

TENDER NO. 96 /2021-2023T



CONTRACT DOCUMENT

FOR THE

SPECIFICATION FOR THE LEASE AND OPERATING OF MACHINERY AND EQUIPMENT

| ISSUED BY: | COMPILED BY: | For official use. |
|---|--|---|
| Supply Chain Management Office Senqu Municipality 19 Murray Street, Lady Grey, 9755 Private Bag X 003, Lady Grey, 9755 Tel: 0516031300 Fax: 0516030445 e-mail: info@senqu.gov.za | Senqu Municipality 19 Murray Street, Lady Grey, 9755 Private Bag X 003, Lady Grey, 9755 Tel: 082 7611 924 e-mail: salmanim@senqu.gov.za | SIGNATURES OF MUNICIPALITY OFFICIALS AT TENDER OPENING 1. 2. 3. |

OCTOBER 2022

| | |
|--|--|
| NAME OF TENDERING ENTITY | |
| EMAIL ADDRESS OF TENDERING ENTITY | |
| FAX NUMBER OF TENDERING ENTITY | |

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Bid No 96/2022 – 2023 T
Tender Description: Lease and Operating of Machinery and Equipment

| (1) GENERAL TENDER INFORMATION | | |
|--------------------------------|--|----------------|
| TENDER DETAILS | | |
| Tender advertising date | 14 October 2022 | |
| Tender closing date | 28 October 2022 | |
| Tender closing time | 12h00 | |
| Technical contact person | Mr Mxolisi Salmani 051 – 603 1300 / 1460 salmanim@senqu.gov.za | |
| SCM contact person | Mr M Xorile 051 – 603 1300 / 1448 mziwoxolom@senqu.gov.za | |
| CLARIFICATION MEETING | | N/A |
| Nature of meeting | Compulsory | Non-compulsory |
| Date and time of meeting | N/A | |
| Venue of Meeting | N/A | |
| TENDER SUBMISSION DETAILS | | |
| Tender box address | Senqu Municipality, 19 Murray Street, Lady Grey | |
| Tender submission process | <p>The Tender Document (which includes the Form of Offer and Acceptance) completed in all respects, plus any additional supporting documents required, must be submitted in a sealed envelope with the name and address of the tenderer, the tender No. and title, and the closing date indicated on the envelope. The sealed envelope must be inserted into the tender box before closing time.</p> <p>If the tender offer is too large to fit into the abovementioned box or the box is full, please enquire at the public counter for alternative instructions. The onus remains with the tenderer to ensure that the tender is placed in either the original box or as alternatively instructed.</p> | |

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(2) TENDER NOTICE AND INVITATION TO TENDER

SENQU LOCAL MUNICIPALITY

INVITES YOU TO SUBMIT AN OFFER FOR THE FOLLOWING TENDER:

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|--|--|
| TENDER NUMBER: | 96/2022 -2023 T |
| TENDER TITLE | Leases Machinery and Equipment |
| CLOSING DATE | 28 October 2022 |
| CLOSING TIME | 12h00 |
| ADDRESS OF MUNICIPALITY | Senqu Municipality, 19 Murray Street, Lady Grey |
| NON-REFUNDABLE TENDER FEE | N/A |
| DATE OF CLARIFICATION MEETING | N/A |
| NATURE OF CLARIFICATION MEETING | N/A |
| TIME OF CLARIFICATION MEETING | N/A |
| VENUE OF CLARIFICATION MEETING | N/A |
| CIDB REQUIREMENTS | Not applicable |
| TECHNICAL ENQUIRIES | Mr Salmani 051 – 603 1300 / 1460 salmanim@senqu.gov.za |
| SCM ENQUIRIES | Mziwoxolo Xorile 051 – 603 1300 / 1448 mziwoxolom@senqu.gov.za |
| TENDER VALIDITY PERIOD | 120 days |

Tenders may only be submitted on the bid documentation provided by the municipality. The completed original tender document and all supporting documentation shall be placed in a single sealed envelope clearly marked with the name and address of the tenderer, the tender number and title, and the closing date indicated on the envelope, deposited in the tender box at the address, and by the date and time stated above. No faxed or e-mailed documents will be accepted. The Senqu Municipality does not bind itself to accept the lowest tender or any other tender and reserves the right to accept the whole or part of the tender. Tenders will be opened in public as soon as practical after the closing time.

Tender documents will be available on the municipal the website <http://www.senqu.gov.za>.

Tender enquiries can be made to the parties as stated above.

Tenders must be compliant with all bid requirements stated in the tender document. Bidders are specifically referred to the requirements of the Preferential Procurement Regulations, 2017, including but not limited to functionality, eligibility, statutory, local content, compulsory sub-contracting, other objective, and price and preference criteria **as stated in the tender document**. If applicable, only locally produced, or manufactured goods meeting the stipulated minimum threshold for local production and content, will be considered. Tenderers' attention is drawn to the registration requirements in the tender documents in respect of registration on the municipal supplier database, Central Suppliers' Database, Construction Industry Development Board (if applicable), etc.

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(3) CONDITIONS OF TENDER

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|----------------|---|
| 3.1 | General |
| 3.1.1 | Actions |
| 3.1.1.1 | <p>The Senqu Municipality (SM) 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 these Conditions of Tender, timeously and with integrity, and behave equitably, honestly and transparently, comply with all legal obligations.</p> <p>The parties agree that this tender, its evaluation and acceptance and any resulting contract shall also be subject to the SM's Supply Chain Management Policy ('SCM Policy') that was applicable on the date the bid was advertised, save that if the SM adopts a new SCM Policy which contemplates that any clause therein would apply to the contract emanating from this tender, such clause shall also be applicable to that contract. Please refer to this document contained on the SM's website.</p> <p>Abuse of the supply chain management system is not permitted and may result in the tender being rejected, cancellation of the contract, restriction of the supplier, and/or the exercise by the SM of any other remedies available to it as described in the SCM Policy.</p> |
| 3.1.1.2 | The SM, the tenderer and 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 SM shall declare any conflict of interest to the SM 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. |
| 3.1.1.3 | The SM shall not seek, and a tenderer shall not submit a tender, without having a firm intention and capacity to proceed with the contract. |
| 3.1.2 | Interpretation |
| 3.1.2.1 | The additional requirements contained in the returnable documents are part of these Conditions of Tender. |
| 3.1.2.2 | These Conditions of Tender and returnable schedules which are required for tender evaluation purposes, shall form part of the contract arising from the invitation to tender. |
| 3.1.3 | <p>Communication during tender process</p> <p>Verbal or any other form of communication, from the SM, its employees, agents, or advisors during site visits/clarification meetings or at any other time prior to the award of the Contract, will not be regarded as binding on the SM, <u>unless communicated by the SM in writing to suppliers by its Bid Specification Committee or his nominee.</u></p> <p>All communications must be directed to the persons as stated in the General Tender Information.</p> |
| 3.1.4 | The SM's right to accept or reject any tender offer |
| 3.1.4.1 | <p>The SM may accept or reject any tender offer and may cancel the tender process or reject all tender offers at any time before the formation of a contract. The SM may, prior to the award of the tender, cancel a tender if:</p> <p>(a) due to changed circumstances, there is no longer a need for the services, works or goods requested; or</p> <p>(b) funds are no longer available to cover the total envisaged expenditure; or</p> <p>(c) no acceptable tenders are received; or</p> <p>(d) there is a material irregularity in the tender process; or</p> <p>(e) the parties are unable to negotiate market related pricing.</p> <p>The SM shall not accept or incur any liability to a tenderer for such cancellation or rejection, but will</p> |

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| | give written reasons for such action upon receiving a written request to do so. |
| 3.1.5 | Procurement procedures |
| 3.1.5.1 | <p>General</p> <p>Unless otherwise stated in the tender conditions, a contract will be concluded with the tenderer who scores the highest number of tender adjudication points.</p> <p>The SM intends to appoint a single tenderer for the allocation of work.</p> <p>The contract period shall be for a period of 3 months from the commencement date of the contract.</p> |
| 3.1.5.2 | <p>Proposal procedure using the two stage-system</p> <p>A two-stage system will not be followed.</p> |
| 3.1.5.3 | <p>Nomination of Alternative Bidder</p> <p>Alternative Bidder means a bidder, identified at the time of awarding a bid, that will be considered for award should the contract be terminated for any reason whatsoever. In the event that a contract is terminated during the execution thereof, the SM may consider the award of the contract, or non-award, to the alternative bidder in terms of the procedures included its SCM Policy.</p> |
| 3.1.6 | Objections, complaints, queries and disputes/ Appeals in terms of Section 62 of the Systems Act/ Access to court |
| 3.1.6.1 | Disputes, objections, complaints and queries |
| | <p>In terms of Regulations 49 and 50 of the Local Government: Municipal Finance Management Act, 56 of 2003 Municipal Supply Chain Management Regulations (Board Notice 868 of 2005):</p> <p>Persons aggrieved by decisions or actions taken by the SM in the implementation of its supply chain management system, may lodge within 14 days of the decision or action, a written objection or complaint or query or dispute against the decision or action.</p> |
| 3.1.6.2 | <p>Appeals</p> <p>In terms of Section 62 of the Local Government: Municipal Systems Act, 32 of 2000 a person whose rights are affected by a decision taken by the SM, may appeal against that decision by giving written notice of the appeal and reasons to the Municipal Manager within 21 days of the date of the notification of the decision.</p> <p>An appeal must contain the following:</p> <ol style="list-style-type: none"> i. Must be in writing ii. It must set out the reasons for the appeal iii. It must state in which way the Appellant's rights were affected by the decision; iv. It must state the remedy sought; and v. It must be accompanied with a copy of the notification advising the person of the decision <p>The relevant SM appeal authority must consider the appeal and may confirm, vary or revoke the decision that has been appealed, but no such revocation of a decision may detract from any rights that may have accrued as a result of the decision.</p> |
| 3.1.6.3 | <p>Right to approach the courts and rights in terms of Promotion of Administrative Justice Act, 3 of 2000 and Promotion of Access to Information Act, 2 of 2000</p> <p>The sub- clauses above do not influence any affected person's rights to approach the High Court at any time or its rights in terms of the Promotion of Administrative Justice Act (PAJA) and Promotion of Access to Information Act (PAIA).</p> |

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| 3.1.6.4 | <p>All requests referring to sub clauses 3.1.6.1 to 3.1.6.3 must be submitted in writing to:</p> <p>The Municipal Manager</p> <p>Via hand delivery at: Senqu Municipality, 19 Murray Street, Lady Grey Via post at: Private Bag X003, Lady Grey, 9755 Via fax at: 051 603 0445 Via email at: yawam@senqu.gov.za</p> |
| 3.1.7 | <p>Senqu Municipality Town Supplier Database Registration</p> <p>Tenderers are required to be registered on the SM Supplier Database as a service provider. Tenderers must register as such upon being requested to do so in writing and within the period contained in such a request, failing which no orders can be raised or payments processed from the resulting contract. In the case of Joint Venture partnerships this requirement will apply individually to each party of the Joint Venture.</p> <p>Tenderers who wish to register on the SM's Supplier Database may collect registration forms from the Senqu Municipality at 19 Murray Street, Lady Grey (Tel 051 603 0019). Registration forms and related information are also available on the SM's website by following the link alongside – https://www.senqu.gov.za/supplier-registration-forms/.</p> <p>It is each tenderer's responsibility to keep all the information on the SM Supplier Database updated.</p> |
| 3.1.8 | <p>National Treasury Web Based Central Supplier Database (CSD) Registration</p> <p>Tenderers are required to be registered on the National Treasury Web Based Central Supplier Database (CSD) as a service provider. Tenderers must register as such upon being requested to do so in writing and within the period contained in such a request, failing which no orders can be raised or payments processed from the resulting contract. In the case of Joint Venture partnerships this requirement will apply individually to each party of the Joint Venture.</p> <p>Tenderers who wish to register on the National Treasury Web Based Central Supplier Database (CSD) may do so via the web address https://secure.csd.gov.za.</p> <p>It is each tenderer's responsibility to keep all the information on the National Treasury Web Based Central Supplier Database (CSD) updated.</p> |

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| 3.2 | Tenderer's obligations |
| 3.2.1 | Eligibility Criteria |
| 3.2.1.1 | Tenderers are obligated to submit a tender offer that complies in all aspects to the conditions as detailed in this tender document. Only those tenders that comply in all aspects with the tender conditions, specifications, pricing instructions and contract conditions will be declared to be responsive. |
| 3.2.1.1.1 | Submit a tender offer Only those tender submissions from which it can be established that a clear, irrevocable, and unambiguous offer has been made to SM, by whom the offer has been made and what the offer constitutes, will be declared responsive. |
| 3.2.1.1.2 | Compliance with requirements of SM SCM Policy and procedures Only those tenders that are compliant with the requirements below will be declared responsive: <ul style="list-style-type: none"> a) A completed Compulsory Enterprise Questionnaire to be provided (applicable schedule to be completed); b) A completed Certificate of Independent Bid Determination to be provided and which does not indicate any non-compliance with the requirements of the schedule (applicable schedule to be completed); c) A completed Certificate of Authority for Partnerships/ Joint Ventures/ Consortiums to be provided authorising the tender to be made and the signatory to sign the tender on the partnership /joint venture/consortium's (applicable schedule to be completed); d) A copy of the partnership / joint venture / consortium agreement to be provided. e) A completed Declaration – Conflict of Interest and Declaration of Bidders' past Supply Chain Management Practices to be provided and which does not indicate any conflict or past practises that renders the tender non-responsive based on the conditions contained thereon (applicable schedules to be completed); f) A completed Declaration of Interest – State Employees to be provided and which does not indicate any non-compliance with the legal requirements relating to state employees (applicable schedule to be completed); g) The tenderer (including any of its directors or members), has not been restricted in terms of abuse of the Supply Chain Management Policy, h) The tenderer's tax matters with SARS are in order, or the tenderer is a foreign supplier that is not required to be registered for tax compliance with SARS; i) The tenderer is not an advisor or consultant contracted with the SM whose prior or current obligations creates any conflict of interest or unfair advantage, j) The tenderer is not a person, advisor, corporate entity or a director of such corporate entity, involved with the bid specification committee; k) A completed Municipal Accounts' Status schedule to be provided and which does not indicate any details that prevents the award of the tender based on the conditions contained thereon (applicable schedules to be completed); l) The tenderer (including any of its directors or members), has not been found guilty of contravening the Competition Act 89 of 1998, as amended from time to time; m) The tenderer (including any of its directors or members), has not been found guilty on any other basis listed in the Supply Chain Management Policy. |
| 3.2.1.1.3 | Compulsory clarification meeting N/A |

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| 3.2.1.1.4 | <p>Key personnel</p> <p>N/A</p> | | | | | | | | | | | | |
|--------------|--|----------------|--|----------------|----|-----------|----|----|---|----|--------------|--|-----|
| 3.2.1.1.5 | <p>Company Experience</p> <p>In order to be declared responsive, the tenderer must demonstrate that it had successfully completed five urban design projects/ structure plans/ precinct or layout plans. If the bidding entity does not have all the required experience in-house, a signed undertaking from a specialist consultant/firm(s) having the required personnel, stating that they will undertake the necessary work on behalf of the tenderer in terms of a sub-consultant agreement, will be acceptable. Such undertaking must be attached to the schedule titled Work Experience of Bidder. The schedule titled Work Experience of Bidder must be clearly indicative of the required experience durations, etc.</p> | | | | | | | | | | | | |
| 3.2.1.1.5 | <p>Minimum score for functionality</p> <p>Only those tenders submitted by tenderers who achieve the minimum score for functionality as stated below will be declared responsive.</p> <p>The description of the functionality criteria and the maximum possible score for each is shown in the table below. The score achieved for functionality will be the sum of the scores achieved, in the evaluation process, for the individual criteria.</p> <table><tr><th colspan="2">CRITERIA</th><th>MAXIMUM POINTS</th></tr><tr><td>1.</td><td>Machinery</td><td>50</td></tr><tr><td>2.</td><td>Organisational experience in providing and operating landfill site management projects.</td><td>50</td></tr><tr><td colspan="2">TOTAL POINTS</td><td>100</td></tr></table> <p>The minimum qualifying score for functionality is 70 out of a maximum of 100.</p> <p>Where the entity tendering is a Joint Venture, Consortium, or reliant upon sub-contractors, the tender must be accompanied by a statement describing exactly what aspects of the work will be undertaken by each party to the tendering entity.</p> <p>Tenderers shall ensure that all relevant information has been submitted with the tender offer in the prescribed format to ensure optimal scoring of functionality points for each Evaluation Criteria. Failure to provide all information IN THIS TENDER SUBMISSION could result in the tenderer not being able to achieve the specified minimum scoring.</p> <p>A more detailed explanation of the functionality criteria is given below:</p> | CRITERIA | | MAXIMUM POINTS | 1. | Machinery | 50 | 2. | Organisational experience in providing and operating landfill site management projects. | 50 | TOTAL POINTS | | 100 |
| CRITERIA | | MAXIMUM POINTS | | | | | | | | | | | |
| 1. | Machinery | 50 | | | | | | | | | | | |
| 2. | Organisational experience in providing and operating landfill site management projects. | 50 | | | | | | | | | | | |
| TOTAL POINTS | | 100 | | | | | | | | | | | |

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| | <p>The following criteria will be used to calculate points for functionality of Service providers tender offers, and Service providers must ensure that they submit all information and required evidence to be evaluated in terms of functionality on the criteria mentioned in table 1 below:</p> <p>Functionality criteria = Maximum = 100 points: Minimum Points required to qualify = 70 Points</p> <table><tr><td>Plant equipment</td><td>Bidders must submit proof of ownership of the Compactor Dozer, TLB and Tipper Truck (with Renewed Registration Certificate required, as well operator certificates for each machine) 50 Points = TLB, Tipper Truck and Dozer.</td><td>Total Points = 50</td></tr><tr><td>Company Experience Appointment letters for Landfill Site Management for each project.</td><td>0-1 Appointment Letter = 0 Points 2-3 Appointment Letters = 20 Points 4-5 Appointment Letters = 30 Points 6 and above Appointment Letters = 50 Points</td><td>Total Points = 50 Points</td></tr></table> <p>Minimum points to qualify for the functionality criteria is 70 points, the functionality criteria must be met in order for the bidder to responsive.</p> | Plant equipment | Bidders must submit proof of ownership of the Compactor Dozer, TLB and Tipper Truck (with Renewed Registration Certificate required, as well operator certificates for each machine) 50 Points = TLB, Tipper Truck and Dozer. | Total Points = 50 | Company Experience Appointment letters for Landfill Site Management for each project. | 0-1 Appointment Letter = 0 Points 2-3 Appointment Letters = 20 Points 4-5 Appointment Letters = 30 Points 6 and above Appointment Letters = 50 Points | Total Points = 50 Points |
| Plant equipment | Bidders must submit proof of ownership of the Compactor Dozer, TLB and Tipper Truck (with Renewed Registration Certificate required, as well operator certificates for each machine) 50 Points = TLB, Tipper Truck and Dozer. | Total Points = 50 | | | | | |
| Company Experience Appointment letters for Landfill Site Management for each project. | 0-1 Appointment Letter = 0 Points 2-3 Appointment Letters = 20 Points 4-5 Appointment Letters = 30 Points 6 and above Appointment Letters = 50 Points | Total Points = 50 Points | | | | | |
| 3.2.1.1.7 | Pre-qualification criteria for preferential procurement N/A | | | | | | |
| 3.2.2 | Cost of tendering The SM will not be liable 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. | | | | | | |
| 3.2.3 | Check documents The documents issued by the SM for the purpose of a tender offer are listed in the index of this tender document. Before submission of any tender, the tenderer should check the number of pages, and if any are found to be missing or duplicated, or the figures or writing is indistinct, or if the Price Schedule contains any obvious errors, the tenderer must apply to the SM at once to have the same rectified. | | | | | | |
| 3.2.4 | Confidentiality and copyright of documents Treat as confidential all matters arising in connection with the tender. Use and copy the documents issued by the SM only for the purpose of preparing and submitting a tender offer in response to the invitation. | | | | | | |
| 3.2.5 | 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. | | | | | | |

