 4kg/sq.m. polyester reinforced, bituminous waterproofing membrane with 75mm overlaps, laid over tack-coated areas, torch welded to roofs and extended up and over parapet walls as instructed by the Architect in Charge.</td>
</tr>
<tr>
<td>1.04</td>
<td>Extra for chasing in the first horizontal joint, placing and of membrane into the open joint, sealing resulting gap with cement/sand mix (1:5 ratio) and applying two coats liquid membrane 100mm wide to seal joint.</td>
</tr>
<tr>
<td>1.05</td>
<td>Open up vertical and horizontal joints in the parapeth walls and point joints with a cement/sand mix (1:5 ratio)</td>
</tr>
<tr>
<td>1.06</td>
<td>Apply 1 coat of external paint to parapeth wall.</td>
</tr>
<tr>
<td>1.07</td>
<td>Repair to existing membrane Remove dust and chippings from joint and trench weld joint. Apply two coats liquid membrane over repaired joint.</td>
</tr>
<tr>
<td><strong>GRAND TOTAL including and discounts and other taxes/charges but excluding VAT (Delivery Duty Paid - DDP)</strong></td>
<td></td>
</tr>
</tbody>
</table>

Name of Tenderer: _____________________

Date: ________________

Signature of Tenderer: ____________________
PART FIVE - Annexes

1. Statement on conditions of employment
2. Occupational Health And Safety Declaration Waiver And Indemnity
3. Key Experts
4. Works Programme – Not Applicable
5. Bid-Bond – Not Applicable
6. Performance Bond
7. Procedure for the submission of appeals
8. Data on Joint Venture/Consortium (Where applicable)
9. Specimen Retention Guarantee
10. Key Expert Declaration Form
11. Sub-Contracting
12. Membrane Installer Guarantee
ANNEX 1 - STATEMENT ON CONDITIONS OF EMPLOYMENT

<table>
<thead>
<tr>
<th>Tenderers are to ensure that self-employed personnel are not engaged on this contract. Non-compliance will invalidate the contract.</th>
</tr>
</thead>
</table>

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

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

Signature: .............................................................

(\textit{the person or persons authorised to sign on behalf of the tenderer})

Date: .............................................................
ANNEX 2

OCCUPATIONAL HEALTH AND SAFETY DECLARATION WAIVER AND INDEMNITY

The undersigned is duly authorised to represent the bidder hereafter referred to as the Contractor.

The Contractor acknowledges that he is tendering to perform works / deliver items as detailed in the tender document as contractors for the Foundation for Tomorrow's and that for all intents and purposes at law the Contractor shall / is responsible to ensure that health and safety obligations in respect of its employees and any third parties accessing the site described above shall be / are respected in full at all times including during the use of machinery and equipment.

The Contractor shall assume full responsibility and accountability regarding the health and safety of its employees and/or subcontractors including any third parties involved in the execution of his contract.

The Contractor shall be bound to conform and comply with Chapter 424 of The Laws of Malta (Occupational Health and Safety Authority Act) as well as any other national legislation, regulations, standards; and/or codes of practice or an amendment thereto in effect during the execution of the contract.

The Contractor hereby undertakes to indemnify the FTS against any and all liability including judicial and extra-judicial costs that may be incurred as a result of any failure on the part of the Contractor to ensure health and safety as above stated and undertakes to effect payment to FTS on simple demand in respect of any such liability.

Name of company or individual submitting the tender: ________________________________________________________

Signature: ........................................................................................................

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

Date: ........................................................................................................
**ANNEX 3 - KEY EXPERTS**

**Tenderer’s Technical Capacity: List Of Staff To Be Employed On This Contract By The Tenderer**

Bidders are to note that the Evaluation Committee reserves the right to request the CVs of key staff CVs during the evaluation process, failing which the offer would be discarded.

The following list of Key Experts must include at least:

a) A Site manager / Supervisor

b) Other Key Personnel which tenderer deems necessary.

