

Reference No: MJEG/MPU/63/2020

Leasing of Office Space for the Ministry for Justice, Equality and Governance

Date Published: 20th March, 2020

Deadline for Submission: 7th April, 2020 at 12.00hrs CET

Tender Opening: 7th April, 2020 at 12:30hrs CET

IMPORTANT:

- No Bid Bond is requested for this tender.

Clarifications shall be uploaded and will be available to view/download from -
www.meae.gov.mt

Ministerial Procurement Unit
Ministry for Justice, Equality and Governance

123, Triq Santa Lucija, Valletta, Malta – Tel +356 23346200 Email tenders.mjcl@gov.mt

SECTION 1 – INSTRUCTIONS TO TENDERERS

1. General Instructions

- 1.1 In submitting a tender, the tenderer accepts in full and in its entirety, the content of this tender document, including subsequent Clarifications issued by the Contracting Authority, whatever the economic operator's own corresponding conditions may be, which through the submission of the tender is waived. 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 in respect of the procurement documents; any disagreement, contradiction, alteration or deviation shall lead to the tender offer not being considered any further.

Prospective tenderers must submit their response by submitting their offers through a tender box found at 'Auberge d'Aragon', Misrah Indipendenza Valletta.

Prospective tenderers take full responsibility to submit their offer well before the tender submission deadline in order to avoid last minute restrictions. Tender offers must be fully accepted by the officer fully acknowledged prior to the deadline for submission of offers, that is, tenders in transit upon tender submission deadline will be rejected.

Note:

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

- 1.2 The subject of this tender is the Leasing of Office Space for the Ministry for Justice, Equality and Governance. Due to functions of the office concerned, the building should be located in Valletta.
- 1.3 The lease period shall be 10 years from date of signature of the contract, unless otherwise terminated earlier by the Contracting Authority, if found to be in breach of the contractual obligations. Furthermore, within two years prior to the lapse of the lease agreement, the Contracting Authority reserves the right to renegotiate the lease of the property for a further period as agreed between the Contracting Authority and the Lessor.

2. Timetable

	DATE	TIME
Clarification meeting (Refer to Clause 5.1)	N/A	N/A
Deadline for request for any additional information from the Contracting Authority	2 nd April 2020	12.00hrs
Last date on which additional information can be issued by the Contracting Authority	3 th April, 2020	12.00hrs
Deadline for Submission of Tenders	7 th April 2020	12.00hrs
Central European Time (CET)		

3. Lots

3.1 This tender is not divided into lots.

4. Financing

4.1 The lease shall be financed by local funds.

5. Clarification Meeting

5.1 No Clarification meeting is planned.

6. Selection and Award Requirements

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

(A) Eligibility Criteria

- (i) No Bid Bond is required. ^(Note 1)
- (ii) Declare agreement, conformity and compliance with the conditions provided in the attached document (Appendix I).
- (iii) Power of Attorney (Appendix II). (if applicable) ^(Note 2)
- (iv) Exclusion (including Blacklisting) Criteria as per Appendix III.

(B) Technical Specifications

- (i) Tenderer's Proposal/Offer in response to specifications in line with the requirement as per Form marked Annex IV Tenderer's Proposal/Offer. ^(Note 2)

- (ii) Literature as per form marked Annex V Literature List to be submitted with the offer.
(Note 2)

(C) Financial Offer

- (i) A financial offer as per Annex VI calculated on the lease tendered as per Form marked Financial Offer. **Failure to submit a financial offer shall lead the disqualification of the offer submitted** (Note 3)

Notes to Clause 6:

1. *Tenderers will be requested to clarify/rectify, within five (5) working days from notification, the tender guarantee only in the following four circumstances: incorrect validity date, and/or incorrect value, and/or incorrect addressee and incorrect name of the bidder. Rectification in respect of the Tender Guarantee (Bid Bond) is free of charge.*

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

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

Requests for Clarifications and/or Rectifications concerning a previous request dealing with the same shortcoming shall not be entertained.