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| 3.2.6 | <p>Acknowledge and comply with notices</p> <p>Acknowledge receipt of notices to the tender documents, which the SM may issue, fully comply with all instructions issued in the notices, and if necessary, apply for an extension of the closing time stated on the front page of the tender document, in order to take the notices into account. Notwithstanding any requests for confirmation of receipt of notices issued, the tenderer shall be deemed to have received such notices if the SM can show proof of transmission thereof via electronic mail, facsimile or registered post.</p> |
| 3.2.7 | <p>Clarification meeting (Not Applicable)</p> <p>Attend, where required, a clarification meeting at which tenderers may familiarise themselves with aspects of the proposed work, services or supply and pose questions. Details of the meeting(s) are stated in the General Tender Information.</p> <p>Tenderers should be represented at the site visit/clarification meeting by a person who is suitably qualified and experienced to comprehend the implications of the work involved.</p> |
| 3.2.8 | <p>Seek clarification</p> <p>Request clarification of the tender documents, if necessary, by notifying the SM at least one week before the closing time stated in the General Tender Information, where possible.</p> |
| 3.2.9 | <p>Pricing the tender offer</p> |
| 3.2.9.1 | <p>Comply with all pricing instructions as stated on the Price Schedule.</p> |
| 3.2.10 | <p>Alterations to documents</p> <p>Do not make any alterations or additions to the tender documents, except to comply with instructions issued by the SM in writing, or necessary to correct errors made by the tenderer. All signatories to the tender offer shall initial all such alterations.</p> |
| 3.2.11.2 | <p>Accept that an alternative tender offer may be based only on the criteria stated in the tender conditions or criteria otherwise acceptable to the SM.</p> |
| 3.2.12 | <p>Submitting a tender offer</p> |
| 3.2.12.1 | <p>Submit one tender offer only on the original tender documents as issued by the SM, 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 conditions and described in the specifications. Only those tenders submitted on the tender documents as issued by the SM together with all Returnable Schedules duly completed and signed will be declared responsive.</p> |
| 3.2.12.2 | <p>Return the entire document to the SM after completing it in its entirety, either electronically (if they were issued in electronic format) or by writing legibly in non-erasable ink.</p> |
| 3.2.12.3 | <p>Submit the parts of the tender offer communicated on paper as an original with an English translation for any part of the tender submission not made in English.</p> <p>1 (One) copy(ies) of the following elements of the bid submission must be submitted separately bound in the same envelope where possible:</p> |
| 3.2.12.4 | <p>Sign the original tender offer where required in terms of the tender conditions. The tender shall be signed by a person duly authorised to do so. Tenders submitted by joint ventures of two or more firms shall be accompanied by the document of formation of the joint venture or any other document signed by all parties, in which is defined precisely the conditions under which the joint venture will function, its period of duration, the persons authorised to represent and obligate it, the participation of the several firms forming the joint venture, and any other information necessary to permit a full appraisal of its functioning. Signatories for tenderers proposing to contract as joint ventures shall state which of the signatories is the lead partner.</p> |

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| 3.2.12.5 | Where a two-envelope system is required in terms of the tender conditions, place and seal the returnable documents listed in the tender conditions 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 SM's address and identification details stated in the General Tender Information, as well as the tenderer's name and contact address. |
| 3.2.12.6 | Seal the original tender offer and copy packages together in an outer package that states on the outside only the SM's address and identification details as stated in the General Tender Information. . If it is not possible to submit the original tender and the required copies (see 3.13.3) in a single envelope, then the tenderer must seal the original and each copy of the tender offer as separate packages marking the packages as “ORIGINAL” and “COPY” in addition to the aforementioned tender submission details. |
| 3.2.12.7 | Accept that the SM shall 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. |
| 3.2.12.8 | Accept that tender offers submitted by facsimile or e-mail will be rejected by the SM, unless stated otherwise in the tender conditions. |
| 3.2.12.9 | By signing the offer part of the Form of Offer (Section 2, Part A) the tenderer warrants that all information provided in the tender submission is true and correct. |
| 3.2.12.10 | Tenders must be properly received and deposited in the designated tender box on or before the closing date and before the closing time (as detailed on the General Tender Information page of this tender document) |
| 3.2.12.12 | The tenderer must record and reference all information submitted contained in other documents for example cover letters, brochures, catalogues, etc. in the returnable schedule titled List of Other Documents Attached by Tenderer . |
| 3.2.13 | 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 SM as non-responsive. |
| 3.2.14 | Closing time |
| 3.2.14.1 | Ensure that the SM receives the tender offer at the address specified in the General Tender Information prior to the closing time stated on the front page of the tender document. |
| 3.2.14.2 | Accept that, if the SM extends the closing time stated on the front page of the tender document for any reason, the requirements of these Conditions of Tender apply equally to the extended deadline. |
| 3.2.14.3 | Accept that, the SM shall not consider tenders that are received after the closing date and time for such a tender (late tenders). |
| 3.2.15 | Tender offer validity and withdrawal of tenders |
| 3.2.15.1 | Warrants that the tender offer(s) remains valid, irrevocable and open for acceptance by the SM at any time for a period of 120 days after the closing date stated on the front page of the tender document. |
| 3.2.15.2 | Notwithstanding the period stated above, bids shall remain valid for acceptance for a period of three (3) months after the expiry of the original validity period, unless the SM is notified in writing of anything to the contrary by the bidder. |

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| 3.2.15.3 | <p>A tenderer may request in writing, after the closing date, that the tender offer be withdrawn. Such withdrawal will be permitted or refused at the sole discretion of the SM after consideration of the reasons for the withdrawal, which shall be fully set out by the tenderer in such written request for withdrawal. Should the tender offer be withdrawn in contravention hereof, the tenderer agrees that:</p> <ul style="list-style-type: none"> a) it shall be liable to the SM for any additional expense incurred or losses suffered by the SM in having either to accept another tender or, if new tenders have to be invited, the additional expenses incurred or losses suffered by the invitation of new tenders and the subsequent acceptance of any other tender; b) the SM shall also have the right to recover such additional expenses or losses by set-off against monies which may be due or become due to the tenderer under this or any other tender or contract or against any guarantee or deposit that may have been furnished by the tenderer or on its behalf for the due fulfilment of this or any other tender or contract. Pending the ascertainment of the amount of such additional expenses or losses, the SM shall be entitled to retain such monies, guarantee or deposit as security for any such expenses or loss. |
| 3.2.16 | <p>Clarification of tender offer, or additional information, after submission</p> <p>Provide clarification of a tender offer, or additional information, in response to a written request to do so from the SM during the evaluation of tender offers within the time period stated in such request. No change in the competitive position of tenderers or substance of the tender offer is sought, offered, or permitted.</p> <p>This clause does not preclude the negotiation of the final terms of the contract with a preferred tenderer following a competitive selection process, should the SM elect to do so.</p> <p>Failure, or refusal, to provide such clarification or additional information within the time for submission stated in the SM's written request may render the tender non-responsive.</p> |
| 3.2.17 | <p>Provide other material</p> |
| 3.2.17.1 | <p>General:</p> <p>Provide, on request by the SM, any other material that has a bearing on the tender offer, the tenderer's commercial position (including joint venture agreements), preferencing arrangements, or samples of materials, considered necessary by the SM for the purpose of the evaluation of the tender. 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 SM's request, the SM may regard the tender offer as non-responsive.</p> |
| 3.2.17.2 | <p>Provide, on written request by the SM, where the transaction value inclusive of VAT exceeds R 10 million:</p> <ul style="list-style-type: none"> a) audited annual financial statement for the past 3 years, or for the period since establishment if established during the past 3 years, if required by law to prepare annual financial statements for auditing; b) a certificate signed by the tenderer certifying that the tenderer has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days; c) particulars of any contracts awarded to the tenderer by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract; d) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic. <p>Each party to a Consortium/Joint Venture shall submit separate certificates/statements in the above regard.</p> |

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| 3.2.17.3 | <p>Municipal Accounts:</p> <p>In addition to the conditions stated in 3.2.1.1.2.k of these tender conditions, tenderers further undertake to fully cooperate with the SM in the provision of appropriate and valid information and / or evidence to enable the SM to determine whether the entity and its directors / members / partners has any municipal arrears greater than 90 days. The SM reserves its rights to make additional enquiries in this regard, with the bidding entity or any municipality or municipal entity.</p> |
| 3.2.18 | <p>Samples, Inspections, tests and analysis</p> <p>Provide access during working hours to premises for inspections, tests and analysis as provided for in the tender conditions or specifications.</p> <p>If the Specification requires the tenderer to provide samples, these shall be provided strictly in accordance with the instructions set out in the Specification.</p> <p>If such samples are not submitted as required in the bid documents or within any further time stipulated by the SM in writing, then the bid concerned may be declared non-responsive.</p> <p>The samples provided by all successful bidders will be retained by the SM for the duration of any subsequent contract. Bidders are to note that samples are requested for testing purposes therefore samples submitted to the SM may not in all instances be returned in the same state of supply and in other instances may not be returned at all. Unsuccessful bidders will be advised by the Project Manager or dedicated SM Official to collect their samples, save in the aforementioned instances where the samples would not be returned.</p> |
| 3.2.19 | <p>Certificates</p> <p>The tenderer must provide the SM with all certificates as stated below:</p> |
| 3.2.19.1 | <p>Broad-Based Black Economic Empowerment Status Level Documentation</p> <p>In order to qualify for preference points, it is the responsibility of the tenderer to submit documentary proof, either as certificates, sworn affidavits or any other requirement prescribed in terms of the B-BBEE Act, of its B-BBEE status level of contribution in accordance with the applicable Codes of good practise as issued by the Department of Trade and Industry, to the SM with the tender submission.</p> <p>Consortiums/Joint Ventures will qualify for preference points, provided that the entity submits the relevant certificate/scorecard in accordance with the applicable codes of good practise. Note that, in the case of unincorporated entities, a verified consolidated B-BBEE scorecard must be submitted in the form of a certificate with the tender.</p> <p>Tenderers are further referred to the content of the Preference Points Claim Form for the full terms and conditions applicable to the awarding of preference points.</p> <p>The applicable code for this tender is the Amended Codes for Measuring Broad-Based Black Economic Empowerment in the Construction Sector.</p> <p>The tenderer shall indicate on the Preference Points Claim Form the Level of Contribution in respect of the enterprise status or structure of the tendering entity (the supplier).</p> |

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| 3.2.19.2 | <p>Evidence of tax compliance</p> <p>Tenderers shall be registered with the South African Revenue Service (SARS) and their tax affairs must be in order and they must be tax compliant subject to the requirements of clause 2.2.1.1.2.h. In this regard, it is the responsibility of the tenderer to provide its Tax Compliance Status PIN number on the Compulsory Enterprise Questionnaire pages of the tender submission.</p> <p>Each party to a Consortium/Joint Venture shall separately submit this information.</p> <p>Before making an award the SM must verify the bidder's tax compliance status. Where the recommended bidder is not tax compliant, the bidder should be notified of the non-compliant status and be requested to submit to the SM, within 7 working days, written proof from SARS that they have made arrangement to meet their outstanding tax obligations. The proof of tax compliance submitted by the bidder must be verified by the SM via CSD or e-Filing. The SM should reject a bid submitted by the bidder if such bidder fails to provide proof of tax compliance within the timeframe stated herein and it status on the SARS system remains non-compliant.</p> <p>Only foreign suppliers who have answered "NO" to all the questions contained in the Questionnaire to Bidding Foreign Suppliers section on the Compulsory Enterprise Questionnaire pages of the tender submission, are not required to register for a tax compliance status with SARS.</p> |
| 3.2.20 | <p>Compliance with Occupational Health and Safety Act, 85 of 1993</p> <p>Tenderers are to note the requirements of the Occupational Health and Safety Act, 85 of 1993. The Tenderer shall be deemed to have read and fully understood the requirements of the above Act and Regulations and to have allowed for all costs in compliance therewith.</p> <p>In this regard the Tenderer shall submit upon written request to do so by the SM, a Health and Safety Plan in sufficient detail to demonstrate the necessary competencies and resources to deliver the goods or services all in accordance with the Act, Regulations and Health and Safety Specification.</p> |
| 3.2.21 | <p>Claims arising from submission of tender</p> <p>The tenderer warrants that it has:</p> <ul style="list-style-type: none"> a) inspected the Specifications and read and fully understood the Conditions of Contract. b) read and fully understood the whole text of the Specifications and Price Schedule and thoroughly acquainted himself with the nature of the goods or services proposed and generally of all matters which may influence the Contract. c) visited the site(s) where delivery of the proposed goods will take place, carefully examined existing conditions, the means of access to the site(s), the conditions under which the delivery is to be made, and acquainted himself with any limitations or restrictions that may be imposed by the Municipal or other Authorities in regard to access and transport of materials, plant and equipment to and from the site(s) and made the necessary provisions for any additional costs involved thereby. d) requested the SM to clarify the actual requirements of anything in the Specifications and Price Schedule, the exact meaning or interpretation of which is not clearly intelligible to the Tenderer. e) received any notices to the tender documents which have been issued in accordance with the SM's Supply Chain Management Policy. <p>The SM will therefore not be liable for the payment of any extra costs or claims arising from the submission of the tender.</p> |

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| 3.3 | The SM's undertakings |
| 3.3.1 | Respond to requests from the tenderer |
| 3.3.1.1 | Unless otherwise stated in the Tender Conditions, respond to a request for clarification received up to one week (where possible) before the tender closing time stated on the front page of the tender document. |
| 3.3.1.2 | The SM's representative for the purpose of this tender is stated on the General Tender Information page. |
| 3.3.2 | <p>Issue Notices</p> <p>If necessary, issue addenda in writing that may amend or amplify the tender documents to each tenderer during the period from the date the tender documents are available until one week before the tender closing time stated in the Tender Data. The SM reserves its rights to issue addenda less than one week before the tender closing time in exceptional circumstances. If, as a result a tenderer applies for an extension to the closing time stated on the front page of the tender document, the SM may grant such extension and, shall then notify all tenderers who drew documents.</p> <p>Notwithstanding any requests for confirmation of receipt of notices issued, the tenderer shall be deemed to have received such notices if the SM can show proof of transmission thereof via electronic mail, facsimile or registered post.</p> |
| 3.3.3 | Opening of tender submissions |
| 3.3.3.1 | <p>Unless the two-envelope system is to be followed, open tender submissions in the presence of tenderers' agents who choose to attend at the time and place stated in the tender conditions.</p> <p>Tenders will be opened immediately after the closing time for receipt of tenders as stated on the front page of the tender document, or as stated in any Notice extending the closing date and at the closing venue as stated in the General Tender Information.</p> |
| 3.3.3.2 | Announce at the meeting held immediately after the opening of tender submissions, at the closing venue as stated in the General Tender Information, the name of each tenderer whose tender offer is opened and, where possible, the prices and the preferences indicated. |
| 3.3.3.3 | Make available a record of the details announced at the tender opening meeting on the SM's website. |
| 3.3.4 | Two-envelope system |
| 3.3.4.1 | Where stated in the tender conditions that a two-envelope system is to be followed, open only the technical proposal of tenders in the presence of tenderers' agents who choose to attend at the time and place stated in the tender conditions and announce the name of each tenderer whose technical proposal is opened. |
| 3.3.4.2 | Evaluate the quality of the technical proposals offered by tenderers, then advise tenderers who have submitted responsive technical proposals of the time and place when the financial proposals will be opened. Open only the financial proposals of tenderers, who have submitted responsive technical proposals in accordance with the requirements as stated in the tender conditions and announce the total price and any preferences claimed. Return unopened financial proposals to tenderers whose technical proposals were non responsive. |
| 3.3.5 | <p>Non-disclosure</p> <p>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 and recommendations for the award of a contract, until after the award of the contract to the successful tenderer.</p> |

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| 3.3.6 | <p>Grounds for rejection and disqualification</p> <p>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.</p> |
| 3.3.7 | <p>Test for responsiveness</p> |
| 3.3.7.1 | <p>Appoint a Bid Evaluation Committee and determine after opening whether each tender offer properly received:</p> <ul style="list-style-type: none"> 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. |
| 3.3.7.2 | <p>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 SM's opinion, would:</p> <ul style="list-style-type: none"> a) detrimentally affect the scope, quality, or performance of the goods, services or supply identified in b) the Specifications, c) significantly change the SM's or the tenderer's risks and responsibilities under the contract, or d) affect the competitive position of other tenderers presenting responsive tenders, if it were to be rectified. <p>Reject a non-responsive tender offer, and not allow it to be subsequently made responsive by correction or withdrawal of any material deviation or qualification.</p> <p>The SM reserves the right to accept a tender offer which does not, in the SM's opinion, materially and/or substantially deviate from the terms, conditions, and specifications of the tender documents.</p> |
| 3.3.8 | <p>Arithmetical errors, omissions, discrepancies and corrections of rates</p> |
| 3.3.8.1 | <p>Check the highest ranked tender or tenderer with the highest number of tender evaluation points after the evaluation of tender offers for:</p> <ul style="list-style-type: none"> a) the gross misplacement of the decimal point in any unit rate; b) omissions made in completing the Price Schedule; or c) arithmetic errors in: <ul style="list-style-type: none"> i. line item totals resulting from the product of a unit rate and a quantity in the Price Schedule; or ii. the summation of the prices; or iii. calculation of individual rates. |
| 3.3.8.2 | <p>Notify the tenderer of all errors or omissions that are identified in the tender offer and either confirm the tender offer as tendered or accept the corrected total of prices. Where the tenderer elects to confirm the tender offer as tendered, correct the errors as follows:</p> <ul style="list-style-type: none"> a) 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. <p>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.</p> |

