



# **TWO STAGE TENDER FOR THE APPOINTMENT OF A PANEL OF CONTRACTORS TO EXECUTE THE SEALING OF DERELICT HOLINGS**

**STAGE 1 CONTRACT MTK 20/2021**

**VOLUME 1**

**TENDERING PROCEDURES**

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## T1.1 Tender notice and invitation to tender

Mintek, on behalf of the Department of Mineral Resources, is in the process of closing and sealing several abandoned mine holings around the country.

In this regard, Mintek invites tenders for the Appointment of a Panel of Contractors to Execute the Sealing of Derelict Holings situated in various locations around the country.

Tenders are available for download from Mintek's website [www.mintek.co.za](http://www.mintek.co.za)

Queries relating to this tender must be addressed in writing using the dedicated submit query button accessible on the online tender box. Closing date for tender/technical queries is **07 December 2021**.

A compulsory briefing session will take place on the **29 November 2021 at 11:00am**. Venue of the briefing is **Mintek Auditorium, 200 Malibongwe Drive, Strydom Park, Randburg**. Due to COVID-19 restrictions, a maximum of 2 representatives from each company will be allowed to attend the briefing session.

Tenders are to be submitted online using the Online Tender Box that is located on the Tender Notice Page where procurement documentation is downloaded. Detailed instructions for online submission are published on the Online Tender Box. The closing time for the receipt of tenders is **12h00** on the **10<sup>th</sup> December 2021**.

Telegraphic, telephonic, telex, facsimile, e-mail, physical and late tenders will not be accepted.

Tenders may only be submitted on the tender documentation that is issued. Requirements for sealing, addressing, delivery, opening and assessment of tenders are stated in the Tender Data.

Bidders should ensure that bids are submitted timeously to the correct portal. Late bids will be rejected. If the bid is late, it will not be accepted for consideration. Bids delivered in any method other than through the method stipulated, will be rejected.

A non-refundable fee of R500.00 (Payment for tender participation) is payable either by bank deposit or electronic Fund Transfer.

**All bidders must include with bid submission proof of payment when submitting their tenders.**

Bank details are as follows: **Bank: ABSA**  
**Account number: 01000041501**

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**Branch code: 632005**

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## **T1.2 TENDER DATA**

### **T1.2.1 Conditions of Tender**

The conditions of tender are the Standard Conditions of Tender as contained in Annex F of the CIDB Standard for Uniformity in Construction Procurement (January 2009) as published in Government Gazette No 38960, Board Notice 136 of 2015 of 10 July 2015. (See [www.cidb.org.za](http://www.cidb.org.za)).

The Standard Conditions of Tender make several references to the Tender Data for details that apply specifically to this tender. The Tender Data shall have precedence in the interpretation of any ambiguity or inconsistency between it and the Standard Conditions of Tender.

Each item of data given below is cross-referenced to the clause in the Standard Conditions of Tender to which it mainly applies. The Standard Conditions of Tender have been added as an annexure to these tendering procedures.

### **T1.2.2 Tender Data**

The clause numbers in the Tender Data refer to the corresponding clause numbers in the Conditions of Tender (see Annex).

**The additional Conditions of Tender are:**

<b>Clause number</b>	<b>Tender Data</b>
F.1.1	The Employer is, <b>MINTEK</b>
F.1.2	The tender documents issued by the Employer comprise: <b>Volume 1:</b> <b>Tendering Procedures</b> T1.1 Tender Notice and Invitation to Tender T1.2 Tender Data <b>Returnable Documents</b> T2.1 List of Returnable Documents T2.2 Returnable Schedules, including the Enterprise Declaration Affidavit which may be bound in a separate volume T2.3 List of Returnable Schedules <b>Part 1: Agreement and Contract Data</b> C1.1 Form of Offer and Acceptance C1.2 Contract Data C1.3 Forms of Securities <b>Part 2: Scope of Work</b> C2.1 Scope of Work
F.1.4	The Employer shall mean the Engineer and Employer's agent. The Employer's agent is: <b>Mine Closure and Rehabilitation</b>  Company name: <b>Mintek (Pty) Ltd</b> Address: <b>200 Malibongwe Street, Randburg</b> E-mail address: <a href="mailto:tenders@mintek.co.za">tenders@mintek.co.za</a>

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Clause number	Tender Data
F1.5.2	<p>Replace the existing clause with the following:</p> <p>The Employer may not subsequent to the cancellation or abandonment of a tender process or the rejection of all responsive tender offers, <b>save for all tenders being non-responsive</b>, re-issue a tender covering substantially the same scope of work within a period of three months unless only one tender was received and such tender was returned unopened to the tenderer.</p>
F1.6.3.2.1 & F.1.6.3.2.2	<p><b>Proposal procedure using the two stage-system (Option 2)</b></p> <p>Replace the existing clause with the following:</p> <p>The two stage system will be used for this tender.</p> <p><b>Stage 1 (This Tender)</b></p> <p>Tenderers shall submit in Stage 1 only compliance and technical proposals, and the evaluation will be based on the following.</p> <ul style="list-style-type: none"> <li>• Compliance <ul style="list-style-type: none"> <li>– All compliance documents listed in Clause F.2.23 of Additional Conditions of Tender.</li> </ul> </li> <li>• Technical requirements <ul style="list-style-type: none"> <li>– Relevant experience</li> <li>– Similar projects</li> <li>– Experience of key personnel</li> </ul> </li> <li>• Company capacity <ul style="list-style-type: none"> <li>– Plant availability</li> </ul> </li> <li>• Financial capability <ul style="list-style-type: none"> <li>– Financial statements</li> </ul> </li> </ul> <p>The bidders obtaining the 10 highest number of total points will be awarded panel contracts (subject to evaluations on financial capability).</p> <p><b>Stage 2 (To Follow)</b></p> <p>The employer shall invite only the appointed tenderers to submit tender offers in the second stage, following the issuing of procurement documents. The employer shall evaluate tenders received during Stage 2 in terms of the following:</p> <ul style="list-style-type: none"> <li>• Approach or methodology</li> <li>• Pricing</li> <li>• BBBEE Preferential points</li> </ul> <p>In order to spread out the work fairly, the maximum clusters to be awarded to a bidder per batch will be 3 clusters, where possible.</p>
F.2.2.2	<p>The Employer shall ensure availability of tender documents on the Mintek webpage:</p>