7. Tender Guarantee (Bid Bond)

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

8. Obligations of the Contractor

The Ministry for Justice, Equality and Governance reserves the right to select and/or reject any or all of the submitted proposals. The Ministry may also decide not to proceed further with the tender process.

The bidder shall consider the submission of the tender as acceptable on the terms and conditions outlined in this document. Each bidder shall be solely responsible for the fees, costs and expenses incurred in participating in the present process, and the Ministry for Justice, Equality and Governance will under no circumstances be liable for any such fee, costs, expenses, re-imbursements, loss or damage whatsoever arising out of or in connection with the proposal process.

The Ministry for Ministry for Justice, Equality and Governance reserves the right to request a site visit as required during adjudication stage and to request further clarifications. Failure to answer such requests within the stipulated timeframe may lead to disqualification of the offer.

The offer is to be signed by the Contractor or his/her Authorised Signatory.

Submissions are to be submitted in hard copy in a sealed envelope marked **Confidential** quoting the above **Title** and **Reference Number** of this Expression of Interest, and the **Name** of the bidder and sent **By Hand** to the following address by not later than **12:00 hours (noon)** of **7th April 2020**.

Ministerial Procurement Unit

Ministry for Justice, Equality and Governance

Auberge D'Aragon,

Pjazza Indipendenza

Valletta

9. Criteria for Award

- 9.1 The sole award criterion shall be the annual price per square metre for the offered property.

The contract will be awarded to the tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria. The Contracting Authority reserves the right not to award any contract under any particular notwithstanding that there are compliant bids.

The contracting authority also reserves the right to award multiple contracts for different bidders for different properties according to the ranking of the compliant bids.

SECTION 2 – EXTRACTS FROM PUBLIC PROCUREMENT REGULATIONS

Part IX of the Public Procurement Regulations

Appeals from decisions taken after the closing date for the submissions of an offer

270. Where the estimated value of the public contract meets or exceeds five thousand euro (€5,000) any tenderer or candidate concerned, or any person, having or having had an interest or who has been harmed or risks being harmed by an alleged infringement or by any decision taken including a proposed award in obtaining a contract, a rejection of a tender or a cancellation of a call for tender after the lapse of the publication period, may file an appeal by means of an objection before the Public Contracts Review Board, which shall contain in a very clear manner the reasons for their complaints.

271. The objection shall be filed within ten (10) calendar days following the date on which the DoC/Contracting Authority or the authority responsible for the tendering process has by fax or other electronic means sent its proposed award decision or the rejection of a tender or the cancellation of the call for tenders after the lapse of the publication period.

272. The communication to each tenderer or candidate concerned of the proposed award or of the cancellation of the call for tenders shall be accompanied by a summary of the relevant reasons relating to the rejection of the tender as set out in regulation 242 or the reasons why the call for tenders is being cancelled after the lapse of the publication period, and by a precise statement of the exact standstill period.

273. The objection shall only be valid if accompanied by a deposit equivalent to 0.50 per cent of the estimated value set by the DoC/Contracting Authority of the whole tender or if the tender is divided into lots according to the estimated value of the tender set by the DoC/Contracting Authority for each lot submitted by the tenderer, provided that in no case shall the deposit be less than four hundred euro (€400) or more than fifty thousand euro (€50,000) which may be refunded as the Public Contracts Review Board may decide in its decision.

274. The Secretary of the Public Contracts Review Board shall immediately notify the Director, the Ministerial Procurement Unit and, or the DoC/Contracting Authority, as the case may be, that an objection had been filed with his authority thereby immediately suspending the award procedure.

275. The Department of Contracts or the Contracting Authority involved, as the case may be, shall be precluded from concluding the contract during the period of ten (10) calendar days allowed for the submission of appeals. The award process shall be completely suspended if an appeal is eventually submitted.