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| 3.3.8.3 | <p>In the event of tendered rates or lump sums being declared by the SM to be unacceptable to it because they are not priced, either excessively low or high, or not in proper balance with other rates or lump sums, the tenderer may be required to produce evidence and advance arguments in support of the tendered rates or lump sums objected to. If, after submission of such evidence and any further evidence requested, the SM is still not satisfied with the tendered rates or lump sums objected to, it may request the tenderer to amend these rates and lump sums along the lines indicated by it.</p> <p>The tenderer will then have the option to alter and/or amend the rates and lump sums objected to and such other related amounts as are agreed on by the SM, but this shall be done without altering the tender offer in accordance with this clause.</p> <p>Should the tenderer fail to amend his tender in a manner acceptable to and within the time stated by the SM, the SM may declare the tender as non-responsive.</p> |
| 3.3.9 | <p>Clarification of a tender offer</p> <p>The SM may, after the closing date, request additional information or clarification from tenderers, in writing on any matter affecting the evaluation of the tender offer or that could give rise to ambiguity in a contract arising from the tender offer, which written request and related response shall not change or affect their competitive position or the substance of their offer. Such request may only be made in writing by the Bid Evaluation Committee using any means as appropriate.</p> |
| 3.3.10 | Evaluation of tender offers |
| 3.3.10.1 | General |
| 3.3.10.1.1 | Reduce each responsive tender offer to a comparative price and evaluate them using the tender evaluation methods and associated evaluation criteria and weightings that are specified in the tender conditions. |
| 3.3.10.1.2 | <p>For evaluation purposes only, the effects of the relevant contract price adjustment methods will be considered in the determination of comparative prices as follows:</p> <ol style="list-style-type: none"> a. If the selected method is based on bidders supplying rates or percentages for outer years, comparative prices would be determined over the entire contract period based on such rates or percentages. b. If the selected method is based on a formula, indices, coefficients, etc. that is the same for all bidders during the contract period, comparative prices would be the prices as tendered for year one. c. If the selected method is based on a formula, indices, coefficients, etc. that varies between bidders, comparative prices would be determined over the entire contract period based on published indices relevant during the 12 months prior to the closing date of tenders. d. If the selected method includes an imported content requiring rate of exchange variation, comparative prices would be determined based on the exchange rates tendered for the prices as tendered for year one. The rand equivalent of the applicable currency 14 days prior to the closing date of tender will be used (the SM will check all quoted rates against those supplied by its own bank). e. If the selected method is based on suppliers' price lists, comparative prices would be the prices as tendered for year one. f. If the selected method is based on suppliers' price lists and / or rate of exchange, comparative prices would be determined as tendered for year one whilst taking into account the tendered percentage subject to rate of exchange (see sub clause (d) for details on the calculation of the rate of exchange). |
| 3.3.10.1.3 | Where the scoring of functionality forms part of a bid process, each member of the Bid Evaluation Committee must individually score functionality. The individual scores must then be interrogated and calibrated if required where there are significant discrepancies. The individual scores must then be added together and averaged to determine the final score. |

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| 3.3.10.2 | Decimal places Score financial offers, preferences, and functionality, as relevant, to two decimal places. |
| 3.3.10.3 | Scoring of tenders (price and preference) |
| 3.3.10.3.1 | Points for price will be allocated in accordance with the formula set out in this clause based on the tender sum / amount as set out in the Price Schedule (Part 3) . |
| 3.3.10.3.2 | Points for preference will be allocated in accordance with the provisions of Preference Points Claim Form and the table in this clause. |
| 3.3.10.3.3 | The terms and conditions of Preference Points Claim Form as it relates to preference shall apply in all respects to the tender evaluation process and any subsequent contract. |
| 3.3.10.3.4 | Applicable formula: The price/preference points system as identified within the Preference Claim form attached in this bid document will be applicable to this tender. |
| 3.3.10.5 | Risk Analysis Notwithstanding compliance with regard to any requirements of the tender, the SM will perform a risk analysis in respect of the following: <ul style="list-style-type: none"> a) reasonableness of the financial offer b) reasonableness of unit rates and prices c) the tenderer's ability to fulfil its obligations in terms of the tender document, that is, that the tenderer can demonstrate that he/she possesses the necessary professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, capacity, experience, reputation, personnel to perform the contract, etc.; the SM reserves the right to consider a tenderer's existing contracts with the SM in this regard d) any other matter relating to the submitted bid, the tendering entity, matters of compliance, verification of submitted information and documents, etc. The conclusions drawn from this risk analysis will be used by the SM in determining the acceptability of the tender offer. No tenderer will be recommended for an award unless the tenderer has demonstrated to the satisfaction of the SM that he/she has the resources and skills required. |
| 3.3.11 | Negotiations with preferred tenderers The SM may negotiate the final terms of a contract with tenderers identified through a competitive tendering process as preferred tenderers provided that such negotiation: <ul style="list-style-type: none"> a) does not allow any preferred tenderer a second or unfair opportunity; b) is not to the detriment of any other tenderer; and c) does not lead to a higher price than the tender as submitted. If negotiations fail to result in acceptable contract terms, the Municipal Manager (or his delegated authority) may terminate the negotiations and cancel the tender, or invite the next ranked tenderer for negotiations. The original preferred tenderer should be informed of the reasons for termination of the negotiations. If the decision is to invite the next highest ranked tenderer for negotiations, the failed earlier negotiations may not be reopened by the SM. Minutes of any such negotiations shall be kept for record purposes. The provisions of this clause will be equally applicable to any invitation to negotiate with any other tenderers. In terms of the PPPFA Regulations, 2017, tenders must be cancelled in the event that negotiations fail to achieve a market related price with any of the three highest scoring tenderers. |

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| 3.3.12 | Acceptance of tender offer Notwithstanding any other provisions contained in the tender document, the SM reserves the right to: |
| 3.3.12.1 | Accept a tender offer(s) which does not, in the SM's opinion, materially and/or substantially deviate from the terms, conditions, and specifications of the tender document. |
| 3.3.12.2 | Accept the whole tender or part of a tender or any item or part of any item or items from multiple manufacturers, or to accept more than one tender (in the event of a number of items being offered), and the SM is not obliged to accept the lowest or any tender. |
| 3.3.12.3 | Accept the tender offer(s), if in the opinion of the SM, it does not present any material risk and only if the tenderer(s):: <ul style="list-style-type: none"> a) is not under restrictions, has any principals who are under restrictions, or is not currently a supplier to whom notice has been served for abuse of the supply chain management system, preventing participation in the SM'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, complies with the legal requirements, if any, stated in the tender data, and e) is able, in the opinion of the SM, to perform the contract free of conflicts of interest. If an award cannot be made in terms of anything contained herein, the SM reserves the right to consider the next ranked tenderer(s). |
| 3.3.12.4 | Not to make an award, or revoke an award already made, where the implementation of the contract may result in reputational risk or harm to the SM as a result of (inter alia): <ul style="list-style-type: none"> a) reports of poor governance and/or unethical behaviour; b) association with notorious individuals or their known family; c) poor performance issues, known to the SM; d) negative social media reports; and e) adverse assurance (e.g. due diligence) report outcomes. |
| 3.3.12.5 | The SM reserves the right to nominate an alternative bidder at the time when an award is made and in the event that a contract is terminated during the execution thereof, the SM may consider the award of the contract, or non-award, to the alternative bidder in terms of the procedures included its SCM Policy. |
| 3.3.13 | Prepare contract documents |
| 3.3.13.1 | If necessary, revise documents that shall form part of the contract and that were issued by the SM as part of the tender documents to take account of: <ul style="list-style-type: none"> a) notices issued during the tender period, b) inclusion of some of the returnable documents, and c) other revisions agreed between the SM and the successful tenderer. |
| 3.3.13.2 | Complete the schedule of deviations attached to the form of offer and acceptance, if any. |
| 3.3.14 | Notice to successful and unsuccessful tenderers |
| 3.3.14.1 | Before accepting the tender of the successful tenderer the SM shall notify the successful tenderer in writing of the decision of the SM's Bid Adjudication Committee to award the tender |

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| | to the successful tenderer. No rights shall accrue to the successful tenderer in terms of this notice |
| 3.3.14.2 | The SM shall, at the same time as notifying the successful tenderer of the Bid Adjudication Committee's decision to award the tender to the successful tenderer, also give written notice to the other tenderers informing them that they have been unsuccessful. |
| 3.3.15 | 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. |

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(4) COMPULSORY ENTERPRISE QUESTIONNAIRE

The following particulars must be furnished. In the case of a joint venture, separate enterprise questionnaires in respect of each partner must be completed and submitted.

Section 1a: Name of enterprise:

Section 1b: Trading as (if different from above)

Section 1c: Type of Entity (please select an option)

Individual / Sole Proprietor

Closed Corporation

Company

Partnership / Joint Venture

Trust

Other:

Section 1d: Postal address

Section 1e: Physical address

(Chosen as domicillium citandi et executandi)

Section 1f: Details of authorised representative of tenderer

Title: Full Name:

Tel no:

Fax no:

Cellular no:

Email address:

Section 2: VAT registration number, if any:

Section 2a: National Treasury Central Supplier Database registration no.:

Section 2b: SARS Tax Compliance Status PIN :

Section 2c: Senqu Municipality Supplier Database registration no. :

Section 3: cidb registration no (if applicable):

Section 4: Particulars of sole proprietors and partners in partnerships

** Complete only if sole proprietor or partnership and attach separate page if more than 3 partners*

Section 5: Particulars of companies and close corporations

Company registration number

Close corporation number

Tax reference number

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| Section 6: Foreign Bidding Suppliers | |
| Is tenderer the accredited representative in South Africa for the Goods / Services / Works offered? | <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, enclose proof |
| Is tenderer a foreign based supplier for the Goods / Services / Works offered? | <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, answer the Questionnaire to Bidding Foreign |
| Questionnaire to Bidding Foreign Suppliers | |
| a) Is the tenderer a resident of the Republic of South Africa or an entity registered in South Africa? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| b) Is the tenderer a resident of the Republic of South Africa or an entity registered in South Africa? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| c) Does the tenderer have a permanent establishment in the Republic of South Africa? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| d) Does the tenderer have any source of income in the Republic of South Africa? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| e) Is the tenderer liable in the Republic of South Africa for any form of taxation? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| The undersigned, who warrants that he / she is duly authorised to do so on behalf of the enterprise: <ul style="list-style-type: none"> i) authorizes the Employer to obtain a tax clearance certificate from the South African Revenue Services that my / our tax matters are in order; ii) confirms that the neither the name of the enterprise or the name of any partner, manager, director or other person, who wholly or partly exercises, or may exercise, control over the enterprise appears on the Register of Tender Defaulters established in terms of the Prevention and Combating of Corrupt Activities Act of 2004 or Database of Restricted Suppliers; iii) confirms that no partner, member, director or other person, who wholly or partly exercises, or may exercise, control over the enterprise appears, has within the last five years been convicted of fraud or corruption; iv) confirms that I / we are not associated, linked or involved with any other tendering entities submitting tender offers and have no other relationship with any of the tenderers or those responsible for compiling the scope of work that could cause or be interpreted as a conflict of interest; and | |

Signed

Date

Name

Position

Enterprise

name

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(5) FORM OF OFFER AND ACCEPTANCE

Offer

The SM, identified in the acceptance signature block, has solicited offers to enter into a contract for the procurement of:

CONTRACT NO. 96/2022-2023T

The tenderer, identified in the offer signature block, has examined the documents listed in the conditions of tender and addenda thereto as listed in the returnable schedules, and by submitting this offer has accepted the conditions of tender.

By the representative of the tenderer, deemed to be duly authorized, signing this part of this form of offer and acceptance, the tenderer offers to perform all the obligations and liabilities of the contractor under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the conditions of contract identified herein.

By signing this Form of Offer and Acceptance the tenderer offers to supply all or any of the goods and/or render all or any of the services described in the tender document to the SM in accordance with the:

- 1.1 terms and conditions stipulated in this tender document;
- 1.2 specifications stipulated in this tender document; and
- 1.3 at the prices as set out in the **Price Schedule**.

This offer may be accepted by the SM by signing the acceptance part of this form of offer and acceptance and returning one copy of this document to the tenderer before the end of the period of validity stated in the conditions of tender, whereupon the tenderer becomes the party named as the supplier in the conditions of contract.

| | | |
|----------------------------------|------|------|
| Signature (s) | | |
| Name(s) | | |
| Capacity | | |
| For the Tenderer | Date | |
| Name and Address of the Tenderer | | |
| Name and signature of witness | | Date |

| | | |
|--|----|----|
| For official use. | | |
| INITIALS OF MUNICIPAL OFFICIALS AT TENDER OPENING | | |
| 1. | 2. | 3. |

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Acceptance

By signing this part of this form of offer and acceptance, the employer identified below accepts the tenderer's offer. In consideration thereof, the employer shall pay the supplier the amount due in accordance with the conditions of contract.. Acceptance of the tenderer's offer shall form an agreement between the employer and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract are contained in:

Special and General Conditions of Tender
Price schedule
Specifications

and any drawings and documents or parts thereof, which may be incorporated by reference into the above listed Parts.

Deviations from and amendments to the documents listed in the conditions of tender and any addenda thereto as listed in the returnable schedules as well as any changes to the terms of the offer agreed by the tenderer and the employer during this process of offer and acceptance, are contained in the schedule of deviations attached to and forming part of this form of offer and acceptance. No amendments to or deviations from said documents are valid unless contained in this schedule.

The tenderer shall within two weeks after receiving a completed copy of this agreement, including the schedule of deviations (if any), contact the employer to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documents to be provided in terms of the conditions of contract as supplemented by the special conditions of contract. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the parties have signed the table below and confirms receipt from the employer of one fully completed original copy of this agreement, including the schedule of deviations (if any). The tenderer (now contractor) shall within five working days of the agreement coming into effect notify the employer in writing of any reason why he cannot accept the contents of this agreement as a complete and accurate memorandum thereof, failing which the agreement presented to the contractor shall constitute the binding contract between the parties.

| | | |
|----------------------------------|------|------|
| Signature (s) | | |
| Name(s) | | |
| Capacity | | |
| For the Employer | Date | |
| Name and Address of the Employer | | |
| Name and signature of witness | | Date |

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Schedule of Deviations

Notes:

1. The extent of deviations from the tender documents issued by the employer before the tender closing date is limited to those permitted in terms of the conditions of tender.
2. A tenderer's covering letter shall not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid, become the subject of agreements reached during the process of offer and acceptance, the outcome of such agreement shall be recorded here.
3. Any other matter arising from the process of offer and acceptance either as a confirmation, clarification or change to the tender documents and which it is agreed by the Parties becomes an obligation of the contract shall also be recorded here.
4. Any change or addition to the tender documents arising from the above agreements and recorded here, shall also be incorporated into the final draft of the Contract.

| | | |
|---|---------|--|
| 1 | Subject | |
| | Details | |
| 2 | Subject | |
| | Details | |
| 3 | Subject | |
| | Details | |
| 4 | Subject | |
| | Details | |
| 5 | Subject | |
| | Details | |

By the duly authorised representatives signing this agreement, the employer and the tenderer agree to and accept the foregoing schedule of deviations as the only deviations from and amendments to the documents listed in the conditions of tender and addenda thereto as listed in the returnable schedules, as well as any confirmation, clarification or changes to the terms of the offer agreed by the tenderer and the employer during this process of offer and acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Agreement shall have any meaning or effect in the contract between the parties arising from this agreement.

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(6) PRICE SCHEDULE

Bid specifications may not make any reference to any particular trade mark, name, patent, design, type, specific origin or producer, unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the words "or equivalent".

TENDERERS MUST NOTE THAT WHEREVER THIS DOCUMENT REFERS TO ANY PARTICULAR TRADE MARK, NAME, PATENT, DESIGN, TYPE, SPECIFIC ORIGIN OR PRODUCER, SUCH REFERENCE SHALL BE DEEMED TO BE ACCOMPANIED BY THE WORDS 'OR EQUIVALENT'

Pricing Instructions:

Pricing Instructions mean the criteria as set out below, read together with all Parts of this contract document, which it will be assumed in the contract, that the tenderer has taken into account when developing his prices.

- 6.1 State the rates and prices in Rand unless instructed otherwise in the tender conditions.
- 6.2 Include in the rates, prices, and the tendered total of the prices (if any) all duties, taxes (except Value Added Tax (VAT), and other levies payable by the successful tenderer, such duties, taxes and levies being those applicable 14 days before the closing time stated in the General Tender Information.
- 6.3 The short descriptions given in the Activity Schedule below are brief descriptions used to identify the activities for which prices are required. Detailed descriptions of the activities to be priced are provided in the Scope of Work.
- 6.4 All prices tendered must include all expenses, disbursements and costs (e.g. transport, accommodation etc.) that may be required for the execution of the tenderer's obligations in terms of the Contract, and shall cover the cost of all general risks, liabilities and obligations set forth or implied in the Contract as well as overhead charges and profit (in the event that the tender is successful). All prices tendered will be final and binding.
- 6.5 All prices shall be tendered in accordance with the units specified in this schedule. Prices must be **inclusive of WET RATE**.
- 6.6 Where a value is given in the Quantity column, a Rate and Price (the product of the Quantity and Rate) is required to be inserted in the relevant columns.
- 6.7 The successful tenderer is required to perform all tasks listed against each item. The tenderer must therefore tender prices/rates on all items as per the section in the Price Schedule. **An item against which no rate is/are entered, or if anything other than a rate or a nil rate (for example, a zero, a dash or the word "included" or abbreviations thereof) is entered against an item, it will also be regarded as a nil rate having been entered against that item, i.e. that there is no charge for that item. The Tenderer may be requested to clarify nil rates, or items regarded as having nil rates; and the Employer may also perform a risk analysis with regard to the reasonableness of such rates.**
- 6.8 Provision for time-based services which fall beyond the scope of normal services as described in the Scope of Work has been made in the Activity Schedule. This provision is for services provided on instruction from the Employer and will be deducted in whole or part if not required. The estimated period of involvement of each category of person must be agreed with the Employer before any work in this regard commences.
- 6.9 The categories of persons (A, B, C, D) in respect of time-based fee rates for professional services shall be as defined in the relevant guideline scope(s) of services (as referenced in the Specifications).
- 5.10 A higher category person undertaking lower category work will be reimbursed, in respect of time-based fees, at the lower category rate.
- 6.11 Tenderers are to note that only those recoverable expenses listed in the Activity Schedule will be reimbursed to the Service Provider. No reimbursement of costs for subsistence, typing, printing/copying (other than reports and/or tender documents), communications or computer hardware and/or software will be made and these costs will be deemed to be included in rates, sums, and prices for normal and additional services rendered.
- 6.12 Items for printing/copying shall be for specified contract documents, reports, manuals and drawings, excluding general correspondence, minor reports, progress reports, etc. which shall be deemed to be included in the professional fees. Payment will only be made for copies of reports and drawings submitted to the Employer or issued, as specified or requested by the Employer, and all drafts shall be for the Service Provider's account.
- 6.13 Tenderers are to note that the planning for this contract is based on a three-year budget which is subject to

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change. While the Employer has every intention to complete the full scope of works, the Employer reserves the right to reduce or increase the scope of works according to the dictates of the budget, or to terminate this contract, without adjustment to the agreed rates, sums or fees and without payment of any penalty or surcharge in this regard. The Service Provider shall however be entitled to pro-rata payment for all services carried out in terms of any adjustment to the Scope of Work or, in the case of termination, remuneration and/or reimbursement as described in Clause 8.4.4 of the Standard Professional Services contract as amended by the Contract Data.