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	<a href="http://www.mintek.co.za">http://www.mintek.co.za</a> .
F.2.7	<p>The arrangements for a compulsory clarification meeting are as stated in the Tender Notice and Invitation to Tender.</p> <p>Tenderers must sign the attendance list in the name of the tendering entity. Addenda will be issued to and tenders will be received only from those tendering entities appearing on the attendance list.</p>
F.2.8	<p>Replace the contents of the clause with the following:</p> <p>“Request clarification of the tender documents, if necessary, by notifying the Employer’s Official indicated in the Tender Notice and Invitation to Tender in writing at least three working days before the closing time stated in the foregoing notice and clause F.2.15.”</p>
F.2.9	<p>Add the following to the clause:</p> <p>“Accept that the submission of a Tender shall be construed as an acknowledgement by the Tenderer that he is satisfied with the insurance cover, the Employer will affect under the contract.”</p>
F.2.12	No alternative offer will be accepted and considered.
F.2.13.1	Submit one tender offer only, either as a single tendering entity or as a member in a single joint venture to provide the whole of the works, services or supply identified in the contract data and described in the scope of works.
F.2.13.3	<p>Tenders must be prepared and submitted as follows:</p> <ul style="list-style-type: none"> <li>• Zip File 1: Compliance documents</li> <li>• Zip File 2: Tender submission, including all supporting document</li> <li>• Zip File 3: Not applicable on this tender</li> </ul>
F.2.13.5	<p>Tenders shall be submitted electronically via the Mintek Online Tender Box that may be accessed using the same website address identified in the Tender Notice and Invitation to Tender for downloading the tender documents.</p> <p><b>Identification details for files that are submitted to the Online Tender Box:</b></p> <p>Files are to be saved with the Tender number and the tenderer’s name separated by a dash eg: XXXXX-[tenderername].xxx Only file types specified on the Online Tender Box are to be submitted.</p> <p><b>Files are not to exceed the file size stipulated on the Online Tender Box.</b></p>
F.2.15.1	The closing time for submission of tender offers is as stated in the Tender Notice and Invitation to Tender.
F.2.16	The tender offer validity period is 90 days from closing date.

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Clause number	Tender Data
F.2.16.1	<p>Add the following to the clause:</p> <p>“If the tender validity expires on a Saturday, Sunday or public holiday, the Tender Offer shall remain valid and open for acceptance until the closure of business on the following working day.”</p>
F.2.17	<p>Replace the contents of the clause with the following clause:</p> <p>“Provide clarification of a Tender Offer in response to a request to do so from the Employer during the evaluation of Tender Offers. This may include providing a breakdown of rates or prices and correction of arithmetical errors resulting from the product of the unit rate and the quantity by the adjustment of certain line item totals. No change in the unit rate or prices or substance of the Tender Offer is sought, offered, or permitted. ”</p>
F.2.19	<p>The Tenderer must provide access during working hours to his premises for inspections on request.</p>
F.2.23	<p><b>The Tenderer is required to submit with his tender the following information: Non-submission of the following will result in your bid being disqualified from further assessment</b></p> <ol style="list-style-type: none"> <li>1) Minimum 7CE CIDB grading</li> <li>2) Valid letter of Good Standing with the Department of Labour (COIDA)</li> <li>3) Site briefing attendance certificate</li> </ol>
F.2.24	<p>Add the following new clause:</p> <p><b>Canvassing and obtaining of additional information by tenderers</b></p> <p>Accept that no Tenderer shall make any attempt either directly or indirectly to canvass any of the Employers officials or the Employer’s agent in respect of his tender, after the opening of the tenders but prior to the Employer arriving at a decision thereon.</p> <p>No Tenderer shall make any attempt to obtain particulars of any relevant information, other than that disclosed at the opening of tenders.</p>
F.2.26	<p>Add the following new clause:</p> <p><b>Tax Compliance Status</b></p> <p>In the case of a Joint Venture/Consortium the tax compliance status must be for the Joint Venture/Consortium or individual tax compliance status for all the members of the Joint Venture/Consortium.”</p>
F.3.1	<p>Replace the contents of the clause with the following:</p> <p>“Respond to a request for clarification received up to three calendar days before the tender closing time stated in the tender data and notify all Tenderers who drew procurement documents”</p>



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Clause number	Tender Data												
F.3.4	<p>Tenders will not be opened in public.</p> <p>Mintek reserves the right not to award the bid to the highest scoring bidder if in the opinion of Mintek, a supplier's bid presents risk to time, cost or quality.</p>												
F.3.11.1	<p><b>Add</b> the following contents to clause F.3.11.1:</p> <p>During stage 1 tenders will be evaluated based on the criteria stated below. Preferential points will be considered in stage 2 of the tender.</p> <p>Functionality will be evaluated first (as outlined below) and if the tenderer does not score a minimum total of 65 points for quality, the tenderer will be eliminated and will not be considered further.</p> <table border="1"> <thead> <tr> <th>Main Criteria</th><th>Maximum Score</th></tr> </thead> <tbody> <tr> <td>Experience</td><td>45</td></tr> <tr> <td>Capacity</td><td>25</td></tr> <tr> <td>Mine Health &amp; Safety Experience</td><td>20</td></tr> <tr> <td>Regional Development</td><td>10</td></tr> <tr> <td><b>TOTAL FUNCTIONALITY</b></td><td><b>100</b></td></tr> </tbody> </table> <p>A detailed breakdown of the technical functionality evaluation criteria has been provided in Table A on page TP.9.</p>	Main Criteria	Maximum Score	Experience	45	Capacity	25	Mine Health & Safety Experience	20	Regional Development	10	<b>TOTAL FUNCTIONALITY</b>	<b>100</b>
Main Criteria	Maximum Score												
Experience	45												
Capacity	25												
Mine Health & Safety Experience	20												
Regional Development	10												
<b>TOTAL FUNCTIONALITY</b>	<b>100</b>												
F3.11.9	<p><b>Replace</b> the contents of clause F.3.11.9 with the following:</p> <p>"The bid will be evaluated in three (3) stages namely;</p> <ul style="list-style-type: none"> <li>• Stage 1 – Assess all submissions for completeness and compliance</li> <li>• Stage 2 - Score quality, rejecting all tender offers that fail to score the minimum number of points for quality stated in the Tender data</li> <li>• Stage 3 - Recommend tenderers with the highest number of tender evaluation points for the appointment into the panel contract, unless there are compelling and justifiable reasons not to do so. The ten (10) highest scoring tenderers will be recommended.</li> </ul>												
F.3.13.1	<p>Tender offers will only be accepted if:</p> <ol style="list-style-type: none"> <li>a) the tenderer's tax compliance status is verified either through the use of the PIN or the Tax Clearance Certificate obtained from the South African Revenue Authority (SARS) Tax Compliance Status (TCS) system on eFiling (<a href="http://www.sarsefiling.co.za">www.sarsefiling.co.za</a>). Any arrangements made with SARS to meet outstanding tax obligations will also be considered;</li> <li>b) the tenderer submits a letter of intent from an approved insurer undertaking to provide the Performance Guarantee to the format included in Part T2.2.5 of this procurement document</li> <li>c) the tenderer is registered with the Construction Industry Development Board in the appropriate contractor grading designation;</li> <li>d) the tenderer or any of its directors/shareholders is not listed on the Register of Tender Defaulters in terms of the Prevention and Combating of Corrupt Activities Act of 2004 as a person prohibited from doing business with the public sector;</li> </ol>												