276. The procedure to be followed in submitting and determining appeals as well as the conditions under which such appeals may be filed shall be the following:

- (a) any decision by the General Contracts Committee, or the Special Contracts Committee or by the DoC/Contracting Authority, shall be made public by affixing it to the notice-board of the Department of Contracts or of the office of the Contracting Authority, as the case may be, or by uploading it on

government's e-procurement platform prior to the award of the contract if the call for tenders is administered by the Department of Contracts;

(b) the appeal of the complainant shall also be affixed to the notice-board of the Public Contracts Review Board and shall be communicated by fax or by other electronic means to all participating tenderers;

(c) the DoC/Contracting Authority and any interested party may, within ten (10) calendar days from the day on which the appeal is affixed to the notice board of the Review Board and uploaded where applicable on the government's e-procurement platform, file a written reply to the appeal. These replies shall also be affixed to the notice board of the Review Board and where applicable they shall also be uploaded on the government's eProcurement platform;

(d) the authority responsible for the tendering process shall within ten (10) days forward to the chairman of the Public Contracts Review Board all documentation pertaining to the call for tenders in question including files and tenders submitted;

(e) the secretary of the Review Board shall inform all the participants of the call for tenders, the Department of Contracts and the Contracting Authority of the date or dates, as the case may be, when the appeal will be heard;

(f) when the oral hearing is concluded, the Public Contracts Review Board, if it does not deliver the decision on the same day, shall reserve decision for the earliest possible date to be fixed for the purpose, but not later than six (6) weeks from the day of the oral hearing:

Provided that for serious and justified reasons expressed in writing by means of an order notified to all the parties, the Public Contracts Review Board may postpone the judgment for a later period;

(g) the secretary of the Review Board shall keep a record of the grounds of each adjournment and of everything done in each sitting;

(h) after evaluating all the evidence and after considering all submissions put forward by the parties, the Public Contracts Review Board shall decide whether to accede or reject the appeal or even cancel the call if it appears to it that this is best in the circumstances of the case.

SECTION 3: Technical SPECIFICATIONS

The following are the list of **technical specifications / requirements** pertaining to the desired leased premises for:

The Ministry for Justice, Equality and Governance would like to receive offers for the **leasing of Office Space**.

1. The building shall be located in Valletta and shall be covered with the necessary permits.
2. The minimum area of office space required, not including circulation space, but inclusive of wall thicknesses, is that of between 75m² to 200m². All this area is to be full compliance with CRPD requirements.
3. The offices are to be finished and/or refurbished according to the requirements listed under this section – Technical Specifications of the Ministry for Justice, Equality and Governance by the lessor at his/her expense. Any finishing works are to be ready within six (6) weeks from the signature of contract or from the published date of any necessary Planning Authority approval. The Contracting Authority reserves the right, during the evaluation process of tenders, to request whosoever made an offer to confirm that the building (if selected) will be completed by the owner of the building under the plan provided by the Contracting Authority within these timelines.
4. A minimum of one (1) restroom is to be provided, with one (1) restroom compliant with access for all legislation.
5. All offices are to be fully accessible to persons with special needs through ramps and / or platform lift if necessary. Premises without such facilities may be considered however in such an instance, the lessor would be required to provide such facilities within timelines set in clause 3. Such facilities might require approval from Planning Authority with particular emphasis on contents of clause 7.
6. The offices are to be equipped with (but not limited to) the following:
 - a. fully air-conditioned
 - b. kitchenette
 - c. CAT 6 cabling [for network and telephony] These are to be ready within eight (8) weeks from the signature of contract and in consultation with the Ministry for Justice, Equality and Governance.

7. The offices are to have a permit for office use. If this is not available, the Contractor shall apply for such a permit and bear all applicable costs upon signing of the contract agreement. Prior to any PA applications, premises without permits will be screened to determine the likelihood that a permit will be issued. If the prospects of an eventual permit are somehow jeopardized by existing constraints the premises will be deemed unqualifiable and dropped, even if it might have the best financial package.

8. The leasing period shall be 10 years. Within two years prior to the lapse of the lease agreement, the Contracting Authority reserves the right to renegotiate the lease of the property for a further period as agreed between the Contracting Authority and the Lessor.