- 6.14 All charges in respect of attendance at meetings and the provision of secretarial services, shall be included in the tendered basic fee for normal services.

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Pricing Schedule

Item No. 1.1 : Fees for Services

| Item No. | Activity Description | Amount (EXCL VAT) | |
|----------|---|----------------------|--|
| 1.1.1 | Provide services as described in the Scope of Work (See specification on page 90.) | | |

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SUMMARY OF ACTIVITY SCHEDULE

| | |
|------------------------|---|
| TOTAL EXCLUSIVE OF VAT | R |
| VAT at the rate of 15% | |
| TENDER PRICE | |

| | | |
|---|----|----|
| For official use. | | |
| SIGNATURE OF MUNICIPAL OFFICIALS AT TENDER OPENING | | |
| 1. | 2. | 3. |

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(7) SUPPORTING SCHEDULES

SCHEDULE 1: CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

I, the undersigned, in submitting this tender for in response to the invitation for the tender made by the Municipality, do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of: _____ that:
(Name of Tenderer)

1. I have read and I understand the contents of this Certificate;
2. I understand that this tender will be declared as non-responsive if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the tenderer to sign this Certificate, and to submit this tender on behalf of the tenderer;
4. Each person whose signature appears on this tender has been authorized by the tenderer to determine the terms of, and to sign, the tender, on behalf of the tenderer;
5. For the purposes of this Certificate and this tender, I understand that the word “competitor” shall include any individual or organization, other than the tenderer whether or not affiliated with the tenderer, who:
 - (a) has been requested to submit a tender in response to this invitation to tender;
 - (b) could potentially submit a tender in response to this invitation to tender, based on their qualifications, abilities or experience; and
 - (c) provides the same goods and services as the tenderer and/or is in the same line of business as the tenderer;
6. The tenderer has arrived at this tender independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium¹ will not be construed as collusive tendering;
7. In particular, without limiting the generality of paragraph 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - (a) prices;
 - (b) geographical area where product or service will be rendered (market allocation);
 - (c) methods, factors or formulas used to calculate prices;
 - (d) the intention or decision to submit or not to submit a tender;
 - (e) the submission of a tender which does not meet the specifications and conditions of the tender;or
 - (f) tendering with the intention not to win the tender;

¹Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

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8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this invitation to tender relates;
9. The terms of this tender have not been, and will not be, disclosed by the tenderer, directly or indirectly, to any competitor, prior to the date and time of the official tender opening or of the awarding of the contract;
10. I am aware that , in addition and without prejudice to any other remedy provided to combat any restrictive practices related to tenders and contracts, tenders that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No. 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No. 12 of 2004 or any other applicable legislation.

.....
Signature

.....
Date

.....
Name

.....
Position

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**SCHEDULE 2: CERTIFICATE OF AUTHORITY FOR JOINT VENTURES /
PARTNERSHIPS / CONSORTIA**

This schedule is to be completed if the tender is submitted by a partnership/joint venture/ consortium.

1. We, the undersigned, are submitting this tender offer as a partnership/ joint venture/ consortium and hereby authorize Mr/Ms _____, of the authorised entity _____, acting in the capacity of Lead Partner, to sign all documents in connection with the tender offer and any contract resulting from it on the partnership/joint venture/ consortium's behalf.
2. By signing this schedule the partners to the partnership/joint venture/ consortium:
 - 2.1 warrant that the tender submitted is in accordance with the main business and objectives of the partnership/joint venture/ consortium;
 - 2.2 agree that the SM shall make all payments in terms of this Contract into the following bank account of the Lead Partner:

Account Holder: _____

Financial Institution: _____

Branch Code: _____

Account No.: _____
 - 2.3 agree that in the event that there is a change in the partnership/ joint venture/ consortium and/or should a dispute arise between the partnership/joint venture/ consortium partners, that the SM shall continue to make any/all payments due and payable in terms of the Contract into the aforesaid bank account until such time as the SM is presented with a Court Order or an original agreement (signed by each and every partner of the partnership/joint venture/ consortium) notifying the SM of the details of the new bank account into which it is required to make payment.
 - 2.4 agree that they shall be jointly and severally liable to the SM for the due and proper fulfilment by the successful tenderer/supplier of its obligations in terms of the Contract as well as any damages suffered by the SM as a result of breach by the successful tenderer/supplier. The partnership/joint venture/ consortium partners hereby renounce the benefits of excision and division.

| SIGNED BY THE PARTNERS OF THE PARTNERSHIP/ JOINT VENTURE/ CONSORTIUM | | | |
|--|---------|---|-------------------------|
| NAME OF FIRM | ADDRESS | DULY AUTHORISED SIGNATORY | Percentage contribution |
| Lead partner | | Signature..... Name..... Designation..... | % |
| | | Signature..... Name..... Designation..... | % |
| | | Signature..... Name..... Designation..... | % |
| | | Signature..... Name..... Designation..... | % |

Note: A copy of the Joint Venture Agreement, showing clearly the **percentage contribution of each partner** to the joint venture, shall be appended to this schedule.

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If the above schedule is does not provide sufficient space to capture all the joint venture details, please append all details to this schedule. A copy of the Joint Venture Agreement, clearly showing the **percentage contribution of each partner** to the joint venture, shall be appended to this schedule.

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**SCHEDULE 3: DECLARATION OF TENDERER'S PAST SUPPLY CHAIN
MANAGEMENT PRACTICES (MBD 8)**

Where the entity tendering is a joint venture, each party to the joint venture must sign a declaration in terms of the Municipal Finance Management Act, 56 of 2003, and attach it to this schedule.

- 1 The tender offer of any tenderer may be rejected if that tenderer or any of its directors/members have:**
- a) abused the municipality's / municipal entity's supply chain management system or committed any fraudulent conduct in relation to such system;
 - b) been convicted for fraud or corruption during the past five years;
 - c) willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
 - d) been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- 2 In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

| Item | Question | Yes | No |
|-------|---|---------------------------------|--------------------------------|
| 2.1 | Is the Tenderer or any of its directors listed on the National Treasury's Database of Restricted Suppliers as a company or person prohibited from doing business with the public sector? (Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied). The Database of Restricted Suppliers now resides on the National Treasury's website www.treasury.gov.za and can be accessed by clicking on its link at the bottom of the home page. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 2.1.1 | If so, furnish particulars: | | |
| 2.2 | Is the Tenderer or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act, 12 of 2004? The Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 2.2.1 | If so, furnish particulars: | | |
| 2.3 | Was the Tenderer or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 2.3.1 | If so, furnish particulars: | | |
| 2.4 | Does the Tenderer or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 2.4.1 | If so, furnish particulars: | | |
| 2.5 | Was any contract between the Tenderer and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 2.5.1 | If so, furnish particulars: | | |

I, _____, the undersigned,
 (full name in block letters)

certify that the information furnished on this declaration form is true and correct, and accept that, in addition to cancellation of a contract, action may be taken against me should this declaration prove to be false.

.....
 Signature

Date

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.....
.....
Position

.....
.....
Name of Tenderer/Contractor

| |
|---|
| SCHEDULE4: DECLARATION OF INTEREST – STATE EMPLOYEES (MBD 4 AMENDED) |
|---|

1. No bid will be accepted from:
 - 1.1 persons in the service of the state¹, or
 - 1.2 if the person is not a natural person, of which any director, manager or principal shareholder or stakeholder is in the service of the state, or
2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the tenderer or their authorised representative declare their position in relation to the evaluating/adjudicating authority.
- 3 **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**
 - 3.1 Full Name of tenderer or his or her representative:.....
 - 3.2 Identity Number:
 - 3.3 Position occupied in the Company (director, trustee, shareholder²):.....
 - 3.4 Company or Close Corporation Registration Number:
 - 3.5 Tax Reference Number:.....
 - 3.6 VAT Registration Number:
 - 3.7 The names of all directors / trustees / shareholders members, their individual identity numbers and state employee numbers must be indicated in paragraph 4 below.
 - 3.8 Are you presently in the service of the state? **YES / NO**
 - 3.8.1 If yes, furnish particulars.
.....
 - 3.9 Have you been in the service of the state for the past twelve months? **YES / NO**
 - 3.9.1 If yes, furnish particulars
.....
 - 3.10 Do you have any relationship (family, friend, other) with persons in the service of the state and who may be involved with the evaluation and or adjudication of this bid? **YES / NO**
 - 3.10.1 If yes, furnish particulars.
.....
 - 3.11 Are you, aware of any relationship (family, friend, other) between any other supplier and any persons in the service of the state who may be involved with the evaluation and or adjudication of this bid? **YES / NO**
 - 3.11.1 If yes, furnish particulars
.....
 - 3.12 Are any of the company's directors, trustees, managers, principle shareholders or stakeholders in service of the state? **YES / NO**
 - 3.12.1 If yes, furnish particulars.....

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3.13 Are any spouse, child or parent of the company's directors, trustees, managers, principle shareholders or stakeholders in service of the state? **YES / NO**

3.13.1 If yes, furnish particulars.

3.14 Do you or any of the directors, trustees, managers, principle shareholders, or stakeholders of this company have any interest in any other related companies or business whether or not they are bidding for this contract? **YES / NO**

3.14.1 If yes, furnish particulars:

3.15 Have you, or any of the directors, trustees, managers, principle shareholders, or stakeholders of this company been in the service of the Municipality in the past twelve months? **YES / NO**

3.15.1 If yes, furnish particulars

3.16 Do you have any employee/s who was/were in the service of the Municipality and who was involved in any of the Municipality's bid committees for this bid? **YES / NO**

3.16.1 If yes, furnish particulars

4. Full details of directors / trustees / members / shareholders.

| Full Name | Identity Number | State Employee Number |
|-----------|-----------------|-----------------------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

If the above table does not sufficient to provide the details of all directors / trustees / shareholders, please append full details to the tender submission.

The tenderer hereby certifies that the information set out in this schedule and/or attached thereto is true and correct, and acknowledges that failure to properly and truthfully complete this schedule may result in the tender being declared non-responsive, and/or (in the event that the tenderer is successful) the cancellation of the contract, restriction of the tenderer or the exercise by the employer of any other remedies available to it

Signature

Date

Name (PRINT)

(For and on behalf of the tenderer, duly authorised)

'MSCM Regulations: "in the service of the state" means to be –

- (a) **a member of –**
 - (i) **any municipal council;**
 - (ii) **any provincial legislature; or**
 - (iii) **the national Assembly or the national Council of provinces;**
- (b) **a member of the board of directors of any municipal entity;**
- (c) **an official of any municipality or municipal entity;**
- (d) **an employee of any national or provincial department, national or provincial public entity or constitutional**

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- institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);*
(e) *an executive member of the accounting authority of any national or provincial public entity; or*
(f) *an employee of Parliament or a provincial legislature.*

² *Shareholder” means a person who owns shares in the company and is actively involved in the management of the company or business and exercises control over the company.*

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**SCHEDULE 5: PREFERENCE POINTS CLAIM FORM IN TERMS OF THE
 PREFERENTIAL PROCUREMENT REGULATIONS 2017 (MBD 6.1 AMENDED)**

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.

1. GENERAL CONDITIONS

- 1.1 The following preference point systems are applicable to all bids:
- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
 - the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

- 1.2 a) The value of this bid is estimated to exceed R50 000 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable; or

- 1.3 Points for this bid shall be awarded for:

- (a) Price; and
- (b) B-BBEE Status Level of Contributor.

- 1.4 The maximum points for this bid are allocated as follows:

| | POINTS |
|--|------------|
| PRICE | 80 |
| B-BBEE STATUS LEVEL OF CONTRIBUTOR | 20 |
| Total points for Price and B-BBEE must not exceed | 100 |

- 1.5 Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

- 1.6 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

2. DEFINITIONS

- (a) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (b) **“B-BBEE status level of contributor”** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (c) **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price quotations, advertised competitive bidding processes or proposals;
- (d) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (e) **“EME”** means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (f) **“functionality”** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.
- (g) **“price”** includes all applicable taxes less all unconditional discounts;
- (h) **“proof of B-BBEE status level of contributor”** means:
 - 1) B-BBEE Status level certificate issued by an authorized body or person;
 - 2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
 - 3) Any other requirement prescribed in terms of the B-BBEE Act;
- (i) **“QSE”** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (j) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

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3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES
4. POINTS AWARDED FOR PRICE

4.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

A maximum of 80 or 90 points is allocated for price on the following basis:

80/20 **or** **90/10**

$$Ps = 80 \left(1 - \frac{Pt - P_{min}}{P_{min}} \right) \quad \text{or} \quad Ps = 90 \left(1 - \frac{Pt - P_{min}}{P_{min}} \right)$$

Where

Ps = Points scored for price of bid under consideration

Pt = Price of bid under consideration

Pmin = Price of lowest acceptable bid

4.2 FORMULAE FOR DISPOSAL OR LEASING OF STATE ASSETS AND INCOME-GENERATING PROCUREMENT
4.3 POINTS AWARDED FOR PRICE

A maximum of 80 or 90 points is allocated for price on the following basis:

80/20 **or** **90/10**

$$Ps = 80 \left(1 + \frac{Pt - P_{max}}{P_{max}} \right) \quad \text{or} \quad Ps = 90 \left(1 + \frac{Pt - P_{max}}{P_{max}} \right)$$

Where

Ps = Points scored for price of bid under consideration

Pt = Price of bid under consideration

Pmax = Price of highest acceptable bid

5. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTOR

5.1 In terms of Regulation 6 (2) and 7 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

| B-BBEE Status Level of Contributor | Number of points (90/10 system) | Number of points (80/20 system) |
|------------------------------------|---------------------------------|---------------------------------|
| 1 | 10 | 20 |
| 2 | 9 | 18 |
| 3 | 6 | 14 |
| 4 | 5 | 12 |
| 5 | 4 | 8 |
| 6 | 3 | 6 |
| 7 | 2 | 4 |
| 8 | 1 | 2 |
| Non-compliant contributor | 0 | 0 |

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6. BID DECLARATION

6.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

7. B-BBEE STATUS LEVEL OF CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 4.1

7.1 B-BBEE Status Level of Contributor: . =(maximum of 10 or 20 points)
 (Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

8. SUB-CONTRACTING

8.1 Will any portion of the contract be sub-contracted?

(***Tick applicable box***)

| | |
|-----|----|
| YES | NO |
|-----|----|

8.1.1 If yes, indicate:

i) What percentage of the contract will be subcontracted.....%

ii) The name of the sub-contractor.....

iii) The B-BBEE status level of the sub-contractor.....

iv) Whether the sub-contractor is an EME or QSE

(***Tick applicable box***)

| | |
|-----|----|
| YES | NO |
|-----|----|

v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations,2017:

| Designated Group: An EME or QSE which is at last 51% owned by: | EME √ | QSE √ |
|---|----------|----------|
| Black people | | |
| Black people who are youth | | |
| Black people who are women | | |
| Black people with disabilities | | |
| Black people living in rural or underdeveloped areas or townships | | |
| Cooperative owned by black people | | |
| Black people who are military veterans | | |
| OR | | |
| Any EME | | |
| Any QSE | | |

9. DECLARATION WITH REGARD TO COMPANY/FIRM

9.1 Name of company/firm:.....

9.2 VAT registration number:.....

9.3 Company registration number:.....

9.4 TYPE OF COMPANY/ FIRM

☐ Partnership/Joint Venture / Consortium

☐ One person business/sole propriety

☐ Close corporation

☐ Company

☐ (Pty) Limited

[TICK APPLICABLE BOX]

9.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

.....

.....

.....

9.6 COMPANY CLASSIFICATION

☐ Manufacturer

☐ Supplier

☐ Professional service provider

☐ Other service providers, e.g. transporter, etc.

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[*TICK APPLICABLE BOX*]

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9.7 MUNICIPAL INFORMATION

Municipality where business is situated:

Registered Account Number:

Stand Number:.....

9.8 Total number of years the company/firm has been in business:.....

9.9 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contributor indicated in paragraphs 1.4 and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
 - (a) disqualify the person from the bidding process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
 - (e) forward the matter for criminal prosecution.

WITNESSES

1.

2.

.....

SIGNATURE(S) OF BIDDERS(S)

For official use.

**SIGNATURE OF CITY OFFICIALS AT
TENDER OPENING**

1.

2.

3.

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**SCHEDULE 6: DECLARATION FOR PROCUREMENT ABOVE R10 MILLION
(N/A)**

If the value of the transaction is expected to exceed R10 million (VAT included) the tenderer shall complete the following questionnaire, attach the necessary documents and sign this schedule:

1. Are you by law required to prepare annual financial statements for auditing ? (Please mark with X)

| | | | |
|-----|--|----|--|
| YES | | NO | |
|-----|--|----|--|

1.1 If YES, submit audited annual financial statements:

- (i) for the past three years, or
(ii) since the date of establishment of the tenderer (if established during the past three years)

By attaching such audited financial statements to **List of other documents attached by tenderer** schedule.

2. Do you have any outstanding undisputed commitments for municipal services towards the SM or other municipality in respect of which payment is overdue for more than 30 (thirty) days? (Please mark with X)

| | | | |
|-----|--|----|--|
| YES | | NO | |
|-----|--|----|--|

2.1 If NO, this serves to certify that the tenderer has no undisputed commitments for municipal services towards any municipality for more than three (3) (three) months in respect of which payment is overdue for more than 30 (thirty) days.

2.2 If YES, provide particulars:

3. Has any contract been awarded to you by an organ of state during the past five (5) years? (Please mark with X)

| | | | |
|-----|--|----|--|
| YES | | NO | |
|-----|--|----|--|

3.1 If YES, insert particulars in the table below including particulars of any material non-compliance or dispute concerning the execution of such contract. Alternatively attach the particulars to **List of other documents attached by tenderer** schedule in the same format as the table below:

| Organ of State | Contract Description | Contract Period | Non-compliance/dispute (if any) |
|----------------|----------------------|-----------------|---------------------------------|
| | | | |
| | | | |
| | | | |
| | | | |

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| | | | |
|--|--|--|--|
| | | | |
|--|--|--|--|

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4. Will any portion of the goods or services be sourced from outside the Republic, and if so, what portion and whether any portion of payment from the SM is expected to be transferred out of the Republic? (Please mark with X)

| | | | |
|-----|--|----|--|
| YES | | NO | |
|-----|--|----|--|

4.1 If YES, furnish particulars below

| |
|--|
| |
| |
| |
| |
| |

The tenderer hereby certifies that the information set out in this schedule and/or attached hereto is true and correct, and acknowledges that failure to properly and truthfully complete this schedule may result in steps being taken against the tenderer, the tender being disqualified, and/or (in the event that the tenderer is successful) the cancellation of the contract, restriction of the tenderer or the exercise by the employer of any other remedies available to it.