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	<ul style="list-style-type: none"><li>e) the tenderer has not:<ul style="list-style-type: none"><li>i) abused the Employer's Supply Chain Management System; or</li><li>ii) failed to perform on any previous contract and has been given a written notice to this effect;</li></ul></li><li>f) the tenderer has completed the Compulsory Enterprise Questionnaire and there are no conflicts of interest which may impact on the tenderer's ability to perform the contract in the best interests of the Employer or potentially compromise the tender process and persons in the employ of the state are not permitted to submit tenders or participate in the contract;</li><li>g) the tenderer is registered and in good standing with the compensation fund or with a licensed compensation insurer;</li><li>h) the Employer is reasonably satisfied that the tenderer has, in terms of the Mine Health and Safety Act of 1996, issued the necessary competencies and resources to carry out the work safely; and</li><li>i) the tenderer:<ul style="list-style-type: none"><li>i) has sufficiently substantiated his experience in this type work;</li><li>ii) has the required and experienced key personnel; and</li><li>iii) owns or has the ability to rent the primary equipment to effectively and efficiently execute the work. Proof of ownership or a letter from the plant hire company where the equipment will be rented must accompany the tender submission.</li></ul></li></ul>
F.3.18	The number of paper copies of the signed contract to be provided by the Employer is one.
	There are no additional conditions of tender.

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**Table A: Technical Evaluation Criteria**

No.	Criteria	Method Evaluation	Points
<b>1</b>	<b>Experience</b> ( <i>All experience measures will be assessed on the strength of supporting evidence, e.g.: CV's, testimonials and project completion certificates</i> )		<b>60</b>
<b>1.1</b>	<b>Experience in design and build contracts</b>		<b>20</b>
	Evidence of experience in design and build contracts	No evidence of relevant experience submitted.	0
		1 completion/ taking over certificate submitted with experience in design and build contracts.	3
		2 completion / taking over certificate submitted with experience in design and build contracts.	6
	Completion/Taking Over Certificates must be submitted	3 completion / taking over certificate submitted with experience in design and build contracts.	10
<b>1.2</b>	<b>Experience in concrete structures demolition.</b>		<b>10</b>
	Evidence of experience and performance in concrete structures demolition.	No evidence of relevant experience submitted.	0
		1 testimonial submitted with experience and performance in concrete structures demolition.	4
		2 testimonials submitted with experience and performance in concrete structures demolition.	8
	Non-attachment of testimonials will result in a zero score. Testimonials must clearly state the experience and performance in concrete structures demolition work.	3 testimonials submitted with experience and performance in concrete structures demolition.	10
<b>1.3</b>	<b>Experience in mine adits/ holings closure</b>		<b>15</b>
	Evidence of experience in mine adits/shafts closure.	No evidence of relevant experience submitted	0
		1 completion certificate/ testimonial submitted with experience in mine adits/shafts closure	5
	Bidders to submit completion certificates/ testimonials in relation to mine adits/ shafts closure	2 completion certificates/ testimonials submitted with experience in mine adits/shafts closure	10
		3 completion certificates/ testimonials submitted with experience in mine adits/shafts closure	
<b>1.4</b>	<b>Experience of employees that will be dedicated to the project</b>		<b>25</b>
	Experience of key personnel in civil concrete works, concrete structures demolition and/ or mining adits/ shafts closure projects.		
	<b>Project manager</b> <i>Minimum Qualifications:</i>	No cv submitted and documents submitted do not meet minimum qualifications.	0
	1. A Dip / BSc / B.ENG from a recognized institution.	3 - 4 years' experience and meet minimum qualifications.	1
	2. ESCA registered as a Pr.Eng or Pr. Eng Tech	5 - 7 years' experience and meet minimum qualifications.	2
	3. Minimum 3 years' experience Civil Engineering projects.	8 or more years' experience and meet minimum qualifications.	4