<table>
<thead>
<tr>
<th>Name and Surname of Key Expert</th>
<th>Proposed Position</th>
<th>Nationality</th>
<th>Age</th>
<th>Educational Background</th>
<th>Specialist Area of Knowledge</th>
<th>Years of Experience</th>
<th>Languages and Degree of Fluency (VG; G; W)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site Manager / Supervisor</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Key Personnel</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Signature: ............................................................. Date: .............................................

*(the person or persons authorised to sign on behalf of the tenderer)*
ANNEX 4 - WORKS PROGRAMME

Not applicable for this tender.
ANNEX 5 - BID BOND

Not applicable for this tender.
ANNEX 6 - Performance Bond

Important Note to Contractors:

For the purpose of clarity the amount of the performance guarantee should reflect the contract value plus the amount of the Value Added Tax (VAT).

The Chairman
Foundation for Tomorrow’s Schools
Sir Adrian Dingli Street,
Pembroke PBK1940

In connection with the agreement entered into between yourself on behalf of the Malta Government and

______________________________________________
(Name and address of contractor)

Referred to as “the Contractor” as per the latter’s tender dated___________ and your Acceptance (Ref____________________________) of the __________________

Whereby the contractor undertook to provide, supply, deliver to site/store, erect complete, hand over in working order and thereafter maintain * in accordance with the terms of clause _________________ of the General conditions the works/services as mentioned, enumerated or referred to in the Specifications and/or Bills of Quantities forming part of the tender documents, we hereby guarantee to pay you on demand a maximum sum of (amount in words and figures) ______________________ (€____________) in case the obligations under the above-mentioned agreement are not duly performed by the contractor.

It is understood that this guarantee will become payable on your first demand and that 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 guarantee and Government it is hereby specifically declared for all intents and purposes of law that this guarantee does not exempt the above-mentioned Contractor from any obligations, acts of performance or undertakings assumed under the tender documents as ratified in the Contract.

This guarantee expires on the _________________________ 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 for cancellation on utilization on expiry or in the event of the guarantee being no longer required.

______________________________________________
(Local Bank)
Manager

______________________________________________
Accountant

I accept in the entirety conditions set out above

______________________________________________
Contractor
ANNEX 7 - PROCEDURE FOR THE SUBMISSION OF APPEALS EXTRACT
(Part II of L.N.296-10 Regulation 21)

Rules Governing Public Contracts whose value does not exceed one hundred and twenty thousand euro (€120,000)

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

1) Where the estimated value of the public contract exceeds twelve thousand euro (€12,000) and is issued by an authority listed in Schedule 1, any tenderer or candidate concerned shall have a right to make a complaint to the Review Board in accordance with this regulation.

2) (a) The contracting authority shall be obliged to issue a notice and affix an advertisement, in a prominent place at its premises, indicating the awarded public contract, the financial aspect of the award and the name of the successful tenderer. The contracting authority shall, by electronic means or by fax, inform the tenderer or candidate concerned of the publication of the award. The contracting authority shall be precluded from concluding the contract during the period allowed for the submission of appeals.

(b) The award process shall be completely suspended if an appeal is eventually submitted.

3) Any tenderer or candidate concerned who is aggrieved by the award indicated by the contract authority may, within five working days from the publication of the notice, file a letter of objection, together with a deposit, with the contracting authority, clearly setting forth any reason for his complaint. The deposit to be paid in respect of tenders valued at less than forty-seven thousand euro (€47,000) shall be four hundred euro (€400), while those between forty-seven thousand euro (€47,000) and one hundred and twenty thousand euro (€120,000) shall be 0.5% of the estimated value of the tender, with a minimum deposit of four hundred euro (€400). The letter by the complaining tenderer shall be affixed on the notice board of the contracting authority and shall be brought to the attention of the recommended tenderer.

4) After the expiry of the period allowed for the submission of a complaint, the contracting authority shall deliver the letter of complaint, the deposit receipt and all documents relating to the public contract in question to the Review Board who shall examine the matter in a fair and equitable manner. In its deliberation the Review Board shall have the authority to obtain, in any manner it deems appropriate, any other information not already provided by the contracting authority. The Review Board shall determine the complaint by upholding or rejecting it. The written decision of the Review Board shall be affixed on the notice board of the contracting authority and shall be brought to the attention of the Director of Contracts and all the parties involved.