Signature
Print name:
On behalf of the tenderer (duly authorised)

Date

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SCHEDULE 7: CONSULTANCY SERVICES PROVIDED TO ORGANS OF STATE

The tenderer shall indicate on the schedule below particulars of all consultancy services provided to organs of state by all offices country wide in the last five years. Tenderers shall also indicate, by means of a cross (x) in the last column, which, if any, of the services listed are of a similar nature, to those being tendered for in terms of this tender.

Where the entity tendering is a joint venture, the particulars of services provided to organs of state by each party to the joint venture, must be submitted as part of this schedule (additional pages may be added if necessary).

| CONSULTANCY SERVICES PROVIDED TO ORGANS OF STATE | | | | |
|--|-------------------|----------|----------------|-----------------|
| TITLE OF PROJECT | VALUE OF CONTRACT | EMPLOYER | DATE COMPLETED | SIMILAR SERVICE |
| | | | | |

SIGNED ON BEHALF OF TENDERER:.....

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SCHEDULE 8: SCHEDULE OF PRE-QUALIFICATION CRITERIA SUB-CONTRACTORS (N/A)

The tenderer shall provide information for the evaluation of their compliance with any sub-contracting pre-qualification criteria set in the tender conditions.

| Sub-contractor Name | Nature of sub-contracting | Is the sub-contractor a subsidiary of the main contractor? Y / N | QSE, EME or Co-operative | Black ownership % of QSE, EME or Co-operative | Designated group (youth, women, disabled, rural or township, military veteran) | Value of sub-contracting (including VAT) |
|---|---------------------------|---|--------------------------|---|--|--|
| | | | | | | R |
| | | | | | | R |
| | | | | | | R |
| | | | | | | R |
| | | | | | | R |
| | | | | | | R |
| | | | | | | R |
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| | | | | | | R |
| | | | | | | R |
| | | | | | | R |
| | | | | | | R |
| | | | | | | R |
| Total value of sub-contracting (B) | | | | | | R |

| | | |
|---|--|----------|
| A | Price of tender under consideration (Pt) including VAT | R |
| B | Total value of sub-contracting including VAT | R |
| | Total sub-contracting percentage – (B/A)*100 | % |
| | MINIMUM SUB-CONTRACTING TARGET AS CONTAINED IN CLAUSE C.2.1.4.6 | % |

Tenderers must submit proof of all subcontracting arrangements identified on this schedule as an attachment hereto.

SIGNED ON BEHALF OF TENDERER:

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SCHEDULE 9: MUNICIPAL ACCOUNTS' STATUS

To: THE MUNICIPAL MANAGER, SENQU MUNICIPALITY

From: _____
(Name of tenderer)

The tenderer:

- a) hereby acknowledges that according to SCM Regulation 38(1)(d)(i) the City Manager may reject the tender of the tenderer if any municipal rates and taxes or municipal service charges owed by the tenderer (or any of its directors/members/partners) to the Senqu Municipality, or to any other municipality or municipal entity, are in arrears for more than **8 (eight)** months; and
- b) hereby agrees to provide evidence in the form of current municipal accounts that will enable the SM to evaluate the municipal accounts statuses of the entity and its directors / members / partners.
- c) The tenderer hereby certifies that the information set out in this schedule and/or attached hereto is true and correct, and acknowledges that failure to properly and truthfully complete this schedule may result in steps being taken against the tenderer, the tender being declared non-responsive, and/or (in the event that the tenderer is successful) the cancellation of the contract and/or steps in terms of abuse of the Supply Chain Management Policy.

| Physical Business address of the Tenderer | Municipal Account number(s) |
|--|-----------------------------|
| | |
| | |
| | |
| | |

If there is not enough space for all the names, please attach the additional details to the Tender Document

| Name of Director / Member / Partner | Identity Number | Physical residential address of Director / Member / Partner | Municipal Account number(s) |
|-------------------------------------|-----------------|--|-----------------------------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Signature
Print name:
On behalf of the tenderer (duly authorised)

Date

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| |
|--|
| SCHEDULE 10: DECLARATION IN RESPECT OF COMPLIANCE WITH LABOUR LEGISLATION |
|--|

Tenderers must be registered with the relevant Bargaining Council as contained in the tender conditions and must append to this schedule a certificate of compliance / letter of good standing in terms of the relevant Government Gazette that indicates compliance / validity at the time of tender award.

Each party to a Consortium/Joint Venture shall append separate certificates in the above regard.

Declaration in respect of labour legislation

The tenderer, by signing this schedule, declares that it will comply with all labour legislation, as may be applicable.

SIGNED ON BEHALF OF TENDERER:

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| |
|---|
| SCHEDULE 11: CONFIRMATION OF CONTRACTOR REGISTRATION / ACCREDITATION (N/A) |
|---|

SANS 9001

Where a QA system has been approved in terms of SANS 9001, state registration certificate number and standard.

Certificate No:

SANS 14001

Where an Environmental Management System has been approved in terms of SANS 14001, state registration certificate number and standard.

Certificate No:

OHSAS 18001

Where an Occupational Health and Safety (OHS) Management System has been approved in terms of OHSAS 18001, state registration certificate number and standard.

Certificate No:

SIGNED ON BEHALF OF TENDERER:

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SCHEDULE 12: SCHEDULE OF SUB-CONTRACTORS (N/A)

We notify you that it is our intention to employ the following sub-contractors for work (excluding work covered by provisional sums and contingencies) in this contract.

Acceptance of this tender shall not be construed as approval of all or any of the listed sub-contractors. Should any of the sub-contractors not be approved subsequent to acceptance of the tender, this shall in no way invalidate the contract, and the tendered unit rates for the various items making up the work activities shall remain final and binding.

| SUB-CONTRACTORS | | | |
|------------------------|--|--------------------------------|------------------------------------|
| Sub-contractor's name | Work activities to be undertaken by the Sub-contractor | Estimated value of work (Rand) | Estimate percentage of total value |
| | | R | % |
| | | R | % |
| | | R | % |
| | | R | % |
| | | R | % |
| | | R | % |
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| | | R | % |
| | | R | % |
| | | R | % |
| | | R | % |
| | | R | % |
| TOTALS | | R | % |

Number of sheets appended by the tenderer to this Schedule (If nil, enter NIL).

SIGNED ON BEHALF OF TENDERER:

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| |
|--|
| SCHEDULE 13: PRICE BASIS FOR IMPORTED RESOURCES (N/A) |
|--|

Not applicable to this tender

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**SCHEDULE 14: PROPOSED DEVIATIONS AND QUALIFICATIONS BY
TENDERER**

The Tenderer should record any **proposed** deviations or qualifications he may wish to make to the tender documents in this Returnable Schedule. Alternatively, a tenderer may state such proposed deviations and qualifications in a covering letter attached to his tender and reference such letter in this schedule. Any proposed deviations or qualifications contained in a covering letter which is not referenced in this schedule will not be considered.

The Tenderer's attention is drawn to clause 3.8 of the Standard Conditions of Tender referenced in the Tender Data regarding the Employer's handling of material deviations and qualifications.

If no deviations or qualifications are proposed, the schedule hereunder is to be marked NIL and signed by the Tenderer.

| PAGE | CLAUSE OR ITEM | PROPOSED DEVIATION OR QUALIFICATION |
|------|----------------|-------------------------------------|
| | | |

Number of sheets appended by the tenderer to this Schedule (If nil, enter NIL).

SIGNED ON BEHALF OF TENDERER:

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SCHEDULE 15: RECORD OF ADDENDA TO TENDER DOCUMENTS

We confirm that the following communications received from the Employer before the submission of this tender offer, amending the tender documents, have been taken into account in this tender offer:

| | Date | Title or Details |
|-----|------|------------------|
| 1. | | |
| 2. | | |
| 3. | | |
| 4. | | |
| 5. | | |
| 6. | | |
| 7. | | |
| 8. | | |
| 9. | | |
| 10. | | |

Attach additional pages if more space is required.

SIGNED ON BEHALF OF TENDERER:

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| |
|--|
| SCHEDULE 16: INFORMATION TO BE PROVIDED WITH THE TENDER |
|--|

The following information shall be provided with the Tender:

- a. Work experience of bidder
- b. Key Machinery

SIGNED ON BEHALF OF TENDERER:

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SCHEDULE 16A: MACHINERY

The tenderer is referred to the appropriate clause(s) of the Tender Data and shall indicate on the schedule below all projects applicable to the tender condition.

| TRACK RECORD | | | |
|------------------------------|------------------------|--|------------------------------------|
| DESCRIPTION OF THE MACHINERY | REGISTRATION NUMBER | PROOF OF OWNERSHIP (include certificates) | MACHINE OPERATOR CERTIFICATE |
| | | | |
| | | | |
| | | | |
| | | | |
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| | | | |

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SIGNED ON BEHALF OF TENDERER:

SCHEDULE 16B: COMPANY EXPERIENCE

The tenderer is referred to the appropriate clause(s) of the Tender Data and shall indicate on the schedule below all projects applicable to the tender condition.

| TRACK RECORD | | | | | |
|--|-------------------|--|--------------|---------------|------------------|
| TITLE AND BRIEF DESCRIPTION OF PROJECT | VALUE OF CONTRACT | REFERENCE (include contact details) | | | PROJECT DURATION |
| | | <u>Name</u> | <u>Email</u> | <u>Tel No</u> | |
| | | | | | |
| | | <u>Name</u> | <u>Email</u> | <u>Tel No</u> | |
| | | | | | |
| | | <u>Name</u> | <u>Email</u> | <u>Tel No</u> | |
| | | | | | |
| | | <u>Name</u> | <u>Email</u> | <u>Tel No</u> | |
| | | | | | |
| | | <u>Name</u> | <u>Email</u> | <u>Tel No</u> | |
| | | | | | |

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| | | | | | |
|--|--|-------------|--------------|---------------|--|
| | | <u>Name</u> | <u>Email</u> | <u>Tel No</u> | |
| | | | | | |

SIGNED ON BEHALF OF TENDERER:

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SCHEDULE 16C: PROFESSIONAL INDEMNITY INSURANCE (N/A)

Tenderers are referred to the appropriate clause(s) of the Tender Data and shall state below details of the professional indemnity insurance held by the tenderer.

| PROFESSIONAL INDEMNITY INSURANCE | | |
|----------------------------------|-----------------|-----------------------------------|
| NAME OF INSURED | NAME OF INSURER | LIMIT OF INDEMNITY IRO EACH CLAIM |
| N/A | N/A | N/A |

SIGNED ON BEHALF OF TENDERER:

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SCHEDULE 16 D: PROPOSED WORK PLAN (N/A)

Tenderers are referred to the appropriate clause(s) of the Tender Data and shall append their proposed work plan to this Schedule.

Not applicable

SIGNED ON BEHALF OF TENDERER:

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(8) CONTRACT DATA

Contract Data provided by the Employer

GENERAL CONDITIONS OF CONTRACT

The General Conditions of Contract are the **Standard Professional Services Contract (July 2009) (Edition 3 of CIDB document 1015)**, as published by the Construction Industry Development Board.

The General Conditions of Contract make several references to the Contract Data for specific data, which together with the standard contract collectively describe the risks, liabilities and obligations of the contracting parties and the procedures for the administration of the Contract. The Contract Data shall have precedence in the interpretation of any ambiguity or inconsistency between it and the General Conditions of Contract.

The General Conditions of Contract shall be read in conjunction with the variations, amendments and additions set out in the Contract Specific Data below. Each item of data given below is cross-referenced to the clause in the General Conditions of Contract to which it mainly applies.

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

- a) the Form of Offer and Acceptance,
- b) the Contract Specific Data within the Contract Data,
- c) the General Conditions of Contract
- d) the Specifications, and
- e) the Pricing Data.

If an ambiguity or discrepancy is found in the documents, the Employer shall issue any necessary clarification or instruction.

CONTRACT SPECIFIC DATA

The following contract specific data is applicable to this Contract:

Clause 1:

*Add the following to the definition of **Employer**:*

The **Employer** is the **SENQU MUNICIPALITY**.

*Replace the definition of **Key Persons** with the following:*

Persons who are referred to as such in the Contract Data who will be engaged in the performance of the Services.

*Add the following to the definition of **Period of Performance**:*

The period(s) of performance for this service is as follows:

Final Completion: Within 3 months after Start Date

*Add the following to the definition of **Project**:*

The project is the **PROVISION OF PROFESSIONAL SERVICES IN RESPECT OF: Description: Leases of Machinery and Equipment**

*Add the following to the definition of **Service Provider**:*

The contracting party may be a consortium/joint venture contracting as a formally constituted Joint Venture Partnership, in which all parties are jointly and severally liable. In terms of this definition, the words consortium and joint venture shall be regarded as synonymous.

[]

*Delete the definition of **Services** and replace with the following:*

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The work to be performed by the Service Provider based upon the relevant scope of construction works as described in the Scope of Work.

*Add the following to the definition of **Start Date**:*

The Start Date is the date when the service provider confirms receipt of one fully completed original copy of this document, including the acceptance part of the form of offer and acceptance, and schedule of deviations (if any).

[]

Replace the words “time for completion” with “Period of Performance”.

Add the following definition:

Intellectual Property

Any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, copyright and rights in the nature of copyright, design rights, rights in databases, know-how, trade secrets and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the “look and feel” of any websites

Clause 3

*Delete the heading and replace with “**Governing law and policies**”*

Add the following after clause 3.1

Clause 3.2

- a) The parties agree that this contract shall also be subject to the Employer’s Supply Chain Management Policy (‘SCM Policy’) that was applicable on the date the bid was advertised, **save that if the Employer adopts a new SCM Policy which contemplates that any clause therein would apply to the contract emanating from this tender, such clause shall also be applicable to that contract.** Please refer to this document contained on the municipality’s website.
- b) Abuse of the supply chain management system is not permitted and may result in cancellation of the contract, restriction of the supplier, and/or the exercise by the Employer of any other remedies available to it as described in the SCM Policy.

Clause 3.2

Replace the words “time for completion” with “Period of Performance”.

[]

Clause 3.4 and Clause 4.3.2:

Add the following:

The authorised and designated representative of the Employer is the **Director: Community Services**

The address for receipt of communications is:

Contact Person: M. Salmani
Telephone: 051 – 603 1300 / 1460
E-mail: salmanim@senqu.gov.za
Postal Address: Private Bax X003
LADY GREY
9755
Physical Address: 19 Murray Street

Clause 3.4.1:

Add the following to the first sentence:

... , and may be given as set out hereunder and shall be deemed to have been received when:

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- a) hand delivered – on the working day of delivery
- b) sent by registered mail – five (5) working days after mailing
- c) sent by email or telefax – one (1) working day after transmission

Clause 3.5:

The location for the performance of the Project will be in Sterkspruit, Lady Grey, Barkly East and Rhodes. Key personnel will be expected to work out of the local office as the exigencies of this contract require. The address of the local office will be that as indicated on Schedule 1, Part T2.2: Returnable Schedules, and which will be regarded as the *domicilium citandi et executandi* for the purposes of any contract arising from this tender submission

Should any of the event described in clause 3.9.1 occur, the professional fees and disbursement may be adjusted in a fair and reasonable manner. The Service Provider shall, however, not be entitled to an adjustment to the extent that the variation is due to the negligence or default of the Service Provider. The Service Provider is required to provide all necessary substantiating documents required by the employer to evaluate the request for variation.

Clause 3.9.3:

The Employer shall assess the changes to the Contract Price proposed by the Service Provider on any fair and reasonable basis. The Employer may assess these changes on the effect of the event on the Services based on the time-based fees as stated in the Pricing Data.

Clause 3.9.2:

21 days.

Clause 3.9.3:

The time-based fees used to determine changes to the Contract Price are as stated in the Pricing Data.

Clause 3.10

Penalties and fines

Clause 3.10.1

The penalty amount per day is as follows:
0.05% per milestone that is not achieved as per agreed timeframe
The maximum penalty amount is as follows:
1.5% as per the whole contract amount

Clause 3.10.2

The Employer may impose the following additional penalties or fines:

- a) Any other fines or penalties levied in accordance with any of the specifications.

Clause 3.11

The programme shall be submitted within **14** days of the Start Date.

Clause 3.11.1:

prior to the closing date of the tender.

The indices are those contained in Table A of the P0141 Consumer Price Index for the **CPI for services** published by Statistics South Africa.

Clause 3.12: Price adjustment due to content imported from outside South Africa

3.12.1 General

3.12.1.1 Price adjustment of any resources imported from outside the Republic of South Africa will be permitted **only** in respect of the following variables:

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- (a) Variations in Rates of Exchange as detailed in Clause 3.12.2,
- (b) Variations in Customs Surcharge and Customs Duty as detailed in Clause 3.12.3, and
- (c) Labour and material cost variations in the relevant industries of the countries from which the resources are imported as detailed in Clause 3.12.5.

3.12.1.2 The value of any resources imported from outside South Africa inserted in the schedule titled **Price Basis for Imported Resources** and subject to Clause 3.17.2 shall be deducted from the total values to be adjusted by the Contract Price Adjustment Factor. Any resources not inserted in the schedule titled **Price Basis for Imported Resources** shall be deemed not to be imported into South Africa for the purposes of Contract Price Adjustment.

3.12.2 Variations in Rates of Exchange

3.12.2.1 Adjustment for variations in rates of exchange shall be based on the following:

- (a) The Tenderer shall have completed the schedule titled **Price Basis for Imported Resources** for all imported resources intended to be subject to variations in rates of exchange, subject to the following:
 - i. the value in foreign currency inserted in column (A) shall be subject to Clause 3.17.2 (e) when recalculating the Rand value,
 - ii. the rate of exchange inserted in column (B) shall be the closing spot selling rate quoted by Council's main banker, Nedbank, on the Base Date, rounded to the second decimal place, subject to sub-paragraph iii. below,
 - iii. if the rate of exchange inserted by the Tenderer differs from the Nedbank rate referred to above, then the Nedbank rate shall apply and the Rand value in columns (C) and (F) shall be recalculated accordingly, without altering the price in the Pricing Schedule for the relevant items, and
 - iv. if a quotation from a supplier or sub-contractor provides for variations in rates of exchange, the Service Provider may **only** claim for variations in rates of exchange if he binds the supplier or sub-contractor to the same provision to take out forward cover as described in sub-paragraph (b) below.
- (b) The Service Provider (or supplier or sub-contractor) shall within five working days from the date of placing a firm order on an overseas supplier, cover or recover forward by way of a contract with a bank which is an authorised foreign exchange dealer, the foreign exchange component of the cost of any imported resources inserted by the Tenderer in the schedule titled **Price Basis for Imported Resources**.
- (c) When the Service Provider (or supplier or sub-contractor) so obtains forward cover, the Service Provider shall immediately notify the Employer of the rate obtained and furnish the Employer with a copy of the foreign exchange contract note.
- (d) Based on the evidence provided in sub-paragraph (c) above, the value in Rand inserted in column (C) of the schedule titled **Price Basis for Imported Resources** shall be recalculated using the forward cover rate obtained, and any increase or decrease in the Rand value defined in Clause 3.17.5 shall be adjusted accordingly, subject to sub-paragraph (e) below.
- (e) The adjustments shall be calculated upon the value in foreign currency in the Service Provider's (or supplier's or sub-contractor's) **forward cover contract**, provided that, should this value exceed the value in foreign currency inserted in column (A) of the schedule titled **Price Basis for Imported Resources**, then the value in column (A) shall be used.