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No.	Criteria	Method Evaluation	Points
	<b>Design Engineer</b> <i>Minimum Qualifications:</i> 1. A Dip / BSc / B.ENG from a recognized institution. 2. ESCA registered as a Pr.Eng or Pr. Eng Tech 3. Minimum 5 years' experience in structural engineering and bulk earthworks.	No cv submitted and documents submitted do not meet minimum qualifications.  5 - 6 years' experience and meet minimum qualifications.  7- 8 years' experience and meet minimum qualifications.  More than 8 years' experience and meet minimum qualifications.	0  5  10  15
	<b>Site Agent</b> <i>Minimum Qualifications:</i> 1. A Dip / BSc / B.ENG from a recognized institution. 2. Minimum 3 years' experience in managing Civil Engineering projects.	No cv submitted and documents submitted do not meet minimum requirements.  3 - 4 years' experience and meet minimum qualifications.  5 - 7 years' experience and meet minimum qualifications.  8 or more years' experience and meet minimum qualifications.	0  1  2  3
	<b>Health and Safety Officer</b> <i>Minimum Qualifications:</i> 1. Minimum National Diploma in Occupational Health and Safety from a recognized institution. 2. Minimum 3 years' experience.	No cv submitted and documents submitted do not meet minimum requirements.  3 - 4 years' experience and meet minimum qualifications.  5 or more years' experience and meet minimum qualifications.	0  1  3
<b>2</b>	<b>Capacity</b>		<b>10</b>
<b>2.1</b>	<b>Infrastructure and Capacity</b>		<b>10</b>
2.1.1	Ability to provide quantity and type of plant and equipment to be used for works. (Tipper, Excavator, Concrete Mixer, TLB, Skidsteer Loader)  <b>Form of evidence for ownership and/or agreement/ letter of intent for the hiring of equipment or plant must be submitted</b>	Inability to provide evidence of plant/ equipment procurement capability.  Contractor has evidence of ownership of plant /equipment (supply all own equipment). Form of evidence for ownership  Contractor commits to local procurement (within Gauteng province) of required plant /equipment.  Agreement/ letter of intent for the hiring of equipment or plant	0  5  10
<b>3</b>	<b>Mine Health and Safety experience according to mine related legislation.</b>		<b>20</b>
<b>3.1</b>	<b>Safety experience in mining related construction projects</b>		<b>20</b>

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No.	Criteria	Method Evaluation	Points
3.1.1	Tenderer's experience in Mine health and safety.  <i>All experience measures will be assessed on the strength of supporting evidence, i.e. <b>project completion certificates</b>.</i>	No safety experience in mining related construction project.	0
		Safety experience on at least one mining related construction project.	7
		Safety experience on 2 or more mining related construction projects.	14
		Safety experience on 4 or more mining related construction projects.	20
4.	Regional development		10
4.1	Support for local businesses		10
4.1.1	Consideration is given to local contractors or efforts by contractors to sub-contract local companies.	Neither sub-contractor nor main contractor are from the province (Gauteng) where the project is taking place.	0
		Sub-contractor is from the province (Gauteng) in which the project is located.	5
		Contractor (main contractor) is head quartered in the province (Gauteng) in which the project is located.	10
TOTAL FUNCTIONALITY		Experience + Capacity + Safety experience and Methodology.	100

Bidders who score less than 65% for the technical evaluation will not be considered further.

Over and above the technical evaluations, the bidder should demonstrate financial capability to execute projects of this nature.

Company must submit a full set of latest Annual Financial Statements. Either audited or prepared by a Registered Accountant.

- Income Statement
- Balance Sheet
- Cash Flow Statement
- Statement of Changes in Equity

The top 10 highest scoring bidders for functionality will be subject to evaluations on financial stability/ capability and only the bidders that have the financial stability/ capability to execute projects of this nature will be appointed onto the panel. In the event that a bidder meets the functionality requirements but is not financially stable, they will be disqualified and the next highest scoring bidder for functionality who also meets the financial stability/ capability requirements will be appointed onto the panel.



## **ANNEXURE: STANDARD CONDITIONS OF TENDER**

*(As contained in Annexure F of the CIDB Standard for Uniformity in Construction Procurement)*

### **F.1 General**

#### **F.1.1 Actions**

**F.1.1.1** The employer and each tenderer submitting a tender offer shall comply with these conditions of tender. In their dealings with each other, they shall discharge their duties and obligations as set out in F.2 and F.3, timeously and with integrity, and behave equitably, honestly and transparently, comply with all legal obligations and not engage in anticompetitive practices.

**F.1.1.2** The employer and the tenderer and all their agents and employees involved in the tender process shall avoid conflicts of interest and where a conflict of interest is perceived or known, declare any such conflict of interest, indicating the nature of such conflict. Tenderers shall declare any potential conflict of interest in their tender submissions. Employees, agents and advisors of the employer shall declare any conflict of interest to whoever is responsible for overseeing the procurement process at the start of any deliberations relating to the procurement process or as soon as they become aware of such conflict, and abstain from any decisions where such conflict exists or recuse themselves from the procurement process, as appropriate.

*Note:*

- 1) A conflict of interest may arise due to a conflict of roles which might provide an incentive for improper acts in some circumstances. A conflict of interest can create an appearance of impropriety that can undermine confidence in the ability of that person to act properly in his or her position even if no improper acts result.*
- 2) Conflicts of interest in respect of those engaged in the procurement process include direct, indirect or family interests in the tender or outcome of the procurement process and any personal bias, inclination, obligation, allegiance or loyalty which would in any way affect any decisions taken.*

**F.1.1.3** The employer shall not seek and a tenderer shall not submit a tender without having a firm intention and the capacity to proceed with the contract.

#### **F.1.2 Tender Documents**

The documents issued by the employer for the purpose of a tender offer are listed in the tender data.

#### **F.1.3 Interpretation**

**F.1.3.1** The tender data and additional requirements contained in the tender schedules that are included in the returnable documents are deemed to be part of these conditions of tender.

**F.1.3.2** These conditions of tender, the tender data and tender schedules which are only required for tender evaluation purposes, shall not form part of any contract arising from the invitation to tender.



**F.1.3.3** For the purposes of these conditions of tender, the following definitions apply:

a) **conflict of interest** means any situation in which:

- i) someone in a position of trust has competing professional or personal interests which make it difficult to fulfill his or her duties impartially;
- ii) an individual or organisation is in a position to exploit a professional or official capacity in some way for their personal or corporate benefit; or
- iii) incompatibility or contradictory interests exist between an employee and the organisation which employs that employee.

b) **comparative offer** means the price after the factors of a non-firm price and all unconditional discounts it can be utilised to have been taken into consideration;

c) **corrupt practice** means the offering, giving, receiving or soliciting of anything of value to influence the action of the employer or his staff or agents in the tender process;

d) **fraudulent practice** means the misrepresentation of the facts in order to influence the tender process or the award of a contract arising from a tender offer to the detriment of the employer, including collusive practices intended to establish prices at artificial levels;

e) **organization** means a company, firm, enterprise, association or other legal entity, whether incorporated or not, or a public body;

f) **functionality** means the measurement according to the predetermined norms of a service or commodity designed to be practical and useful, working or operating, taking into account quality, reliability, viability and durability of a service and technical capacity and ability of a tenderer.