5) (a) Any tenderer or candidate who feels aggrieved by a decision taken by the Review Board may appeal to the Court of Appeal (Superior Jurisdiction) as constituted in accordance with article 41(1) of the Code of Organization and Civil Procedure by means of an application filed in the registry of that court within twenty calendar days from the decision on which that decision has been made public.

(b) A copy of the appeal application shall be served on the Contracting Authority and on the recommended tenderer, if any, who may file a written reply within twenty days from the date of service.

(c) The Court of Appeal shall set down the cause for hearing at an early date, in no case later than two months from the date on which the appeal is brought before it and shall cause notice of such date to be given to the parties who, on their part, shall assume the responsibility to visit the court registry and be aware of the latest information regarding the appointment for the hearing of the case.

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

6) Tender documents issued in terms of this Part shall include a clause informing tenderers that the award of the contract is subject to the right of recourse as provided for in this regulation, a copy of which should be reproduced in the documents.
7) The Minister shall have the authority by order to extend the provisions of this regulation in order that recourse as provided in this regulation be made available also by authorities listed in Schedule 3 and to prescribe the procedure by which such recourse is to be granted.
## ANNEX 8 – Data on Joint Venture/Consortium (Where applicable)

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1</strong></td>
<td>Name</td>
</tr>
<tr>
<td><strong>2</strong></td>
<td>Managing Board’s Contact Details</td>
</tr>
<tr>
<td></td>
<td>Address: .............................................................</td>
</tr>
<tr>
<td></td>
<td>.............................................................</td>
</tr>
<tr>
<td></td>
<td>Telephone: ...................... Fax: ......................</td>
</tr>
<tr>
<td></td>
<td>Email: .............................................................</td>
</tr>
<tr>
<td><strong>3</strong></td>
<td>Agency in the state of the Contracting Authority, if any (in the case of a Joint Venture/Consortium with a foreign lead partner)</td>
</tr>
<tr>
<td></td>
<td>Address: .............................................................</td>
</tr>
<tr>
<td></td>
<td>.............................................................</td>
</tr>
<tr>
<td></td>
<td>Telephone: ...................... Fax: ......................</td>
</tr>
<tr>
<td></td>
<td>Email: .............................................................</td>
</tr>
<tr>
<td><strong>4</strong></td>
<td>Names of Partners</td>
</tr>
<tr>
<td>(i)</td>
<td>.............................................................</td>
</tr>
<tr>
<td>(ii)</td>
<td>.............................................................</td>
</tr>
<tr>
<td>(iii)</td>
<td>.............................................................</td>
</tr>
<tr>
<td>(iv)</td>
<td>.............................................................</td>
</tr>
<tr>
<td><strong>5</strong></td>
<td>Name of Lead Partner</td>
</tr>
<tr>
<td></td>
<td>.............................................................</td>
</tr>
<tr>
<td><strong>6</strong></td>
<td>Agreement governing the formation of the Joint Venture/Consortium (Enclose Joint Venture/Consortium Agreement)</td>
</tr>
<tr>
<td></td>
<td>Place of Signature: ..................................................</td>
</tr>
<tr>
<td></td>
<td>Date of Signature: ..................................................</td>
</tr>
<tr>
<td><strong>7</strong></td>
<td>Proposed proportion of responsibilities between partners (in %) with indication of the type of the works to be performed by each*</td>
</tr>
<tr>
<td></td>
<td>* The company acting as the lead partner in a joint venture/consortium, they must have the ability to carry out at least 50% of the contract works by its own means. If a company is another partner in a joint venture/consortium (i.e. not the lead partner) it must have the ability to carry out at least 10% of the contract works by its own means</td>
</tr>
<tr>
<td></td>
<td>............................................................. - .....%</td>
</tr>
<tr>
<td></td>
<td>............................................................. - .....%</td>
</tr>
<tr>
<td></td>
<td>............................................................. - .....%</td>
</tr>
<tr>
<td></td>
<td>............................................................. - .....%</td>
</tr>
</tbody>
</table>