3.12.3 Variations in Customs Surcharge and Customs Duty

- (a) Any increase or decrease in the Rand value between the amounts of Customs Surcharge and Customs Duty inserted in the schedule titled **Price Basis for Imported Resources** and those amounts actually

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paid to the Customs and Excise Authorities, which are due to changes in the percentage rates applicable or to the foreign exchange rate used by the authorities, shall be adjusted accordingly.

- (b) The Tenderer shall state the Customs Duty Tariff Reference applicable to each item and the Service Provider shall advise the Employer of any changes which occur.

3.12.4 Value of Imported resources at Base Date

3.12.4.1 The Rand value of imported resources inserted in the schedule titled **Price Basis for Imported Resources** (column (F)) shall be the value in foreign currency (column (A)) converted to South African Rand (column (C)) by using the closing spot selling rate quoted by Council's main banker, Nedbank, on the Base Date rounded to the second decimal place (column(B)), to which shall be added any Customs Surcharge and Customs Duty applicable at that date (columns (D) and (E)).

3.12.5 Variation in labour and material costs of imported resources

3.12.5.1 If the prices for imported resources are not fixed, the Service Provider shall in his Tender specify the formula for calculating Contract Price Adjustments normally used in the country of manufacture and the indices and relative proportions of labour and material on which his Tender prices are based. Evidence of the indices applicable shall be provided with each claim. The indices applicable 42 days before contractual dispatch date from the factory will be used for the purposes of Contract Price Adjustment.

3.12.5.2 Failure to specify a formula in the Tender shall mean that the prices are fixed or shall be deemed to be fixed.

Clause 4.7:

Payment of the tendered basic fee for normal services shall be in accordance with the Pricing Instructions.

Clause 5.4.1:

The Service Provider is required to take out and maintain, for the full duration of the performance of this contract, the following insurance cover:

The Service Provider shall ensure that any sub-contractors engaged in construction activities shall, in addition to the Public Liability and COID Insurances as described above, also take out and maintain contractors all risks insurance to the value of the work being undertaken.

Clause 5.4.2

Evidence of insurance or confirmation (warranty) from a reputable Insurance Broker that the required insurances are in place, shall be submitted within **14** days of the Start Date.

5.4.3 The Service Provider shall maintain the insurance policy/ies for the duration of the liability period in terms of Clause 13.4 and shall upon request by the Employer provide periodic proof of such insurance.

Clause 5.5:

The Service Provider is required to obtain the Employer's prior approval in writing before taking any of the following actions:

- a) Replacing any of the key personnel listed at the time of tender.
- b) Occupying any public land or facility for any purpose that will cause disruption and or inconvenience to the users of such land or facility in respect of any construction contract.
- c) Making a material change, addition or omission from the approved designs.
- d) The exercising of any discretion in terms of any terms and conditions in this contract, that results in the utilisation of any of the contingency allowance, increasing the contract value or awarding any additional time as detailed in the relevant contract conditions.
- e) Permitting advance payment for items not listed in the Advance Payment Schedule.
- f) Nominating the Employer's Agent Representative.
- g) Delegation of Employer's Agent authority in terms.

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- h) Granting permission to work during non-working times.
- i) Suspend the progress of the works.
- j) The issuing of an instruction to accelerate progress.

Clause 6.4:

6.4 Conflict of interest

The Service Provider shall immediately disclose any potential conflict of interest or involvement in the project other than a professional interest in terms of this Contract.

Clause 7.1.2

Key Persons shall be those individuals listed under the Scope of Work.

Clause 7.2.1:

The Service Provider shall provide appropriate Personnel for such time periods as required and shall enter all data pertaining to Personnel and Key Persons on the Personnel Schedule (comprised of Schedules 9 and 16, Part T2.2 : Returnable Schedules).

Clause 8.1:

The Service Provider is to commence the performance of the Services within **14** days of the Start Date.

Clause 8.4.1:

Delete "or" at the end of Clause 8.4.1(d) and add the following three clauses after Clause 8.4.1(e):

- f) if the Service Provider has failed to provide the required insurances within the prescribed time;
- g) if the Service Provider has committed a corrupt or fraudulent act during the tender process or the execution of the Contract;
- h) if the Service Provider has benefitted from an official or other role player committing any corrupt or fraudulent act during the tender process or in the execution of the Contract;
- i) if a material irregularity vitiates the procurement process leading to the conclusion of the contract, rendering the procurement process and the conclusion of the resulting contract unfair, inequitable, non-transparent, uncompetitive or not cost-effective, provided the Employer follows the processes as described in its SCM Policy; or
- j) The implementation of the contract may result in reputational risk or harm to the City as a result of (inter alia):
 - a. reports of poor governance and/or unethical behaviour;
 - b. association with known family of notorious individuals;
 - c. poor performance issues, known to the Employer;
 - d. negative social media reports; or
 - e. adverse assurance (e.g. due diligence) report outcomes.

Clause 8.4.3(c):

The period of suspension under Clause 8.5 is not to exceed 6 months.

Clause 8.4.4:

Upon termination of this Contract pursuant to Clauses 8.4.1 or 8.4.3, the Employer shall remunerate the Service Provider in terms of the Contract for Services satisfactorily performed prior to the effective date of termination and reimburse the Service Provider without adjustment to the agreed rates, sums or fees and without payment of any penalty or surcharge, including any pro-rata payment for partially completed Services, except in the case of termination pursuant to events (c) and (d) of Clause 8.4.1.

Clause 8.4.6

In addition to anything else contained in this contract, the Employer may make either of the following elections to ensure its rights are protected and any negative impact on service delivery is mitigated in instances where the Service Provider has been liquidated:

- a) accept a contractor's proposal (via the trustee / liquidator) to render delivery utilising the appropriate contractual mechanisms; or

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- b) terminate the contract, as the liquidator proposed contractor is deemed unacceptable to the employer, at any time by giving written notice to the contractor (via the trustee / liquidator).

Clause 9:

- 9.1 The Service Provider acknowledges that it shall not acquire any right, title or interest in or to the Intellectual Property of the Employer.
- 9.2 The Service Provider hereby assigns to the Employer, all Intellectual Property created, developed or otherwise brought into existence by it for the purposes of the contract, unless the Parties expressly agree otherwise in writing.
- 9.3 The Service Provider shall, and warrants that it shall:
- 9.3.1 not be entitled to use the Employer's Intellectual Property for any purpose other than as contemplated in this contract;
- 9.3.2 not modify, add to, change or alter the Employer's Intellectual Property, or any information or data related thereto, nor may the Service Provider produce any product as a result of, including and/or arising from any such information, data and Intellectual Property, and in the event that it does produce any such product, the product shall be, and be deemed in law to be, owned by the Employer;
- 9.3.3 not apply for or obtain registration of any domain name, trademark or design which is similar to any Intellectual Property of the Employer;
- 9.3.4 comply with all reasonable directions or instructions given to it by the Employer in relation to the form and manner of use of the Employer's Intellectual Property, including without limitation, any brand guidelines which the Employer may provide to the Service Provider from time to time;
- 9.3.5 procure that its employees, directors, members and contractors comply strictly with the provisions of clauses 9.3.1 to 9.3.3 above;
- unless the Employer expressly agrees thereto in writing after obtaining due internal authority.
- 9.4 The Service Provider represents and warrants to the Employer that, in providing goods, services or both, as the case may be, for the duration of the contract, it will not infringe or make unauthorised use of the Intellectual Property rights of any third party and hereby indemnifies the Employer from any claims, liability, loss, damages, costs, and expenses arising from the infringement or unauthorised use by the Service Provider of any third party's Intellectual Property rights.
- 9.5 In the event that the contract is cancelled, terminated, ended or is declared void, any and all of the Employer's Intellectual Property, and any and all information and data related thereto, shall be immediately handed over to the Employer by the Service Provider and no copies thereof shall be retained by the Service Provider unless the Employer expressly and in writing, after obtaining due internal authority, agrees otherwise.
- 9.6 Copyright of all documents prepared for the project, and the patent rights or ownership in any plant, machine, item, system or process designed or devised, shall be vested with the Employer. Where copyright is vested in the Service Provider, the Employer shall be entitled to use the documents or copy them only for the purposes for which they are intended in regard to the Project and need not obtain the Service Provider's permission to copy for such use. Where copyright is vested in the Employer, the Service Provider shall not be liable in any way for the use of any of the information other than as originally intended for the Project and the Employer hereby indemnifies the Service Provider against any claim which may be made against him by any party arising from the use of such documentation for other purposes.
- 9.7 The ownership of data and factual information collected by the Service Provider and paid for by the Employer shall, after payment by the Employer, lie with the Employer.
- 9.8 The Employer shall have no right to use any documents prepared by the Service Provider whilst the payment of any fees and expenses due to the Service Provider in terms of the Contract is overdue.

Clause 11.1:

A Service Provider may not sub-contract any work which he has the skill and competency to perform, unless he has the Employer's prior approval in writing.

[]

Clause 12.1.2:

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Interim settlement of disputes is to be by **mediation / adjudication**.

Clause 12.2.1:

In the event that the parties fail to agree on a mediator, the mediator is nominated by the **President of the Association of Arbitrators Southern Africa**.

In the event that the parties fail to agree on an adjudicator, the adjudicator is nominated by the **President of the Association of Arbitrators Southern Africa**.

13.1.4 The Employer and the Service Provider shall enter into an agreement to complete the Services required for the Project in terms of the provisions of Section 37(2) of the Occupational Health and Safety Act No. 85 of 1993 and the Construction Regulations, 2014 promulgated thereunder.

An agreement is included in the Contract Document (C1.3 of Contract Data) and shall be completed and submitted to the Employer together with a letter of good standing from the Compensation Commissioner (if not insured with a licenced compensation insurer) within fourteen (14) days of the Start Date. The Service Provider shall ensure that any letter of good standing shall be timeously renewed in order that it remains in full force for the duration of the Contract.

Clause 13.4:

Notwithstanding the terms of the Prescription Act No. 68 of 1969 (as amended) or any other applicable statute of limitation neither the Employer nor the Service Provider shall be held liable for any loss or damage resulting from any occurrence unless a claim is formally made within a liability period of five years, which period shall commence on the earlier of:

- (a) Final completion of the construction contract.
- (b) Suspension, postponement, expiry or termination of all construction contracts.
- (c) Cancellation or termination of this Contract.

Clause 13.7.3:

13.7.3 The Service Provider hereby indemnifies the Employer against all claims by third parties which arise out of or in connection with the Services rendered under this Contract and where such claims are the consequence of breach by the Service Provider to exercise reasonable professional skill, care and diligence in the exercising of its obligations.

Clause 14.5:

Clause 14.5: Tax Invoices

Section 20(1) of the Value Added Tax Act No. 89 of 1991 requires that a supplier (person supplying goods or services) who is registered as a VAT vendor issue to the recipient a tax invoice within 21 days of the date of a supply whether requested or not.

The Service Provider shall provide a tax invoice (VAT invoice) which shall be included with each account delivered to the Employer in terms of Clause 14. Failure by the Service Provider to provide a tax invoice (VAT invoice) timeously may delay payment by the Employer and no interest shall accrue.

Clause 14.6: More frequent payments

The Service Provider may submit a fully motivated application regarding more frequent payment to the Employer's Project Manager to be submitted to the Employer for consideration. Requests for more frequent payments will be considered at the sole discretion of the Employer and is not a right in terms of this contract.

Clause 15:

The interest rate will be the prime interest rate of the Employer's Bank at the time the amount is due.

(9) GENERAL CONDITIONS OF CONTRACT

**STANDARD PROFESSIONAL SERVICES
CONTRACT
(July 2009)
(Third Edition of CIDB document 1014)**

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GENERAL CONDITIONS OF CONTRACT

1. DEFINITIONS

In the Contract, the following words and expressions shall have the meanings indicated, except where the context otherwise requires. Defined terms and words are signified in the text of the Contract by the use of capital initial letters.

Contract

The Contract signed by the Parties and of which these General Conditions of Contract form part.

Contract Data

Specific data, which together with these General Conditions of Contract, collectively describe the risks, liabilities and obligations of the contracting Parties and the procedures for the administration of the Contract.

Contract Price

The price to be paid for the performance of the Services in accordance with the Pricing Data.

Day

A calendar day.

Defect

A part of the Services, as performed, which does not comply with the requirements of the Contract.

Deliverable

Any measurable, tangible, verifiable outcome, result or item that must be produced or completed;

Employer

The contracting party named in the Contract who employs the Service Provider.

Force Majeure

An event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

Key Persons

Persons who are named as such in the Contract Data who will be engaged in the performance of the Services.

Others

Persons or organisations who are not the Employer, the Service Provider or any employee, Subcontractor, or supplier of the Service Provider.

Parties

The Employer and the Service Provider.

Period of Performance

The period within which the Services are to be performed and completed, commencing from the Start Date.

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Personnel

Persons hired by the Service Provider as employees and assigned to the performance of the Services or any part thereof.

Personnel Schedule

A schedule naming all Personnel and Key Persons.

Pricing Data

Data that establishes the criteria and assumptions that were taken into account when developing the Contract Price and the record of the components that make up the Contract Price.

Project

The project named in the Contract Data for which the Services are to be provided.

Scope of Work

The document which defines the Employer's objectives and requirements and specifies the Services which must, or may, be provided under the Contract.

Service Provider

The contracting party named in the Contract Data who is employed by the Employer to perform the Services described in the Contract, and legal successors to the Service Provider and legally permitted assignees.

Services

The work to be performed by the Service Provider pursuant to the Contract as described in the Scope of Work.

Start date

The date on which the Services are to commence. as stated in the Contract Data

Subcontractor

A person or body corporate who enters into a subcontract with the Service Provider to perform part of the Services.

2. INTERPRETATION

2.1 Unless inconsistent with the context, an expression which denotes :

- a) any gender includes the other genders;
- b) a natural person includes a juristic person and vice versa;
- c) the singular includes the plural and vice versa.

2.2 If there is any conflict between the provisions of these General Conditions of Contract and the Contract Data, the provisions of the Contract Data shall prevail.

2.3 The clause headings shall not limit, alter or affect the meaning of the Contract.

3. GENERAL

3.1 Governing law

Law governing the Contract shall be the law of the Republic of South Africa.

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3.2 Change in legislation

If after the commencement of the Contract, the cost or duration of the Services is altered as a result of changes in, or additions to, any statute, regulation or bye-law, or the requirements of any authority having jurisdiction over any matter in respect of the Project, then the Contract Price and time for completion shall be adjusted in order to reflect the impact of those changes, provided that, within 14 Days of first having become aware of the change, the Service Provider furnished the Employer with detailed justification for the adjustment to the Contract Price or Period of Performance (or both)..

3.3 Language

3.3.1 The language of the Contract and of all communications between the Parties shall be English.

3.3.2 All reports, recommendations and reports prepared by the Service Provider under the Contract shall be in English.

3.4 Notices

3.4.1 Any notice, request, consent, approvals or other communication made between the Parties pursuant to the Contract shall be in writing and forwarded to the address specified in the Contract Data. Such communication shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or one week after having been sent by registered post, or unless otherwise indicated in the Contract Data, when sent by e-mail or facsimile to such Party

3.4.2 A Party may change its address for receipt of communications by giving the other Party 30 Days advance notice of such change.

3.5 Location

The Services shall be performed at such locations as are specified in the Contract Data, and where the location of a particular task is not so specified, at such locations as the Employer may approve.

3.6 Publicity and publication

Unless otherwise stated in the Contract Data, the Service Provider shall not release public or media statements or publish material related to the Services or Project within two (2) years of completion of the Services without the written approval of the Employer, which approval by the Employer shall not be unreasonably withheld.

3.7 Confidentiality

Both parties shall keep all sensitive information obtained by them in the context of the Contract confidential and shall not divulge it without the written approval of the other Party.

3.8 Variations

3.8.1 The Employer may, without changing the objectives or fundamental scope of the Contract, order variations to the Services in writing or may request the Service Provider to submit proposals, including the time and cost implications, for variations to the Services.

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3.8.2 The reasonable cost of preparation and submission of such proposals and the incorporation into the Contract of any variations to the Services ordered by the Employer, including any change in the Contract Price, shall be agreed between the Service Provider and the Employer.

3.8.3 Where a variation is necessitated by default or breach of Contract by the Service Provider, any additional cost attributable to such variation shall be borne by the Service Provider.

3.9 Changes to the Contract Price or Period of Performance

3.9.1 The Service Provider is entitled to apply to the Employer for a change in Contract Price or the Period of Performance in the event that:

- a) a change in legislation takes place in accordance with the provisions of Clause 3.2;
- b) a variation to the Services is made in accordance with the provisions of Clause 3.8;
- c) the Employer or Others do not perform an action, provide access to people, places or things or perform work in accordance with the programme (see Clause 3.15);
- d) the contract is suspended in accordance with the provisions of Clause 8.5;
- e) the contract is restarted following a suspension; or
- f) an event occurs which neither Party could prevent and which prevents the Service Provider from completing the Services or a part thereof

3.9.2 The Service Provider shall submit proposals to change the Contract Price or the Period for Completion (or both) to the Employer within 6 weeks of becoming aware of an event described in 3.9.1 occurring, failing which, the Service Provider shall not be entitled to a change in the Contract Price or Period of Performance.

3.9.3 The Employer shall assess the changes to the Contract Price on the effect of the event on the Services based on time-based fees.

3.9.4 The Employer shall assess the changes to the Period of Performance on the basis of the time that planned completion as shown on the latest approved programme is delayed.

3.10 Sole agreement

The Contract constitutes the sole agreement between the Parties for the performance of the Services and any representation not contained therein shall not be of any force or effect. No amendments will be of any force or effect unless reduced to writing and signed by both Parties.

3.11 Indemnification

The Service Provider shall, at his own expense, indemnify, protect and defend the Employer, its agents and employees, from and against all actions, claims, losses and damage arising from any negligent act or omission by the Service Provider in the performance of the Services, including any violation of legal provisions, or rights of others, in respect of patents, trade marks and other forms of intellectual property such as copyrights.