SECTION 4: GENERAL RULES GOVERNING TENDER

A. **Clarification meeting**

The Ministry for Justice, Equality and Governance reserves the right to request a site visit as required during adjudication stage and to request further clarifications. Failure to answer such requests within the stipulated timeframe may lead to disqualification of the offer.

B. **Payment of Rent**

The rent will be paid by the Contracting Authority on an annual basis in advance.

C. **Duration of service**

The premises will be rented for a period of 10 years. Furthermore, within two years prior to the lapse of the lease agreement, the Contracting Authority reserves the right to renegotiate the lease of the property for a further period as agreed between the Contracting Authority and the Lessor.

D. **Proposal Format**

Bidders are to submit their proposal using the format defined in the Tenderer's Proposal/Offer of this request for Tenders. Full specifications of the premises being offered and illustrated literature are to accompany the proposal. All documents must be in the English language.

E. **Request for Clarifications**

Bidders are urged to promptly notify the Contracting Authority of any ambiguity in or discrepancy between any of the documents of this Request for Tenders which may be discovered upon examination of the documents.

Bidders may submit any written requests for clarification concerning this request for Tenders through the Ministry's email address: tenders.justice@gov.mt until the deadline stipulated in the timetable, specifying the publication reference and the title of this request. Any requests after this date will not be accepted.

Any clarifications from the Contracting Authority in response to any requests for clarification will be published on the Ministry's website before the deadline stipulated in the timetable.

Bidders are advised that any interpretations, correction or changes to the Request for Tenders will be notified via the Ministry's website. It is the responsibility of the bidders to be aware of the latest information published on the Contracting Authority's website prior to submitting the offer. Interpretations, corrections or changes made in any other manner will not be valid, and prospective bidders shall not rely upon such interpretations, corrections and changes.

F. **Submission of Tenders**

All tenders must be submitted through the tender box. The price(s) offered shall be quoted in Euro (excluding VAT).

In submitting their tenders, bidders will be submitting their final offer. Bidders are deemed to have taken account of all that is required for the submission, including its correctness and completeness and that

they have included all charges in their price offer. Tenders must comply with the requirements as stated in this request.

G. Validity of Tenders

Tenders shall remain valid for a period of 90 days from the closing date for the submission of the tenders stipulated in the timetable.

H. Cancellation of the Request for Tenders Procedure

The Contracting Authority shall have the option to cancel any published request for Tenders prior to its closing date stipulated in the timetable.

Bidders are advised that any cancellation to the request for Tenders will be notified via the Ministry's website. It is the responsibility of the bidders to visit the website <https://justice.gov.mt/en/ministry/tenders/> prior to submitting the proposal.

I. Evaluation of Tenders

The entire evaluation procedure is confidential. The Evaluation Committee's decisions are collective and its deliberations are held in closed session. The members of the Evaluation Committee are bound to secrecy.

In the interest of transparency and equal treatment and without being able to modify the submitted proposal, the bidder may be required, at the sole written request of the Contracting Authority to provide clarifications.

The Evaluation Committee will be conducting an inspection on premises, where this is deemed necessary, as part of the evaluation process.

The Contracting Authority is not bound to accept any of the submitted offers and has the right to refuse in part or in full any or all the submissions, even the most advantageous.

SECTION 5: GENERAL CONDITIONS AND CONTRACTUAL OBLIGATIONS

J. Data Protection and Freedom of Information

Any personal data submitted in the tenders shall be processed pursuant to the Data Protection Act (2018). It shall be processed solely for the purposes of the performance, management and follow-up 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.

The provisions of this proposal 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 proposal which have not yet been made public, shall consult the bidder 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.