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

**Date:** .............................................................
ANNEX 9 – SPECIMEN RETENTION GUARANTEE

(LETTERHEAD OF THE REGISTERED FINANCIAL INSTITUTION PROVIDING THE GUARANTEE)

Chairman
Foundation for Tomorrow’s Schools
Sir Adrian Dingli Street,
Pembroke PBK 1940
Malta

[Date]

[Tender Reference]

Dear Sir,

We, the undersigned, [name, company name, address], hereby declare that we will guarantee, as principal debtor, to [Contracting Authority’s name and address] on behalf of [Contractor’s name and address], the payment of [indicate the amount], corresponding to the guarantee mentioned in Article 2.23 of the Conditions of Contract without dispute, on receipt of a first written request from the beneficiary.

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

The guarantee will enter into force and take effect from the [indicate the date of payment of the sums retained under the contract] and shall be valid until the date of issue of the certificate of final acceptance.

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

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

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

Signature: ..................................................

[stamp of the body providing the guarantee]
ANNEX 10

KEY EXPERT DECLARATION FORM

Note: Bidders are to declare “Not Applicable” if the Key Expert/s is/are not employed with the Public Administration.

To Be completed by each individual key expert/Personnel who is employed with the Public administration.

I, the undersigned, hereby declare that I do not have any Conflict of Interest as defined in the Public Administration Act, Chapter 497 of the Laws of Malta - First Schedule, Code of Ethics, Article 5.

I also declare that, I am not engaged in another project or in a position which may give rise to a possible private or personal interest sufficient to influence or appear to influence the objective exercise of my duties as public employee.

By making this declaration, I understand that as a public employee I shall avoid any financial or other interest or undertaking, which could directly or indirectly compromise the performance of my duties as public employee.

I am fully aware that the onus to disclose any possible conflict of interest lies solely on me and I shall be responsible to disclose any foreseen conflict of interest to my seniors/head of organization within one week from when the need arises as well as inform the Contractor accordingly.

Furthermore, I confirm that I shall also abide by the provisions laid down in Article 21 - Ethics Clauses of the General Rules Governing Tendering version 1.11.

Name of Key Expert: ..........................................................

Signature of Key Expert: ..........................................................

Date: ..........................................................

Signature of Tenderer: ..........................................................

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

Date: ..........................................................
ANNEX 11

Sub-Contracting

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

<table>
<thead>
<tr>
<th>Work intended to be sub-contracted</th>
<th>Name and details of sub-contractors</th>
<th>Value of sub-contracting as percentage of the total cost *</th>
<th>Experience in similar works (details to be specified)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Note
- The maximum amount of sub-contracting must not exceed 49% of the total contract value.
- The main contractor must have the ability to carry out at least 51% of the contract works by his own means.

Bidders must declare a "NIL" statement if no subcontractors are going to be engaged.

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

Date: .................................................................
ANNEX 12 - MEMBRANE INSTALLER GUARANTEE

I/we hereby declare that the membrane works are guaranteed for a period of five (5) calendar years against any defects. The guarantee period commences from the date of handing over of the site. A Certificate of Acceptance shall be issued by the Contractor and signed by the Architect in charge.

I/we hereby declare that in the event of any defects arising after the handing over date and within the five (5) calendar years, I/We accept to within a reasonably short time and at my/our own expense I/we make good, repair or replace any defects and defective parts.

We understand that I/We fail to replace, make good or repair defects, the Foundation for Tomorrow’s Schools (or the School) shall reserve the right to engage third parties to amend and make good such effects, faults or damages or to carry out all necessary works. All expenses incurred shall be claimed from the Contractor.

Name and Surname: ____________________________________________

I.D. Number: ____________________________________________

Signature of tenderer: ____________________________________________

Duly authorised to sign this tender on behalf of: ______________________________________

Individual/Company/Lead Partner VAT No (if applicable): ______________________________

Stamp of the firm/company: ____________________________________________

Place and date: ____________________________________________
PART SIX

List of Drawings

“NOT APPLICABLE”