3.12 Penalty

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3.12.1 If due to his negligence, or for reasons within his control, the Service Provider does not perform the Services within the Period of Performance, the Employer shall without prejudice to his other remedies under the Contract or in law, be entitled to levy a penalty for every Day or part thereof, which shall elapse between the end of the period specified for performance, or an extended Period of Performance, and the actual date of completion, at the rate and up to the maximum amount stated in the Contract Data.

3.12.2 If the Employer has become entitled to the maximum penalty amount referred to in 3.12.1, he may after giving notice to the Service Provider :

- a) terminate the Contract
- b) complete the Services at the Service Provider's cost.

3.13 Equipment and materials furnished by the Employer

3.13.1 Equipment and materials made available to the Service Provider by the Employer, or purchased by the Service Provider with funds provided by the Employer for the performance of the Services shall be the property of the Employer and shall be marked accordingly. Upon termination or expiration of the Contract, the Service Provider shall make available to the Employer an inventory of such equipment and materials and shall dispose of them in accordance with the Employer's instructions.

3.13.2 The Service Provider shall, at his own expense, insure the equipment and materials referred to in 3.13.1 for their full replacement value.

3.14 Illegal and impossible requirements

The Service Provider shall notify the Employer immediately, on becoming aware that the Contract requires him to undertake anything which is illegal or impossible.

3.15 Programme

3.15.1 The Service Provider shall, within the time period set out in the Contract Data and whenever a programme is amended or revised, submit for the Employer's approval a programme for the performance of the Services which shall, *inter alia*, include:

- a) the order and timing of operations by the Service Provider and any actions, access to people, places and things and work required of the Employer and Others;
- b) the dates by which the Service Provider plans to complete work needed to allow the Employer and Others to undertake work required of them;
- c) provisions for float;
- d) the planned completion of the Services or part thereof in relation to a Period of Performance; and
- e) other information as required in terms of the Scope of Work or Contract Data.

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3.15.2 The Employer may, during the course of the Contract, request the Service Provider to amend the programme. Where this is not practicable, the Service Provider shall advise the Employer accordingly and advise him of alternative measures, if any, which might be taken.

3.15.3 A programme shall be deemed to be approved if the Employer fails to approve such programme or give reasons for not approving a programme within three weeks of receipt of a request by the Service Provider to approve a programme.

3.15.3 The Service Provider shall update the programme:

- a) unless otherwise stated in the Contract Data, every three months to reflect actual progress to date;
- b) whenever a change in Period of Performance or Contract Price is applied for; and
- c) whenever a change in the Period of Performance is changed by the Employer and submit such revised programme to the Employer for approval.

3.16 Price adjustment to time-based fees for inflation

3.16.1 Time-based fees which are stated in the Pricing Data as a unique rate and are not calculated by multiplying the total annual cost of employment contained, shall unless otherwise stated in the Contract Data, be adjusted in terms of 3.16.2 on each anniversary of the Starting Date.

3.16.2 The adjustment to the time-based fees shall be equal to:

$(CPI_n - CPI_s) / CPI_s$

where CPI_s = the indices specified in the Contract Data during the month in which the start date falls

CPI_n = the latest indices specified in Contract Data during the month in which the anniversary of the Start Date falls

4. EMPLOYER'S OBLIGATIONS

4.1 Information

4.1.1 The Employer shall timeously provide to the Service Provider, free of cost, all available information and data in the Employer's possession which may be required for the performance of the Services.

4.1.2 The Employer shall provide the Service Provider with reasonable assistance required in obtaining other relevant information that the latter may require in order to perform the Services.

4.2 Decisions

The Employer shall, within a reasonable time, give his decision on any matter properly referred to him in writing by the Service Provider so as not to delay the performance of Services.

4.3 Assistance

4.3.1 The Employer shall co-operate with the Service Provider and shall not interfere with or obstruct the proper performance of the Services. The Employer shall as soon as practicable:

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a) authorise the Service Provider to act as his agent insofar as may be necessary for the performance of the Services;

b) provide all relevant data, information, reports, correspondence and the like, which become available;

c) procure the Service Provider's ready access to premises, or sites, necessary for the performance of the Services;

d) assist in the obtaining of all approvals, licenses and permits from state, regional and municipal authorities having jurisdiction over the Project, unless otherwise stated in the Contract Data;

4.3.2 Unless otherwise communicated, the authorised and designated person named in the Contract Data has complete authority in giving instructions and receiving communications on the Employer's behalf and interpreting and defining the Employer's policies and requirements in regard to the Services.

4.4 Services of Others

The Employer shall, at his own cost, engage such Others as may be required for the execution of work not included in the Services, but which is necessary for the completion of the Project.

4.5 Notification of material change or defect

The Employer shall immediately advise the Service Provider on becoming aware of:

a) any matter other than a change in legislation which will materially change, or has changed the Services; or

b) a material defect or deficiency in the Services.

4.6 Issue of instructions

Where the Service Provider is required to administer the work or services of Others, or any contract or agreement, on behalf of the Employer, then the Employer shall issue instructions related to such work, services, contract or agreement only through the Service Provider.

4.7 Payment of Service Provider

The Employer shall pay the Service Provider the Contract Price in accordance with the provisions of the Contract.

5. SERVICE PROVIDER'S OBLIGATIONS

5.1 General

5.1.1 The Service Provider shall perform the Services in accordance with the Scope of Work with all reasonable care, diligence and skill in accordance with generally accepted professional techniques and standards.

5.1.2 If the Service Provider is a joint venture or consortium of two or more persons, the Service Provider shall designate one person to act as leader with authority to bind the joint venture or consortium. Neither the composition nor the constitution of the joint venture or consortium shall be altered without the prior consent in writing of the Employer, which shall not be unreasonably withheld.

5.2 Exercise of authority

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The Service Provider shall have no authority to relieve Others appointed by the Employer to undertake work or services on the Project of any of their duties, obligations, or responsibilities under their respective agreements or contracts, unless expressly authorised by the Employer in response to an application by the Service Provider in writing to do so.

5.3 Designated representative

Unless otherwise communicated, the authorised and designated person named in the Contract Data has complete authority to receive instructions from and give information to the Employer on behalf of the Service Provider.

5.4 Insurances to be taken out by the Service Provider

5.4.1 The Service Provider shall as a minimum and at his own cost take out and maintain in force all such insurances as are stipulated in the Contract Data.

5.4.2 The Service Provider shall, at the Employer's request, provide evidence to the Employer showing that the insurance required in terms of Clause 5.4.1 has been taken out and maintained in force.

5.5 Service Provider's actions requiring Employer's prior approval

The Service Provider shall obtain the Employer's prior approval in writing before taking, inter alia, any of the following actions:

- a) appointing Subcontractors for the performance of any part of the Services,
- b) appointing Key Persons not listed by name in the Contract Data.
- c) any other action that may be specified in the Contract Data.

5.6 Co-operation with Others

If the Service Provider is required to perform the Services in co-operation with Others he may make recommendations to the Employer in respect of the appointment of such Others. The Service Provider shall, however, only be responsible for his own performance and the performance of Subcontractors unless otherwise provided for.

5.7 Notice of change by Service Provider

On becoming aware of any matter which will materially change or has changed the Services, the Service Provider shall within 14 Days thereof give notice to the Employer.

6. CONFLICTS OF INTEREST

6.1 Service Provider not to benefit from commissions, discounts, etc.

The remuneration of the Service Provider under the Contract shall constitute the Service Provider's sole remuneration in connection with the Contract, or the Services, and the Service Provider shall not accept for his own benefit any trade commission, discount, or similar payment in connection with activities pursuant to the Contract, or in the discharge of his obligations under the Contract, and shall use his best efforts to ensure that the

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Personnel, any Subcontractors, and agents of either of them shall, similarly, not receive any additional remuneration.

6.2 Royalties and the like

The Service Provider shall not have the benefit, whether directly or indirectly, of any royalty or of any gratuity or commission in respect of any patented or protected article or process used in or for the purposes of the Contract, or Project, unless so agreed by the Employer in writing.

6.3 Independence

The Service Provider shall refrain from entering into any relationship which could be perceived as compromising his independence of judgement, or that of Subcontractors or Personnel.

7. SERVICE PROVIDER'S PERSONNEL

7.1 General

7.1.1 The Service Provider shall employ and provide all qualified and experienced Personnel required to perform the Services.

7.1.2 Where required in terms of the Contract, the Service Provider shall provide Key Persons as listed in the Contract Data to perform specific duties. If at any time, a particular Key Person cannot be made available, the Service Provider may engage a replacement who is equally or better qualified to perform the stated duty, subject to the Employer's approval, which approval shall not be unreasonably withheld.

7.1.3 Where the fees for the Services are time-based, the fee payable for a person provided as a replacement to a named Key Person shall not exceed that which would have been payable to the person replaced.

7.1.4 The Service Provider shall bear all additional costs arising out of or incidental to replacement of Personnel, except where such replacement is otherwise provided for in the Contract.

7.1.5 The Service Provider shall take all measures necessary and shall provide all materials and equipment necessary to enable Personnel to perform their duties in an efficient manner.

7.2 Provision of Personnel in terms of a Personnel Schedule

7.2.1 The Service Provider shall, where required in terms of the Contract Data, provide appropriate Personnel for such time periods as required in terms of the Contract and enter all data pertaining to Personnel including titles, job descriptions, qualifications and estimated periods of engagement on the performance of the Services in the Personnel Schedule.

7.2.2 Where the Service Provider proposes to utilise a person not named in the Personnel Schedule, he shall submit the name, relevant qualifications and experience of the proposed replacement person to the Employer for approval. Should the Employer not object in writing within 10 Days of receipt of such notification, the replacement shall be deemed to have been approved by the Employer.

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7.2.3 The Services shall be performed by the Personnel listed in the Personnel Schedule for the periods of time indicated therein. The Service Provider may, subject to the approval of the Employer, make such adjustments to the data provided in terms of Clause 7.2.1 above as may be appropriate to ensure the efficient performance of the Services, provided that the adjustments will not cause payments to exceed any limit placed on the Contract Price.

7.2.4 The Service Provider shall, if required in terms of Clause 7.2.1:

- a) forward to the Employer for approval, within 15 Days of the award of the Contract, the Personnel Schedule and a timetable for the placement of Personnel.
- b) inform the Employer of the date of commencement and departure of each member of Personnel during the course of the Project.
- c) submit to the Employer for his approval a timely request for any proposed change to Personnel, or timetables.

8. COMMENCEMENT, COMPLETION, MODIFICATION, SUSPENSION AND TERMINATION

8.1 Commencement of Services

The Service Provider shall commence the performance of the Services within the period stated in the Contract Data.

8.2 Completion

8.2.1 Unless terminated in terms of the Contract, or otherwise specified in the Contract Data, the Contract shall be concluded when the Service Provider has completed all Deliverables in accordance with the Scope of Work.

8.2.2 The Service Provider may request an extension to the Period of Performance if he is or will be delayed in completing the Contract by any of the following causes:

- a) additional Services ordered by the Employer;
- b) failure of the Employer to fulfil his obligations under the Contract;
- c) any delay in the performance of the Services which is not due to the Service Provider's default;
- d) *Force Majeure*; or
- e) suspension.

8.2.3 The Service Provider shall within 14 Days of becoming aware that a delay may occur or has occurred, notify the Employer of his intention to make a request for the extension of the Period of Performance to which he considers himself entitled and shall within 30 days after the delay ceases deliver to the Employer full and detailed particulars of the request.

8.2.4 The Employer shall, within 30 Days of receipt of a detailed request, grant such extension to the Period of Performance as may be justified, either prospectively or retrospectively, or inform the Service Provider that he is not entitled to an extension. Should the Service Provider find the decision of the Employer to be unacceptable he shall, nevertheless, abide by such decision in the performance of the Services and the matter shall be dealt with as a dispute in terms of Clause 12.

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8.3 Force Majeure

8.3.1 The failure of a Party to fulfil any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of *Force Majeure*, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures in order to meet the terms and conditions of this Contract, and has informed the other Party as soon as possible about the occurrence of such an event.

8.3.2 In the event that the performance of the Services has to be suspended on the grounds of *Force Majeure*, the Period of Performance shall be extended by the extent of the delay plus a reasonable period for the resumption of work.

8.3.3 During the period of his inability to perform the Services as a result of an event of *Force Majeure*, the Service Provider shall be entitled to any payment due in terms of the Contract and shall be reimbursed for additional costs reasonably and necessarily incurred by him in suspending, delaying and re-activating the performance of the Services.

8.4 Termination

8.4.1 The Employer may terminate the Contract:

- (a) where the Services are no longer required;
- (b) where the funding for the Services is no longer available;
- (c) if the Service Provider does not remedy a failure in the performance of his obligations under the Contract within thirty (30) Days after having been notified thereof, or within any further period as the Employer may have subsequently approved in writing;
- (d) if the Service Provider becomes insolvent or liquidated; or
- (e) if, as the result of *Force Majeure*, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) Days;

8.4.2 The Employer shall give the Service Provider not less than thirty (30) Days written notice of any termination made in terms of 8.4.1 (a) or (b).

8.4.3 The Service Provider may terminate the Contract, by giving not less than thirty (30) Days written notice to the Employer after the occurrence of any of the following events:

- (a) if the Employer fails to pay any monies due to the Service Provider in terms of the Contract and not subject to dispute pursuant to Clause 12 within forty-five (45) Days after receiving written notice from the Service Provider that such payment is overdue;

or

- (b) if, as the result of *Force Majeure*, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) Days; or

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(c) when the Services have been suspended under Clause 8.5 and the period of suspension exceeds the period stated in the Contract Data, or it is clear to the Service Provider that it will be impossible or impractical to resume the suspended Services before the period of suspension has exceeded the period stated in the Contract Data;

or

(d) if the Employer is in material breach of a term of the Contract and fails to rectify such breach within 30 Days of the receipt of written notice requiring him to do so.

8.4.4 Upon termination of this Contract pursuant to Clauses 8.4.1 or 8.4.3, the Employer shall remunerate the Service Provider in terms of the Contract for Services satisfactorily performed prior to the effective date of termination and reimburse the Service Provider any reasonable cost incident to the prompt and orderly termination of the Contract, except in the case of termination pursuant to events (c) and (d) of Clause 8.4.1.

8.4.5 Should the Service Provider, being an individual or the last surviving principal of a partnership or body corporate, die or be prevented by illness or any other circumstances beyond his control from performing the obligations implied by the Contract, the Contract shall be terminated without prejudice to the accrued rights of either Party against the other.

8.5 Suspension

8.5.1 The Employer may temporarily suspend all or part of the Services by notice to the Service Provider who shall immediately make arrangements to stop the performance of the Services and minimise further expenditure.

8.5.2 When Services are suspended, the Service Provider shall be entitled to pro-rata payment for the Services carried out and reimbursement of all reasonable cost incident to the prompt and orderly suspension of the Contract.

8.6 Rights and liabilities of the Parties

Completion, suspension or termination of the Contract shall not prejudice or affect the accrued rights or liabilities of the Parties.

9. OWNERSHIP OF DOCUMENTS AND COPYRIGHT

9.1 Copyright of all documents prepared by the Service Provider in accordance with the relevant provisions of the copyright Act (Act 98 of 1978) relating to Project shall be vested in the party named in the Contract Data. Where copyright is vested in the Service Provider, the Employer shall be entitled to use the documents or copy them only for the purposes for which they are intended in regard to the Project and need not obtain the Service Provider's permission to copy for such use. Where copyright is vested in the Employer, the Service Provider shall not be liable in any way for the use of any of the information other than as originally intended for the Project and the Employer hereby indemnifies the Service Provider against any claim which may be made against him by any party arising from the use of such documentation for other purposes.

9.2 The ownership of data and factual information collected by the Service Provider and paid for by the Employer shall, after payment by the Employer, lie with the Employer.

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9.3 The Employer shall have no right to use any documents prepared by the Service Provider whilst the payment of any fees and expenses due to the Service Provider in terms of the Contract is overdue.

10. SUCCESSION AND ASSIGNMENT

10.1 Except as defined in Clause 8.4.4 above, each Party binds itself and its partners, successors, executors, administrators, assigns and legal representatives to the other Party and to the other partners, successors, executors, administrators, assigns and legal representatives of the other Party in respect of all obligations and liabilities of the Contract.

10.2 An assignment shall be valid only if it is a written agreement by which the Service Provider transfers his rights and obligations under the Contract, or part thereof, to others.

10.3 The Service Provider shall not, without the prior written consent of the Employer, assign the Contract or any part thereof, or any benefit or interest thereunder, except in the following cases :

(a) by a charge in favour of the Service Provider's bankers of any monies due or to become due under the Contract; or

(b) by assignment to the Service Provider's insurers of the Service Provider's right to obtain relief against any other person liable in cases where the insurers have discharged the Service Provider's loss or liability.

10.4 The approval of an assignment by the Employer shall not relieve the Service Provider of his obligations for the part of the Contract already performed or the part not assigned.

10.5 If the Service Provider has assigned his Contract or part thereof without authorization, the Employer may forthwith terminate the Contract and the third party will have no claim against the Employer resulting from such termination.

11. SUBCONTRACTING

11.1 A Service Provider may not subcontract any work which he has the skill and competency to perform, unless otherwise permitted in the Contract Data.

11.2 A subcontract, where permitted in terms of the Contract Data, shall be valid only if it is a written agreement by which the Service Provider entrusts performance of a part of the Services to Others.

11.3 The Service Provider shall not subcontract to nor engage a Subcontractor to perform any part of the Services without the prior written authorization of the Employer. The services to be sub-contracted and the identity of the Subcontractor shall be notified to the Employer. The Employer shall, within 14 Days of receipt of the notification and a full motivation why such services are to be subcontracted, notify the Service Provider of his decision, stating reasons, should he withhold such authorization. If the Service Provider enters into a subcontract with a Subcontractor without prior approval, the Employer may forthwith terminate the Contract.

11.4 The Employer shall have no contractual relationships with Subcontractors. However, if a Subcontractor is found by the Employer to be incompetent, the Employer may request the Service Provider either to provide a

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Subcontractor with qualifications and experience acceptable to the Employer as a replacement, or to resume the performance of the relevant part of the Services himself.

11.5 The Service Provider shall advise the Employer without delay of the variation or termination of any subcontract for performance of all or part of the Services.

11.6 The Service Provider shall be responsible for the acts, defaults and negligence of Subcontractors and their agents or employees in the performance of the Services, as if they were the acts, defaults or negligence of the Service Provider, his agents or employees. Approval by the Employer of the subcontracting of any part of the Contract or of the engagement by the Service Provider of Subcontractors to perform any part of the Services shall not relieve the Service Provider of any of his obligations under the Contract.

12. RESOLUTION OF DISPUTES

12.1 Settlement

12.1.1 The Parties shall negotiate in good faith with a view to settling any dispute or claim arising out of or relating to the Contract and may not initiate any further proceedings until either Party has, by written notice to the other, declared that such negotiations have failed.

12.1.2 Any dispute or claim arising out of or relating to the Contract which cannot be settled between the Parties shall in the first instance be referred by the Parties to either mediation or adjudication as provided for in the Contract Data.