#### **F.1.4 Communication and employer's agent**

Each communication between the employer and a tenderer shall be to or from the employer's agent only, and in a form that can be readily read, copied and recorded. Communications shall be in the English language. The employer shall not take any responsibility for non-receipt of communications from or by a tenderer. The name and contact details of the employer's agent are stated in the tender data.

#### **F.1.5 Cancellation and Re-Invitation of Tenders**

F1.5.1 An organ of state may, prior to the award of the tender, cancel a tender if-

- (a) due to changed circumstances, there is no longer a need for the services, works or goods requested; or
- (b) funds are no longer available to cover the total envisaged expenditure; or
- (c) no acceptable tenders are received.

#### **F.1.6 Procurement procedures**

##### **F.1.6.1 General**

Unless otherwise stated in the tender data, a contract will, subject to F.3.13, be concluded with the tenderer who in terms of F.3.11 is the highest ranked or the tenderer scoring the highest number of tender evaluation points, as relevant, based on the tender submissions that are received at the closing time for tenders.

##### **F.1.6.2 Competitive negotiation procedure**

**F.1.6.2.1** Where the tender data require that the competitive negotiation procedure is to be followed, tenderers shall submit tender offers in response to the proposed contract in the first round of submissions. Notwithstanding the requirements of F.3.4, the employer shall announce only the names





of the tenderers who make a submission. The requirements of F.3.8 relating to the material deviations or qualifications which affect the competitive position of tenderers shall not apply.

**F.1.6.2.2** All responsive tenderers, or not less than three responsive tenderers that are highest ranked in terms of the evaluation method and evaluation criteria stated in the tender data, shall be invited in each round to enter into competitive negotiations, based on the principle of equal treatment and keeping confidential the proposed solutions and associated information. Notwithstanding the provisions of F.2.17, the employer may request that tenders be clarified, specified and fine-tuned in order to improve a tenderer's competitive position provided that such clarification, specification, fine-tuning or additional information does not alter any fundamental aspects of the offers or impose substantial new requirements which restrict or distort competition or have a discriminatory effect.

**F.1.6.2.3** At the conclusion of each round of negotiations, tenderers shall be invited by the employer to make a fresh tender offer, based on the same evaluation criteria, with or without adjusted weightings. Tenderers shall be advised when they are to submit their best and final offer.

**F.1.6.2.4** The contract shall be awarded in accordance with the provisions of F.3.11 and F.3.13 after tenderers have been requested to submit their best and final offer.

### **F.1.6.3 Proposal procedure using the two stage-system**

#### **F.1.6.3.1 Option 1**

Tenderers shall in the first stage submit technical proposals and, if required, cost parameters around which a contract may be negotiated. The employer shall evaluate each responsive submission in terms of the method of evaluation stated in the tender data, and in the second stage negotiate a contract with the tenderer scoring the highest number of evaluation points and award the contract in terms of these conditions of tender.

#### **F.1.6.3.2 Option 2**

**F.1.6.3.2.1** Tenderers shall submit in the first stage only technical proposals. The employer shall invite all responsive tenderers to submit tender offers in the second stage, following the issuing of procurement documents.

**F.1.6.3.2.2** The employer shall evaluate tenders received during the second stage in terms of the method of evaluation stated in the tender data, and award the contract in terms of these conditions of tender.

### **F.2 Tenderer's obligations F.2.1 Eligibility**

**F.2.1.1** Submit a tender offer only if the tenderer satisfies the criteria stated in the tender data and the tenderer, or any of his principals, is not under any restriction to do business with employer.

**F.2.1.2** Notify the employer of any proposed material change in the capabilities or formation of the tendering entity (or both) or any other criteria which formed part of the qualifying requirements used by the employer as the basis in a prior process to invite the tenderer to submit a tender offer and obtain the employer's written approval to do so prior to the closing time for tenders.

### **F.2.2 Cost of tendering**

**F.2.2.1** Accept that, unless otherwise stated in the tender data, the employer will not compensate the tenderer for any costs incurred in the preparation and submission of a tender offer, including the costs of any testing necessary to demonstrate that aspects of the offer complies with requirements.

**F.2.2.2** The cost of the tender documents charged by the employer shall be limited to the actual cost incurred by the employer for printing the documents. Employers must attempt to make available the





tender documents on its website so as not to incur any costs pertaining to the printing of the tender documents.

#### **F.2.3 Check documents**

Check the tender documents on receipt for completeness and notify the employer of any discrepancy or omission.

#### **F.2.4 Confidentiality and copyright of documents**

Treat as confidential all matters arising in connection with the tender. Use and copy the documents issued by the employer only for the purpose of preparing and submitting a tender offer in response to the invitation.

#### **F.2.5 Reference documents**

Obtain, as necessary for submitting a tender offer, copies of the latest versions of standards, specifications, conditions of contract and other publications, which are not attached but which are incorporated into the tender documents by reference.

#### **F.2.6 Acknowledge addenda**

Acknowledge receipt of addenda to the tender documents, which the employer may issue, and if necessary apply for an extension to the closing time stated in the tender data, in order to take the addenda into account.

#### **F.2.7 Clarification meeting**

Attend, where required, a clarification meeting at which tenderers may familiarize themselves with aspects of the proposed work, services or supply and raise questions. Details of the meeting(s) are stated in the tender data.

#### **F.2.8 Seek clarification**

Request clarification of the tender documents, if necessary, by notifying the employer at least five working days before the closing time stated in the tender data.

#### **F.2.9 Insurance**

Be aware that the extent of insurance to be provided by the employer (if any) might not be for the full cover required in terms of the conditions of contract identified in the contract data. The tenderer is advised to seek qualified advice regarding insurance.

#### **F.2.10 Alterations to documents**

Do not make any alterations or additions to the tender documents, except to comply with instructions issued by the employer, or necessary to correct errors made by the tenderer. All signatories to the tender offer shall initial all such alterations.

#### **F.2.11 Alternative tender offers**

**F.2.11.1** Unless otherwise stated in the tender data, submit alternative tender offers only if a main tender offer, strictly in accordance with all the requirements of the tender documents, is also submitted as well as a schedule that compares the requirements of the tender documents with the alternative requirements that are proposed.

**F.2.11.2** Accept that an alternative tender offer may be based only on the criteria stated in the tender data or criteria otherwise acceptable to the employer.

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**F.2.11.3** An alternative tender offer may only be considered in the event that the main tender offer is the winning tender.

**F.2.12 Submitting a tender offer**

**F.2.12.1** Submit one tender offer only, either as a single tendering entity or as a member in a joint venture to provide the whole of the works, services or supply identified in the contract data and described in the scope of works, unless stated otherwise in the tender data.

**F.2.12.2** Return all returnable documents to the employer after completing them in their entirety, either electronically (if they were issued in electronic format) or by writing legibly in non-erasable ink.

**F.2.12.3** Submit the parts of the tender offer communicated on paper as an original plus the number of copies stated in the tender data, with an English translation of any documentation in a language other than English, and the parts communicated electronically in the same format as they were issued by the employer.

**F.2.12.4** Sign the original and all copies of the tender offer where required in terms of the tender data. The employer will hold all authorized signatories liable on behalf of the tenderer. Signatories for tenderers proposing to contract as joint ventures shall state which of the signatories is the lead partner whom the employer shall hold liable for the purpose of the tender offer.

**F.2.12.5** Seal the original and each copy of the tender offer as separate packages marking the packages as "ORIGINAL" and "COPY". Each package shall state on the outside the employer's address and identification details stated in the tender data, as well as the tenderer's name and contact address.

**F.2.12.6** Where a two-envelope system is required in terms of the tender data, place and seal the returnable documents listed in the tender data in an envelope marked "financial proposal" and place the remaining returnable documents in an envelope marked "technical proposal". Each envelope shall state on the outside the employer's address and identification details stated in the tender data, as well as the tenderer's name and contact address.

**F.2.12.7** Seal the original tender offer and copy packages together in an outer package that states on the outside only the employer's address and identification details as stated in the tender data.

**F.2.12.8** Accept that the employer will not assume any responsibility for the misplacement or premature opening of the tender offer if the outer package is not sealed and marked as stated.

**F.2.12.9** Accept that tender offers submitted by facsimile or e-mail will be rejected by the employer, unless stated otherwise in the tender data.

**F.2.13 Information and data to be completed in all respects**

Accept that tender offers, which do not provide all the data or information requested completely and in the form required, may be regarded by the employer as non-responsive.

**F.2.14 Closing time F.2.15.1** Ensure that the employer receives the tender offer at the address specified in the tender data not later than the closing time stated in the tender data. Accept that proof of posting shall not be accepted as proof of delivery.

**F.2.14.2** Accept that, if the employer extends the closing time stated in the tender data for any reason, the requirements of these conditions of tender apply equally to the extended deadline.



### **F.2.15 Tender offer validity**

**F.2.15.1** Hold the tender offer(s) valid for acceptance by the employer at any time during the validity period stated in the tender data after the closing time stated in the tender data.

**F.2.15.2** If requested by the employer, consider extending the validity period stated in the tender data for an agreed additional period with or without any conditions attached to such extension.

**F.2.15.3** Accept that a tender submission that has been submitted to the employer may only be withdrawn or substituted by giving the employer's agent written notice before the closing time for tenders that a tender is to be withdrawn or substituted.

**F.2.15.4** Where a tender submission is to be substituted, submit a substitute tender in accordance with the requirements of F.2.13 with the packages clearly marked as "SUBSTITUTE".

### **F.2.16 Clarification of tender offer after submission**

Provide clarification of a tender offer in response to a request to do so from the employer during the evaluation of tender offers. This may include providing a breakdown of rates or prices and correction of arithmetical errors by the adjustment of certain rates or item prices (or both). No change in the competitive position of tenderers or substance of the tender offer is sought, offered, or permitted.

***Note:** Sub-clause F.2.17 does not preclude the negotiation of the final terms of the contract with a preferred tenderer following a competitive selection process, should the Employer elect to do so.*

### **F.2.17 Provide other material**

**F.2.17.1** Provide, on request by the employer, any other material that has a bearing on the tender offer, the tenderer's commercial position (including notarized joint venture agreements), preferencing arrangements, or samples of materials, considered necessary by the employer for the purpose of a full and fair risk assessment. Should the tenderer not provide the material, or a satisfactory reason as to why it cannot be provided, by the time for submission stated in the employer's request, the employer may regard the tender offer as non-responsive.

**F.2.17.2** Dispose of samples of materials provided for evaluation by the employer, where required.

### **F.2.18 Inspections, tests and analysis**

Provide access during working hours to premises for inspections, tests and analysis as provided for in the tender data.

### **F.2.19 Submit securities, bonds and policies**

If requested, submit for the employer's acceptance before formation of the contract, all securities, bonds, guarantees, policies and certificates of insurance required in terms of the conditions of contract identified in the contract data.

### **F.2.20 Check final draft**

Check the final draft of the contract provided by the employer within the time available for the employer to issue the contract.

### **F.2.21 Return of other tender documents**

If so instructed by the employer, return all retained tender documents within 28 days after the expiry of the validity period stated in the tender data.

### **F.2.22 Certificates**



Include in the tender submission or provide the employer with any certificates as stated in the tender data.

### **F.3 The employer's undertakings**

#### **F.3.1 Respond to requests from the tenderer**

**F.3.1.1** Unless otherwise stated in the tender Data, respond to a request for clarification received up to five working days before the tender closing time stated in the Tender Data and notify all tenderers who drew procurement documents.

**F.3.1.2** Consider any request to make a material change in the capabilities or formation of the tendering entity (or both) or any other criteria which formed part of the qualifying requirements used to prequalify a tenderer to submit a tender offer in terms of a previous procurement process and deny any such request if as a consequence:

- a) an individual firm, or a joint venture as a whole, or any individual member of the joint venture fails to meet any of the collective or individual qualifying requirements;
- b) the new partners to a joint venture were not prequalified in the first instance, either as individual firms or as another joint venture; or
- c) in the opinion of the Employer, acceptance of the material change would compromise the outcome of the prequalification process.

#### **F.3.2 Issue Addenda**

If necessary, issue addenda that may amend or amplify the tender documents to each tenderer during the period from the date that tender documents are available until three days before the tender closing time stated in the Tender Data. If, as a result a tenderer applies for an extension to the closing time stated in the Tender Data, the Employer may grant such extension and, shall then notify all tenderers who drew documents.

**F.3.3 Return late tender offers** Return tender offers received after the closing time stated in the Tender Data, unopened, (unless it is necessary to open a tender submission to obtain a forwarding address), to the tenderer concerned.

#### **F.3.4 Opening of tender submissions**

**F.3.4.1** Unless the two-envelope system is to be followed, open valid tender submissions in the presence of tenderers' agents who choose to attend at the time and place stated in the tender data. Tender submissions for which acceptable reasons for withdrawal have been submitted will not be opened.

**F.3.4.2** Announce at the meeting held immediately after the opening of tender submissions, at a venue indicated in the tender data, the name of each tenderer whose tender offer is opened and, where applicable, the total of his prices, number of points claimed for its BBBEE status level and time for completion for the main tender offer only.

**F.3.4.3** Make available the record outlined in F.3.4.2 to all interested persons upon request.

#### **F.3.5 Two-envelope system**

**F.3.5.1** Where stated in the tender data that a two-envelope system is to be followed, open only the technical proposal of valid tenders in the presence of tenderers' agents who choose to attend at the time and place stated in the tender data and announce the name of each tenderer whose technical proposal is opened.



**F.3.5.2** Evaluate functionality of the technical proposals offered by tenderers, then advise tenderers who remain in contention for the award of the contract of the time and place when the financial proposals will be opened. Open only the financial proposals of tenderers, who score in the functionality evaluation more than the minimum number of points for functionality stated in the tender data, and announce the score obtained for the technical proposals and the total price and any points claimed on BBEE status level. Return unopened financial proposals to tenderers whose technical proposals failed to achieve the minimum number of points for functionality.

**F.3.6 Non-disclosure**

Not disclose to tenderers, or to any other person not officially concerned with such processes, information relating to the evaluation and comparison of tender offers, the final evaluation price and recommendations for the award of a contract, until after the award of the contract to the successful tenderer.

**F.3.7 Grounds for rejection and disqualification**

Determine whether there has been any effort by a tenderer to influence the processing of tender offers and instantly disqualify a tenderer (and his tender offer) if it is established that he engaged in corrupt or fraudulent practices.

**F.3.8 Test for responsiveness**

**F.3.8.1** Determine, after opening and before detailed evaluation, whether each tender offer properly received:

- a) complies with the requirements of these Conditions of Tender,
- b) has been properly and fully completed and signed, and
- c) is responsive to the other requirements of the tender documents.

**F.3.8.2** A responsive tender is one that conforms to all the terms, conditions, and specifications of the tender documents without material deviation or qualification. A material deviation or qualification is one which, in the Employer's opinion, would:

- a) detrimentally affect the scope, quality, or performance of the works, services or supply identified in the Scope of Work,
- b) significantly change the Employer's or the tenderer's risks and responsibilities under the contract, or
- c) affect the competitive position of other tenderers presenting responsive tenders, if it were to be rectified.

Reject a non-responsive tender offer, and not allow it to be subsequently made responsive by correction or withdrawal of the non-conforming deviation or reservation.

**F.3.9 Arithmetical errors, omissions and discrepancies**

**F.3.9.1** Check the highest ranked tender or tenderer with the highest number of tender evaluation points after the evaluation of tender offers in accordance with F.3.11 for:

- a) the gross misplacement of the decimal point in any unit rate;
- b) omissions made in completing the pricing schedule or bills of quantities; or
- c) arithmetic errors in:
  - i) line item totals resulting from the product of a unit rate and a quantity in bills of quantities or schedules of prices; or
  - ii) the summation of the prices.



**F3.9.2** The employer must correct the arithmetical errors in the following manner:

a) Where there is a discrepancy between the amounts in words and amounts in figures, the amount in words shall govern.

b) If bills of quantities or pricing schedules apply and there is an error in the line item total resulting from the product of the unit rate and the quantity, the line item total shall govern and the rate shall be corrected. Where there is an obviously gross misplacement of the decimal point in the unit rate, the line item total as quoted shall govern, and the unit rate shall be corrected.

c) Where there is an error in the total of the prices either as a result of other corrections required by this checking process or in the tenderer's addition of prices, the total of the prices shall govern and the tenderer will be asked to revise selected item prices (and their rates if bills of quantities apply) to achieve the tendered total of the prices.

Consider the rejection of a tender offer if the tenderer does not correct or accept the correction of the arithmetical error in the manner described above.

#### **F.3.10 Clarification of a tender offer**

Obtain clarification from a tenderer on any matter that could give rise to ambiguity in a contract arising from the tender offer.

#### **F.3.11 Evaluation of tender offers**

##### **F.3.11.1 General**

Appoint an evaluation panel of not less than three persons. Reduce each responsive tender offer to a comparative offer and evaluate them using the tender evaluation methods and associated evaluation criteria and weightings that are specified in the tender data.

##### **F.3.11.2 Method 1: Preference**

In the case of preference:

- 1) Score points for BBBEE contribution

##### **F.3.11.3 Method 2: Functionality and Preference**

In the case of a functionality, price and preference:

- 1) Score functionality, rejecting all tender offers that fail to achieve the minimum number of points for functionality as stated in the Tender Data.
- 2) No tender must be regarded as an acceptable tender if it fails to achieve the minimum qualifying score for functionality as indicated in the tender invitation.
- 3) Tenders that have achieved the minimum qualification score for functionality must be evaluated further in terms of the preference points system prescribed in paragraphs 4 and 4 and 5 below

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(4)(b) Subject to subparagraph(4)(c), points must be awarded to a tender for attaining the B-BBEE status level of contributor in accordance with the table below:

<b>B-BBEE status level of contributor</b>	<b>Number of points</b>
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

(4)(c) A maximum of 20 points may be allocated in accordance with subparagraph (4)(b)

(4)(d) The points scored by tender in respect of B-BBEE contribution contemplated in contemplated in subparagraph (4) (b) must be added to the points scored for price as calculated in accordance with subparagraph (4)(a).

(4)(e) Subject to paragraph 4.3.8 the contract must be awarded to the tender who scores the highest total number of points.

**The 90/10 preference points system for acquisition of services, works or goods with a Rand value above R 50 million**

(5)(a) The following formula must be used to calculate the points for price in respect of tenders with a Rand value above R 50 000 000 (all applicable taxes included):

$$P_s = 90 \left( 1 - \frac{P_t - P_{min}}{P_{min}} \right)$$

Where

*P<sub>s</sub>* = Points scored for comparative price of tender or offer under consideration;

*P<sub>t</sub>* = Comparative price of tender or offer under consideration; and

*P<sub>min</sub>* = Comparative price of lowest acceptable tender or offer.

(5)(b) Subject to subparagraph(5)(c), points must be awarded to a tender for attaining the B- BBEE status level of contributor in accordance with the table below:

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B-BBEE status level of contributor	Number of points
1	10
2	9
3	6
4	5
5	4
6	3
7	2
8	1
Non-compliant contributor	0

(5)(c) A maximum of 10 points may be allocated in accordance with subparagraph (5)(b).

(5)(d) The points scored by tender in respect of B-BBEE contribution contemplated in contemplated in subparagraph (5) (b) must be added to the points scored for price as calculated in accordance with subparagraph (5)(a).

(5)(e) Subject to paragraph 4.3.8 the contract must be awarded to the tender who scores the highest total number of points.

#### **F.3.11.6 Decimal places**

Score price, preference and functionality, as relevant, to two decimal places.

#### **F.3.11.7 Scoring preferences**

Confirm that tenderers are eligible for the preferences claimed in accordance with the provisions of the tender data and reject all claims for preferences where tenderers are not eligible for such preferences.

Calculate the total number of tender evaluation points for preferences claimed in accordance with the provisions of the tender data.

#### **F.3.11.8 Scoring functionality**

Score each of the criteria and subcriteria for quality in accordance with the provisions of the Tender Data.

Calculate the total number of tender evaluation points for quality using the following formula:

$$NQ = W2 \times S_o / MS$$

*where:  $S_o$  is the score for quality allocated to the submission under consideration;*

*$MS$  is the maximum possible score for quality in respect of a submission; and*

*$W2$  is the maximum possible number of tender evaluation points awarded for the quality as stated in the tender data*

#### **F.3.12 Insurance provided by the employer**

If requested by the proposed successful tenderer, submit for the tenderer's information the policies and / or certificates of insurance which the conditions of contract identified in the contract data, require the employer to provide.

#### **F.3.13 Acceptance of tender offer**



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Accept the tender offer, if in the opinion of the employer, it does not present any risk and only if the tenderer:

- a) is not under restrictions, or has principals who are under restrictions, preventing participating in the employer's procurement,
- b) can, as necessary and in relation to the proposed contract, demonstrate that he or she possesses the professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and reputation, expertise and the personnel, to perform the contract,
- c) has the legal capacity to enter into the contract,
- d) is not insolvent, in receivership, under Business Rescue as provided for in chapter 6 of the Companies Act, 2008, bankrupt or being wound up, has his affairs administered by a court or a judicial officer, has suspended his business activities, or is subject to legal proceedings in respect of any of the foregoing,
- e) complies with the legal requirements, if any, stated in the tender data, and
- f) is able, in the opinion of the employer, to perform the contract free of conflicts of interest.

**F.3.14 Prepare contract documents**

**F.3.14.1** If necessary, revise documents that shall form part of the contract and that were issued by the employer as part of the tender documents to take account of:

- a) addenda issued during the tender period,
- b) inclusion of some of the returnable documents, and
- c) other revisions agreed between the employer and the successful tenderer.

**F.3.14.2** Complete the schedule of deviations attached to the form of offer and acceptance, if any.

**F.3.15 Complete adjudicator's contract**

Unless alternative arrangements have been agreed or otherwise provided for in the contract, arrange for both parties to complete formalities for appointing the selected adjudicator at the same time as the main contract is signed.

**F.3.16 Notice to unsuccessful tenderers**

**F.3.16.1** Notify the successful tenderer of the employer's acceptance of his tender offer by completing and returning one copy of the form of offer and acceptance before the expiry of the validity period stated in the tender data, or agreed additional period.

**F.3.16.2** After the successful tenderer has been notified of the employer's acceptance of the tender, notify other tenderers that their tender offers have not been accepted.

**F.3.17 Provide copies of the contracts**

Provide to the successful tenderer the number of copies stated in the Tender Data of the signed copy of the contract as soon as possible after completion and signing of the form of offer and acceptance.

**F.3.18 Provide written reasons for actions taken**

Provide upon request written reasons to tenderers for any action that is taken in applying these conditions of tender, but withhold information which is not in the public interest to be divulged, which is considered to prejudice the legitimate commercial interests of tenderers or might prejudice fair competition between tenderers.



### **F3.19 Transparency in the procurement process**

F3.19.2 The employer must adopt a transparency model that incorporates the disclosure and accountability as transparency requirements in the procurement process.

F3.19.3 The transparency model must identify the criteria for selection of projects, project information template and the threshold value of the projects to be disclosed in the public domain at various intervals of delivery of infrastructure projects.

F3.19.4 The client must publish the information on a quarterly basis which contains the following information:

- Procurement planning process
- Procurement method and evaluation process
- Contract type
- Contract status
- Number of firms tendering
- Cost estimate
- Contract title
- Contract firm(s)
- Contract price
- Contract scope of work
- Contract start date and duration
- Contract evaluation reports

F3.19.5 The employer must establish a Consultative Forum which will conduct a random audit in the implementation of the transparency requirements in the procurement process.

F3.19.6 Consultative Forum must be an independent structure from the bid committees.

F3.19.7 The information must be published on the employer's website.

F 3.19.8 Records of such disclosed information must be retained for audit purposes.