K. Contractual Obligations

1. Premises must be ready for use in accordance with all the requirements indicated in this tender document.
2. The lessor must warrant that he/she is the owner of the site and/or has the right to lease the site and building which is the subject of this tender.
3. The lessor warrants that, to the best of his knowledge the site and building proposed or any part thereof, do not infringe or violate any third-party property rights.
4. The lessor shall indemnify and safe harness the Contracting Authority against from all claims, liabilities, costs, expenses, actions or proceedings it may face or suffer at any time including, without limitation, to claims for personal injury or damage caused by the building, or arising from the performance of the service or part thereof or by any act whether by commission or commission of the Lessor, its employees, agents, or sub-contractors. This clause shall survive the expiration of the Contract.
5. The award of the contract does not exonerate the lessor from the obligation of obtaining any permit and/or licence that may be required under any law, principle or subsidiary, in force in Malta from time to time.
6. The Lessor expressly waives its right to any abatement of any penalty he may incur in terms of this Agreement to which he may be entitled in terms of section 1122(1)(b) of the Civil Code, Chapter 16 Laws of Malta.
7. The entire building must be fully accessible to people with special needs through ramps and a passenger lift if applicable. Premises without such facilities may be considered, however, in such an instance, the lessor would be required to provide such facilities upon signature of the contract agreement.
8. Building must have installed lift facilities if office space is spread on more than one floor and/or is not at street level.
9. The Lessor shall sign and date the contract within 15 calendar days of receipt of the contract.
10. Due to the number and complexity of the Mechanical and Electrical services that will have to be installed, or are already installed, in a building, the bidder must include **yearly expenses for a parallel up-and-running maintenance and servicing agreement set up for the whole building with the bid.**
 - a) The maintenance and servicing agreement/s must be presented for vetting and acceptance by the contracting authority **at least 15 working days before the building lease contract is signed.**
 - b) The maintenance contract has to clearly list the frequency of inspections, lead times for servicing and repairs which would ensure a smooth running of the building's Mechanical and Electrical systems and operations within normal office hours and emergency calls where applicable. Mechanical and Electrical systems shall include, but are not limited to, the following:

ACCESSIBILITY	
	Vertical access lifts
	Stair lifts
	Escalators and Conveyors
THERMAL COMFORT	
	Air conditioners
	HVAC systems
ARTIFICIAL LIGHTING	
	Lighting systems (internal and external)
	PIR-based sensors, etc
SAFETY	
	Intruder detection systems such as burglar alarms, etc
	CCTV systems
	Card-operated door locks
	Fire-detection systems including fire exit signage
	Fire-fighting systems including fire extinguishers, fire-blankets, etc
	Gas operated appliances
	Lightning protection systems
DATA MANAGEMENT	
	Data network installations (wired and wireless)
	Building management system
WATER MANAGEMENT AND PLUMBING	
	Plumbing systems including hot water storage, pressure and circulation pumps
	Drainage systems
	Rainwater collection and disposal systems
	Irrigation systems
ELECTRICITY & PROVISION OF SUPPLY	

	Standby generator
	Uninterruptable power supply systems (UPS's)
RENEWABLE ENERGY SYSTEMS	
	Photo Voltaic Panels including the DC-AC convertor
	Solar Water Heaters
	Retractable shading devices
	Ground heat pumps

- c) The maintenance contract has to clearly list the frequency of inspections, the lead times for maintenance and upkeep of the building's structure and finishes which would ensure a smooth running of the building's functions within normal office hours and emergency calls where applicable. Building structure and finishes shall include, but are not limited to, the following:

STRUCTURE	
	Floors
	Walls
	Roofs
	Ramps
	Staircases
	Balconies and canopies
THERMAL COMFORT	
	Passive Air Vents
	Fixed Shading Devices
	Insulation
NATURAL LIGHTING	
	Lighting systems (internal and external)
	PIR-based sensors, etc
	Glazed areas including windows and doors
	Skylights and lightwells
HEALTH & SAFETY	

	Building security
	Door and window locks
	Soffits
	Railings
	Anti-slip fixtures (stairs, etc)
	Rodent & other pest control
RAINWATER & DAMPNESS CONTROL	
	Dampness in the main structure and finishes
	Roof membrane
	Wells and reservoirs
	Seals around doors and windows
	Rainwater pipes and drains
RENEWABLE ENERGY SYSTEMS	
	Fixed shading devices

- d) The proprietor has to offer a minimum guarantee of 2 years on all the Mechanical and Electrical systems, equipment and appliances to make sure that all systems are installed and running as per their intended use and that they are of good manufacture and installation quality.
- e) The proprietor has to nominate his/her representative responsible for the smooth running of the maintenance contract.
- f) Ownership of the building and its services shall remain in the hands of the owner.

Any instances not regulated by this contract shall fall under Chapter 16 of the Civil Code.

Appendix I: (to be filled by the bidder)

Declaration Statement

I, declare that I am agreeing with the contents of this document and abiding by all the rules and general conditions highlighted in this document.

Date

Appendix II: (to be filled by the bidder)

POWER OF ATTORNEY (if applicable)

Please attach here the Power of Attorney empowering the signatory of the tender and all related documentation required in this document

Signature:

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

Date:

Appendix III: (to be filled by the bidder)

DECLARATION CONCERNING EXCLUSION GROUNDS

I hereby declare that I do not fall under any of the grounds listed under Part VI of LN352/2016.

Signature

Name of Company

Appendix IV: The Tenderer's Proposal/Offer ^(Note 2)

The tenderer's proposal/offer shall include the following information:

a. Personal and contact details of the premises' owner including postal address, contact numbers and email address;	
b. The exact location and address of the premises being offered for lease;	
c. The area offered in square metres (per floor if applicable);	
d. The net usable area in square metres (per floor if applicable);	
e. The number of floors of the proposed property;	
f. Details on whether the space offered is a standalone building part of a block;	
g. Details on whether the premises are in finished, ready to move into or otherwise.	
h. Declaration that all technical specifications required are being offered.	

Name and Surname: _____

ID Card/Passport Number: _____

Signature: _____

Annex V Literature List ^(Note2)

The submissions are to include the following documents and information, which are to be submitted according to the sequential order hereunder:

Documents	Submitted/Not Submitted
a. Photos of the interior and exterior areas and other facilities on site (including all lifts where applicable);	
b. Copy of plans of property (1:100 plan) identifying the different amenities identified above;	
c. Copy of Planning Authority approved plans of the premises if applicable;	
d. Copy of permit which authorises the premises to be used as office space if available;	
e. Occupational Health and Safety Authority (OHSA) certificate (applicable if the premises are in finished state) <u>if available</u> ;	
f. ARMS statement showing that Electricity and Water bills are fully settled (<u>applicable if the premises are in finished state</u>);	
g. Proof that the building is accessible to persons with special needs; through the submission of the National Commission Persons with Disability (KNPD) certification or correspondence <u>if applicable</u> ;	
h. Copy of a valid Insurance Policy (<u>applicable if the premises are in finished state</u>);	
i. If the documents listed in Points (k) – (p) above are not available, a declaration is to be submitted along with the proposal where the bidder is bound that the documents in question	

shall be submitted in due course without undue delay immediately upon completing the finishes to the premises / signing of the contract.	
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Costs for the provision of such documents shall be borne by the Contractor.

Name and Surname: _____

ID Card/Passport Number: _____

Signature: _____

Financial Offer

Financial Offer					
Item	Description of Service	Proposed Years of lease	Proposed Area in Square Metres (m ²)	Rate per square metre (€)	Total Cost Excluding VAT FOR 10 years (€)
A	Cost per square metre Office Space	10 years			
	Annual Increments (if applicable)				
B	Cost for common areas (if applicable/Optional)				
C	Maintenance Rate ((if applicable/Optional) for all the total space including common areas etc.				
GRAND TOTAL Excluding Vat but including all other charges					

1. The rates will cover all taxes duties, levies, charges, other liabilities, inclusive of all extra costs or additions which are not stated separately in the Schedule of Rates but **Excluding VAT**
2. The rates inserted in the Financial Offer are to be also inclusive values of all alteration works, services, improvements and finishes referred to in the Tender Document, 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.
3. Any errors will be corrected as follows:
 - (a) 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.