12.2 Mediation

12.2.1 If the Contract Data does not provide for dispute resolution by adjudication, not earlier than 14 Days after having advised the other Party, in terms of Clause 12.1, that negotiations in regard to a dispute have failed, an aggrieved Party may require that the dispute be referred, without legal representation, to mediation by a single mediator. The mediator shall be selected by agreement between the Parties, or, failing such agreement, by the person named for this purpose in the Contract Data. The costs of the mediation shall be borne equally by the Parties.

12.2.2 The mediator shall convene a hearing of the Parties and may hold separate discussions with any Party and shall assist the Parties in reaching a mutually acceptable settlement of their differences through means of reconciliation, interpretation, clarification, suggestion and advice. The Parties shall record such agreement in writing and thereafter they shall be bound by such agreement.

12.2.3 The mediator is authorised to end the mediation process whenever in his opinion further efforts at mediation would not contribute to a resolution of the dispute between the Parties.

12.2.4 If either Party is dissatisfied with the opinion expressed by the mediator or should the mediation fail, then such Party may require that the dispute be referred to arbitration or litigation in a competent civil court, as provided for in the Contract Data.

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12.3 Adjudication

12.3.1 If the Contract Data does not provide for dispute resolution by mediation, an aggrieved Party may refer the dispute to adjudication. Adjudication shall be in accordance with the latest edition of the separately published CIDB Adjudication Procedures.

12.3.2 The adjudicator shall be appointed in terms of the Adjudicator's Agreement bound in the Construction Industry Development Board's Adjudication Procedure.

12.3.3 The Adjudicator shall be any person agreed to by the parties or, failing such agreement, shall be nominated by the person named in the Contract Data. The Adjudicator shall be appointed in accordance with the Adjudicator's Agreement contained in the CIDB Adjudication Procedure.

12.3.4 If a Party is dissatisfied with the decision of the Adjudicator, the Party may give the other Party notice of dissatisfaction within 28 Days of the receipt of that decision and refer the dispute to arbitration or litigation in a competent civil court as provided for in the Contract Data. If no notice of dissatisfaction is given within the specified time, the decision shall be final and binding on the Parties.

12.4 Arbitration

12.4.1 Arbitration, where provided for in the Contract Data, shall be by a single arbitrator in accordance with the provisions of the Arbitration Act of 1965 as amended and shall be conducted in accordance with such procedure as may be agreed between the Parties or, failing such agreement, in accordance with the Rules for the Conduct of Arbitrations published by the Association of Arbitrators current at the date the arbitrator is appointed.

12.4.2 The arbitrator shall be mutually agreed upon or, failing agreement, to be nominated by the person named in the Contract Data.

13. LIABILITY

13.1 Liability of the Service Provider

13.1.1 The Service Provider shall be liable to the Employer arising out of or in connection with the Contract if a breach of Clause 5.1 is established against him.

13.1.2 The Service Provider shall correct a Defect on becoming aware of it. If the Service Provider does not correct a Defect within a reasonable time stated in a notification and the Defect arose from a failure of the Service Provider to comply with his obligation to provide the Services, the Service Provider shall pay to the Employer the amount which the latter assesses as being the cost of having such Defect corrected by Others.

13.1.3 All persons in a joint venture or consortium shall be jointly and severally liable to the Employer in terms of this Contract and shall carry individually the minimum levels of insurance stated in the Contract Data, if any.

.13.2 Liability of the Employer

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The Employer shall be liable to the Service Provider arising out of or in connection with the Contract if a breach of an obligation of his in terms of the Contract is established. The Service Provider shall have no separate delictual right of action against the Employer.

13.3 Compensation

If it is established that either Party is liable to the other, compensation shall be payable only on the following terms:

(a) Compensation shall be limited to the amount of reasonably foreseeable loss and damage suffered as a result of the breach.

(b) In any event, the amount of compensation will be limited to the amount specified in Clause 13.5.

13.4 Duration of Liability

Notwithstanding the terms of the Prescription Act No. 68 of 1969 (as amended) or any other applicable statute of limitation neither the Employer nor the Service Provider shall be held liable for any loss or damage resulting from any occurrence unless a claim is formally made within the period stated in the Contract Data or, where no such period is stated, within a period of three years from the date of termination or completion of the Contract.

13.5 Limit of Compensation

13.5.1 Unless otherwise indicated in the Contract Data, the maximum amount of compensation payable by either Party to the other in respect of liability under the Contract is limited to:

a) the sum insured in terms of 5.4 in respect of insurable events; and

b) the sum stated in the Contract Data or, where no such amount is stated, to an amount equal to twice the amount of fees payable to the Service Provider under the Contract, excluding reimbursement and expenses for items other than salaries of Personnel, in respect of non-insurable events.

13.5.2 Each Party agrees to waive all claims against the other insofar as the aggregate of compensation which might otherwise be payable exceeds the aforesaid maximum amount payable.

13.5.3 If either Party makes a claim for compensation against the other Party and this is not established, the claimant shall reimburse the other for his reasonable costs incurred as a result of the claim or if proceedings are initiated in terms of Clause 12 for such costs as may be awarded.

13.6 Indemnity by the Employer

Unless otherwise indicated in the Contract Data, the Employer shall indemnify the Service Provider against all claims by third parties which arise out of or in connection with the performance of the Services save to the extent that such claims do not in the aggregate exceed the limit of compensation in Clause 13.5, if applicable, or are covered by the insurances arranged under the terms of Clause 5.4.

13.7 Exceptions

13.7.1 Clauses 13.5 and 13.6 shall not apply to claims arising from deliberate misconduct.

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13.7.2 The Service Provider shall have no liability whatsoever for actions, claims, losses or damages occasioned by:

- a) the Employer omitting to act on any recommendation, or overriding any act, decision or recommendation, of the Service Provider, or requiring the Service Provider to implement a decision or recommendation with which the Service Provider disagrees or on which he expresses a serious reservation; or
- b) the improper execution of the Service Provider's instructions by agents, employees or independent contractors of the Employer.

14. REMUNERATION AND REIMBURSEMENT OF SERVICE PROVIDER

The Employer shall remunerate and reimburse the Service Provider for the performance of the Services as set out in the Pricing Data. If not otherwise stated in the Pricing Data, the following shall apply:

14.1 The Service Provider shall be entitled to render interim monthly accounts for fees and reimbursements throughout the duration of the Contract. Interim amounts of lump sum fees due shall be based on progress.

14.2 Amounts due to the Service Provider shall be paid by the Employer within thirty (30) Days of receipt by him of the relevant invoices. If the Service Provider does not receive payment by the due date, he shall be entitled to charge interest on the unpaid amount, which is payable by the Employer, at the prime interest rate charged by his bank and certified by such bank, plus 2% per annum, and calculated from the due date of payment.

14.3 If any item or part of an item in an invoice submitted by the Service Provider is disputed by the Employer, the latter shall, before the due date of payment, give notice thereof with reasons to the Service Provider, but shall not delay payment of the balance of the invoice. Clause 14.2 shall apply to disputed amounts which are finally determined to be payable to the Service Provider.

14.4 In respect of Services charged for on a time-basis and all other reimbursable expenses the Service Provider shall maintain records in support of such charges and expenses for a period of twenty four months after the completion or termination of the Contract. Within this period the Employer may, on not less than 14 Days notice, require that a reputable and independent firm of accountants, nominated by him at his expense, audit any claims made by the Service Provider for time charges and expenses by attending during normal working hours at the office where the records are maintained.

15 AMOUNTS DUE TO THE EMPLOYER

Amounts due to the Employer shall be paid by the Service Provider within thirty (30) Days of receipt by him of the relevant invoices. If the Employer does not receive payment by the due date, he shall be entitled to charge interest on the unpaid amount, which is payable by the Service Provider, at the rate stated in the Contract Data, calculated from the due date for payment.

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(10) OCCUPATIONAL HEALTH AND SAFETY AGREEMENT

AGREEMENT MADE AND ENTERED INTO BETWEEN THE CITY OF CAPE TOWN (HEREINAFTER CALLED THE "SM") AND

..... ,
(Supplier/Mandatar/Company/CC Name)

IN TERMS OF SECTION 37(2) OF THE OCCUPATIONAL HEALTH AND SAFETY ACT, 85 OF 1993 AS AMENDED.

I, , representing

..... , as an employer
in its own right, do hereby undertake to ensure, as far as is reasonably practicable, that all work will be performed, and all equipment, machinery or plant used in such a manner as to comply with the provisions of the Occupational Health and Safety Act (OHSA) and the Regulations promulgated thereunder.

I furthermore confirm that I am/we are registered with the Compensation Commissioner and that all registration and assessment monies due to the Compensation Commissioner have been fully paid or that I/We are insured with an approved licensed compensation insurer.

COID ACT Registration Number:

OR Compensation Insurer: Policy No.:

I undertake to appoint, where required, suitable competent persons, in writing, in terms of the requirements of OHSA and the Regulations and to charge him/them with the duty of ensuring that the provisions of OHSA and Regulations as well as the Council's Special Conditions of Contract, Way Leave, Lock-Out and Work Permit Procedures are adhered to as far as reasonably practicable.

I further undertake to ensure that any subcontractors employed by me will enter into an occupational health and safety agreement separately, and that such subcontractors comply with the conditions set.

I hereby declare that I have read and understand the Occupational Health and Safety Specifications contained in this tender and undertake to comply therewith at all times.

I hereby also undertake to comply with the Occupational Health and Safety Specification and Plan submitted and approved in terms thereof.

Signed at on the day of 20....

Witness

Mandatar

Signed at on the day of 20

Witness

for and on behalf of
City of Cape Town

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(11) INSURANCE BROKER'S WARRANTY (PRO FORMA)



Letterhead of supplier's Insurance Broker

Date _____

SENQU MUNICIPALITY
City Manager
19 Murray Street
Lady Grey
9755

Dear Sir

TENDER NO.96:/2022-2023T

TENDER DESCRIPTION: Leases Machinery and Equipment

I, the undersigned, do hereby confirm and warrant that all the insurances required in terms of the abovementioned contract have been issued and/or in the case of blanket/umbrella policies, have been endorsed to reflect the interests of the Senqu Municipality with regard to the abovementioned contract, and that all the insurances and endorsements, etc., are all in accordance with the requirements of the contract.

I furthermore confirm that all premiums in the above regard have been paid.

Yours faithfully

Signed: _____

For: _____ (Supplier's Insurance Broker)

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(12) SPECIFICATION(S)

1. PURPOSE

The purpose of the project is to appoint a Service Providers to Lease and operate a Dozer, Tipper Truck and TLB for Senqu Landfill Sites Management. The hired plant must be operated, Maintained and Secured by the service provider and be on site for 8hours per day-Monday to Friday

2. BACKGROUND AND OBJECTIVE

Clearance, compaction and covering of the landfill sites at Senqu LM.

3. OBJECTIVES

- a) The Plant Equipment and Implements must be licensed and roadworthy
- b) Costs of Transporting the Plant Equipment between the three towns of SENQU LM must be incorporated on the Unit Rate of the Plant Equipment and it should be based on a **WET RATE**.
- c) Plant Equipment must have 360-degree visible rotating / flashing Amber lights and the necessary sound warning (reverse) when conducting work on behalf of the Municipality
- d) The Prices (unit rates) are not negotiable and will stand firm for the duration of the Project based on the wet rate.
- e) Appointed Service Provider must submit details of the Plant Operators / Drivers and assistants to the Municipality to verify competency to operate the Plant Equipment. (**Operator's Certificates**)
- f) Appointed Service Providers must submit letters signed for their previous appointment
- g) The Service provider must adhere to all Health and Safety prescripts.
- h) The total tender price must include all operational, maintenance, security costs of Machinery and transport to the Municipality.

4. PROJECT SCOPE OF WORKS

The successful tenderer shall will be expected to have or hire out a Dozer, TLB and a Tipper Truck for Landfill Site Management, with immediate effect.

- a) Extensive Clearing of Senqu Landfill sites by providing cover material (top soil),
- b) Collecting and piling of covering material
- c) Excavating a trench and depositing the waste in the trench and covering the waste with top soil. (**Senqu Landfill sites**)
- d) Compaction of deposited waste to the required densities at the required slopes.
- e) Minimum covering of 150mm is required

5. GENERAL

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9.1 Time Frames/Milestones

Milestones set by the Employer in the Contract Data typically revolve around budget cycles and the need to spend the budget in any given financial year. The important milestones are therefore the financial year ends (30 June each year) and the Service Provider will be expected to establish a project programme, in consultation with the Employer, that takes cognisance of the budgets available and the budget cycles. Once agreed, the Service Provider is expected to ensure that the programme is adhered to, and to intervene timeously if necessary.

The Service Provider shall submit a revised programme as and when required by the Employer.

9.2 Places for the Performance of Specific Tasks

It is anticipated that the majority of the work will be undertaken at the Service Provider's local office. .

The Service Providers personnel will however be required to attend meetings within the municipal area.

9.3 Reporting Requirements

Aside from the particular reports required in terms of the deliverables stated above, the Service Provider may be required to prepare, or contribute to, ad hoc reports on specific aspects of the project.

Furthermore, the Service Provider shall submit monthly cost reports (including cash flows) to the Employer showing expenditure in respect of the Service Provider's appointment costs.

6. Applicable National and International Standards

The Service Provider shall ensure that cognisance of all applicable national and international standards is taken in the execution of his/her own work and that of his/her sub-consultants in the design and compilation of specifications for this project. International standards should only be used where no national standards exist, or where it is the norm to use or refer to international standards.

7. PROCUREMENT

11.1 Monitoring the use of sub-contractors/sub-consultants and joint ventures

Notwithstanding the restriction on sub-contracting as described on the **PREFERENCE POINTS CLAIM FORM**, it is recognised that sub-contracting is an integral part of construction, which the conditions of contract make provision for.

In order, however, to comply with the requirements of the **PREFERENCE POINTS CLAIM FORM**, the service provider shall submit to the Employer, on a monthly basis, a **B-BBEE Sub-contract Expenditure Report**. The format of this report is provided in the attached annexure.

The service provider shall submit to the Employer documentary evidence in accordance with the applicable codes of good practise, , of the B-BBEE status level of every sub-contractor employed by the service provider. Until such time as documentary evidence as described above has been submitted to the Employer, a sub-contractor shall be deemed to be a non-compliant contributor.

The service provider shall furthermore, on the written request of the Employer, provide documentary evidence showing the value of work sub-contracted to any or all of the sub-contractors employed by the service provider.

11.2 Forms for contract administration

The Service Provider shall complete, sign and submit with each monthly statement for payment, the following updated returns (the format of which are attached in Annexes as amended from time to time):

- B-BBEE Sub-contract Expenditure Report
- Joint Venture Expenditure Report

The **B-BBEE Sub-contract Expenditure Report** is required for monitoring the prime contactor's compliance with the sub-contracting conditions of the **PREFERENCE POINTS CLAIM FORM**.

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The Joint Venture Expenditure Report is required for monitoring the joint venture's compliance with the percentage contributions of the JV partners as tendered, where the joint venture has been awarded preference points in respect of its consolidated B-BBEE scorecard.

12. FORMAT OF COMMUNICATION

All requests for formal approval from the Employer, or any other body, shall be submitted in writing in hardcopy format. Interim payment claims shall be submitted in the same format, accompanied by an original tax invoice. Ad-hoc communication between the Employer and the Service Provider may be conducted per facsimile or in electronic format (e-mail).

All contract documents submitted for approval shall be in hardcopy format.

13. KEY PERSONNEL

The Service Provider shall maintain the involvement of the following key personnel as the exigencies of this contract require:

All charges in respect of attendance at meetings and the provision of secretarial services shall be included in the tendered basic fee.

14 TRADE NAMES OR PROPRIETARY PRODUCTS

Bid specifications may not make any reference to any particular trade mark, name, patent, design, type, specific origin or producer, unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the words "or equivalent".

TENDERERS MUST NOTE THAT WHEREVER THIS DOCUMENT REFERS TO ANY PARTICULAR TRADE MARK, NAME, PATENT, DESIGN, TYPE, SPECIFIC ORIGIN OR PRODUCER, SUCH REFERENCE SHALL BE DEEMED TO BE ACCOMPANIED BY THE WORDS 'OR EQUIVALENT'

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(13) ANNEXES

CONTENTS

- 13.1 B-BBEE Sub-contract Expenditure Report
- 13.2 Joint Venture Expenditure Report

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(13.1) BBEE SUB-CONTRACT EXPENDITURE REPORT (PRO FORMA)

TENDER NO. AND DESCRIPTION:

SUPPLIER:

B-BBEE SUB-CONTRACT EXPENDITURE REPORT

| | | | |
|--|---|---------------------------------------|--|
| Rand Value of the contract (as defined in PREFERENCE POINTS CLAIM FORM) (P*) | R | B-BBEE Status Level of Prime Supplier | |
|--|---|---------------------------------------|--|

| Name of Sub-contractor (list all) | B-BBEE Status Level of supplier ¹ | Total value of Sub- contract (excl. VAT) ¹ | Value of Sub- contract work to date (excl. VAT) ¹ | Value of Sub-contract work to Sub-contractors with a lower B-BBEE Status Level than supplier |
|--------------------------------------|---|--|--|---|
| Sub-contractor A | | R | R | R |
| Sub-contractor B | | R | R | R |
| Sub-contractor C | | R | R | R |
| | | | | |
| | | | | |
| Total: | | | | R |
| Expressed as a percentage of P* | | | | % |

¹Documentary evidence to be provided

Signatures

Declared by
supplier to be true
and correct:

Date:

Verified by SM
Project Manager:

Date:

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(13.2) PARTNERSHIP/ JOINT VENTURE (JV) / CONSORTIUM/ EXPENDITURE REPORT (PRO FORMA)

TENDER NO. AND DESCRIPTION:

SUPPLIER:

PARTNERSHIP/ JOINT VENTURE (JV)/ CONSORTIUM EXPENDITURE REPORT

| | | | |
|--|---|--|--|
| Rand value of the contract (as defined in PREFERENCE POINTS CLAIM FORM) (P*) | R | B-BBEE Status Level of Partnership/ Joint Venture (JV)/ Consortium | |
|--|---|--|--|

| Name of partners to the Partnership/ JV / Consortium (list all) | B-BBEE Status Level of each partner at contract award | Percentage contribution of each partner as per the Partnership/ JV/ Consortium Agreement ¹ A | Total value of partner's contribution (excl. VAT) ¹ B = A% x P* | Value of partner's contribution to date (excl. VAT) ¹ C | Value of partner's contribution as a percentage of the work executed to date D = C/P*x100 |
|---|---|--|---|---|--|
| Partner A | | % | R | R | % |
| Partner B | | % | R | R | % |
| Partner C | | % | R | R | % |
| | | | | | |
| | | | | | |

¹Documentary evidence to be provided

Signatures

Declared by supplier to be true and correct:

.....

Date:

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Verified by SM
Project Manager:

Date:

