



water & sanitation

Department:
Water and Sanitation
REPUBLIC OF SOUTH AFRICA

DUE AT 11:00 ON

11 AUGUST 2022

DWS01-0722 WTE

**APPOINTMENT OF APPROVED PROFESSIONAL PERSONS ON THE
DEPARTMENTAL DAM SAFETY OFFICE DATABASE FOR THE EVALUATIONS
AND DAM SAFETY REHABILITATION IN TERMS OF REGULATION R139 OF 24
FEBRUARY 2012 AS WELL AS TO RENDER ANY TECHNICAL ASSISTANCE THE
DEPARTMENT MAY REQUIRE IN THE EVENT OF POSSIBLE FAILURE
SCENARIOS FOR A PERIOD OF 36 MONTHS**

SUBMIT BID DOCUMENTS TO:

POSTAL ADDRESS:
DIRECTOR-GENERAL: WATER AND SANITATION
PRIVATE BAG X313
PRETORIA, 0001

OR

bidenquirieswte@dws.gov.za

Compulsory Briefing Session

Date: 25 July 2022

Time: 09:00am

Microsoft Teams Meeting: Join by entering a meeting ID

Meeting ID: 343 438 894 825

Passcode: yMR2Hd

BIDDER: (Company address and stamp)

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)					
BID NUMBER:	DWS01-0722 WTE	CLOSING DATE:	11 AUGUST 2022	CLOSING TIME:	11:00AM
DESCRIPTION	APPOINTMENT OF APPROVED PROFESSIONAL PERSONS ON THE DEPARTMENTAL DAM SAFETY OFFICE DATABASE FOR THE EVALUATIONS AND DAM SAFETY REHABILITATION IN TERMS OF REGULATION R139 OF 24 FEBRUARY 2012 AS WELL AS TO RENDER ANY TECHNICAL ASSISTANCE THE DEPARTMENT MAY REQUIRE IN THE EVENT OF POSSIBLE FAILURE SCENARIOS FOR A PERIOD OF 36 MONTHS				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
THE ENTRANCE OF ZWAMADAKA BUILDING					
157 FRANCIS BAARD STREET					
PRETORIA					
0002					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	Bid Office		CONTACT PERSON	Mr C Mahlabela	
TELEPHONE NUMBER	012 336 6562 / 7780 / 7596		TELEPHONE NUMBER		
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS	bidenquirieswte@dws.gov.za		E-MAIL ADDRESS	MahlabelaC@dwa.gov.za	
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?		<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3]
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A BRANCH IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.					

PART B TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:
1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED--(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.
1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
1.4. THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).
2. TAX COMPLIANCE REQUIREMENTS
2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.6 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE."

NB: FAILURE TO PROVIDE / OR COMPLY WITH ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.

SIGNATURE OF BIDDER:

.....

CAPACITY UNDER WHICH THIS BID IS SIGNED:

.....

(Proof of authority must be submitted e.g. company resolution)

DATE:

.....



water & sanitation

Department:
Water and Sanitation
REPUBLIC OF SOUTH AFRICA

PROJECT NUMBER: 0192-10-19 WTE

DEPARTMENT OF WATER AND SANITATION

CHIEF DIRECTORATE: STRATEGIC ASSET MANAGEMENT

Request for Quotations from the Panel of Professional Service Providers for

APPROVAL FOR THE APPOINTMENT OF APPROVED PROFESSIONAL PERSONS ON THE DEPARTMENTAL DAM SAFETY OFFICE DATABASE FOR THE EVALUATIONS AND DAM SAFETY REHABILITATION IN TERMS OF REGULATION R139 OF 24 FEBRUARY 2012 AS WELL AS TO RENDER ANY TECHNICAL ASSISTANCE THE DEPARTMENT MAY REQUIRE IN THE EVENT OF POSSIBLE DAM FAILURE SCENARIOS FOR A PERIOD OF 36 MONTHS

This Document consists of the following:

Terms of Reference for

Annexure 1 Quotation Preparation, Submission & Evaluation Criteria

Annexure 2 Pricing Schedule

Annexure 3 List of dams for in-house evaluation, backlog evaluation and rehabilitation

TERMS OF REFERENCE

APPROVAL FOR THE APPOINTMENT OF APPROVED PROFESSIONAL PERSONS ON THE DEPARTMENTAL DAM SAFETY OFFICE DATABASE FOR THE EVALUATIONS AND DAM SAFETY REHABILITATION IN TERMS OF REGULATION R139 OF 24 FEBRUARY 2012 AS WELL AS TO RENDER ANY TECHNICAL ASSISTANCE THE DEPARTMENT MAY REQUIRE IN THE EVENT OF POSSIBLE DAM FAILURE SCENARIOS FOR A PERIOD OF 36 MONTHS

1. INTRODUCTION

1.1 General

These terms of reference are for appointment of Approved Professional Persons (APPs) registered on the departmental Dam Safety Offices' (DSO) database for a period of 36 months for dam safety evaluations, dam safety rehabilitation as well as to render any technical assistance the department may require in the event of possible dam failure scenario for a period of 36 months .

1.2 Stated Aims

Appoint Approved professional Persons for evaluation and rehabilitation tasks

1.3 Required Outcomes

Must include the following:

1.3.1 Dam Safety Evaluation

- Dam safety evaluation report in terms of Regulation R139 of 24 February 2012.

1.3.2 Dam Safety Rehabilitation of dams

- Inception reports
- Preliminary and detailed design reports
- Drawings
- Tender documentation
- Completion reports
- As build drawings

NB: Corrections and revisions of reports made by Dam Safety Office (DSO) cannot be billed as additional work.

1.4 Additional requirements

The APPs must be in a position to serve as professional team members in support of DWS APPs. (As part of knowledge sharing).

1.5 Project Background

Dam safety evaluations and rehabilitation is a legislative requirement for owners of dams with a safety risk to conduct safety evaluations at prescribed periods and remedy any deficiencies identified either through maintenance or rehabilitation. Due to capacity constraints within Dam Safety Surveillance, there is a backlog in executing these functions. The department also owns some of the largest dams in the world, in the event of emergencies the department should be able to draw the experts timeously to assist in the even the necessary expertise in not in the department.

1.6 Responsible Person

The Professional Service Provider will report to the Acting Chief Director: Strategic Asset Management, who will be supported by the Department of Water and Sanitation's project steering committee made up of Acting Director: Strategic Asset Management and Chief Engineer: Dam Safety Surveillance.

2. SCOPE OF SERVICES

The scope of services includes:

- Provide Approved Professional Persons services for tasks listed in 1.3.

3. KEY STAKEHOLDERS

The following key stakeholders have been identified and may be of assistance in performing these activities.

- Dam Safety Surveillance, Head Office
- Dam Safety Office (Regulator), Head Office
- Department of Water and Sanitation Cluster Managers
- Water Boards
- Workers on site engaged in operations and maintenance.

4. REFERENCE DOCUMENTATION

The PSP will be expected to make reference to existing studies relevant to the project area. This should include but not be limited to the following documentation which has been collected and will be made available to the PSP. Please contact Mr Comfort Mahlabela: 082 875 8929.

- Previous dam safety evaluation or design reports
- Drawings

5. DURATION OF ASSIGNMENT

- 36 months.

ANNEXURE 1

QUOTATION PREPERATION, SUBMISSION, EVALUATION & FORM OF CONTRACT

APPROVAL FOR THE APPOINTMENT OF APPROVED PROFESSIONAL PERSONS ON THE DEPARTMENTAL DAM SAFETY OFFICE DATABASE FOR THE EVALUATIONS AND DAM SAFETY REHABILITATION IN TERMS OF REGULATION R139 OF 24 FEBRUARY 2012 AS WELL AS TO RENDER ANY TECHNICAL ASSISTANCE THE DEPARTMENT MAY REQUIRE IN THE EVENT OF POSSIBLE DAM FAILURE SCENARIOS FOR A PERIOD OF 36 MONTHS

A PRICING

This assignment is to be priced on a deliverables based assignment and disbursements by completing the pricing schedule in Annexure 2.

Bidders are required complete the Pricing Schedule appended herein as Annexure 2 (The resources and provisional items on annexure 2 are not comprehensive and the bidder must customize it for this project).

Note that the activities detailed in section 1.3 and 1.5 in the TOR may not be comprehensive and the PSP must ensure that all the resources required for the completion of the assignment are included in the pricing schedule.

The provisional sum for studies can only be expended on the written instruction of the Chief Director of Strategic Asset Management, NWRI Branch.

B SUBMISSION OF QUOTATIONS

Bids (1 Original and 1 copy) shall be submitted in the DWS tender box on the ground floor of the Zwamadaka building. Late submissions will not be accepted.

C FORM OF CONTRACT

The standard DWS PSP contract will be used for the assignment.

ANNEXURE 2: PRICING SCHEDULE

Stage No	Resource Based Fees	Man Hours	Rate	No.	Amount
1.0	Inception Stage				
	1. APP				
	2.				
	3.				
	Sub total				
2.0	Dam safety evaluation .				
	1. APP				
	2.				
	3.				
	4.				
3.0	Dam safety rehabilitation				
	1. APP				
	2.				
	3.				
	4.				
	Sub total				
	Total				

Man hours quoted are fixed and not remeasurable.

No	Studies	Unit	Amount
1.0	Geological evaluations/Investigations	PC Sum	
2.0	Hydrology	PC Sum	
3.0	Surveys	PC Sum	
4.0		PC Sum	
5.0		PC Sum	
6.0	Other studies (Specify)	PC Sum	
	Total		

Prime Cost Sums to be approved by Director Capital Projects and supported by three quotations.

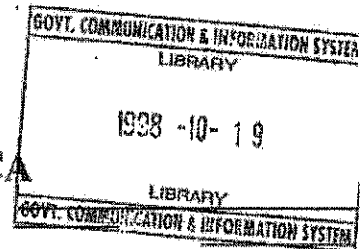
	Disbursements	Unit	Amount
	Total	5% of resource based fee	

Disbursements will be paid on a proven cost basis using the prevailing **RATES FOR REIMBURSABLE EXPENSES** as gazetted and published by the government from time to time on <http://www.publicworks.gov.za/>

	Summary	Unit	Amount
	Time Based Assignments		
	Studies		
	Disbursements		
	Total		
	VAT @ 15%		
	Grand Total		



REPUBLIC OF SOUTH AFRICA



GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

Vol. 398

CAPE TOWN, 26 AUGUST 1998

KAAPSTAD, 26 AUGUSTUS 1998

No. 19182

OFFICE OF THE PRESIDENT

KANTOOR VAN DIE PRESIDENT

No. 1091.

26 August 1998

It is hereby notified (hat the President has assented to the following Act which is hereby published for general information:—

No. 36 of 1998: National Water Act, 1998.

No. 1091.

26 Augustus 1998

Hierby w o r d bekend gemaak dat die President sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 36 van 199X: Nasionale Waterwet, 199X.

(2) No government waterwork referred to in subsection (1) may be transferred, sold or disposed of without the approval of the national executive, if its value exceeds an amount specified from time to time by the Minister in concurrence with the Minister of Finance.

(3) Where a government waterwork is disposed of or transferred to a water management institution, the Minister of Finance may direct that no transfer duty, other tax or duty is payable.

Regulations regarding government waterworks

116. (1) The Minister may, with regard to a government waterwork, make regulations providing for—

- (a) the management of and control over government waterworks and surrounding state-owned land;
- (b) the List of the water of a government waterwork and the surrounding state-owned land; and
- (c) charges for—
 - (i) entrance to;
 - (ii) use of facilities at; and
 - (iii) the private development of, a government waterwork.

(2) In making the regulations, the Minister must take into account all relevant considerations, including—

- (a) the safety and protection of government waterworks;
- (b) the need for control of the use of government waterworks;
- (c) the safety and security of persons using government waterworks for recreational purposes; and
- (d) the cost of protecting and controlling government waterworks and the recovery of these costs.

CHAPTER 12

SAFETY OF DAMS

This Chapter contains measures aimed at improving the safety of new and existing dams with a safety risk so as to reduce the potential for harm to the public, damage to property or to resource quality. To reduce the risk of a dam failure, control measures require an owner to comply with certain directives and regulations, such as to submit a report on the safety of a dam, to repair or alter a dam, or to appoint an approved professional person to undertake these tasks. These measures are in addition to the owners' common law responsibility to ensure the safety of their dams. An approved professional person has a statutory duty of care towards the State and the general public and must fulfil, amongst other things, defined responsibilities when acting under this Chapter. Not all dams are subject to regulation under this Chapter, and the Minister may exempt certain persons from his requirements. Only dams of a defined size, dams which have been declared to be dams with a safety risk, or dams falling into a prescribed category are affected. All dams with a safety risk must be registered. Compliance with any directive or regulation under this Chapter does not exempt an owner from complying with any other provision of this Act, such as the requirement for a licence or other authorisation for water use in respect of the dam.

Definitions

117. In this Chapter—

- (a) "approved professional person" means a person registered in terms of the Engineering Profession of South Africa Act, 1990 (Act No. 114 of 1990), and approved by the Minister after consultation with the Engineering Council of South Africa (established by section 2 of that Act);
- (b) "dam" includes any existing or proposed structure which is capable of containing, storing or impounding water (including temporary impoundment or storage), whether that water contains any substance or not;

- (1) "dam with a safety risk" means any dam—
- (i) which can contain, store or dam more than 50 000 cubic metres of water, whether that water contains any substance or not, and which has a wall of a vertical height of more than five metres, measured as the vertical difference between the lowest downstream ground elevation on the outside of the dam wall and the non-overspill crest level or the general top level of the dam wall; 5
 - (ii) belonging to a category of dams declared under section 118(2) to be dams with a safety risk; or
 - (iii) declared under section 118(3)(a) to be a dam with a safety risk; 10
- (2) "owner of a dam" or "owner of a dam with a safety risk" includes the person in control of that dam; and
- (3) "task" includes a task relating to designing, constructing, altering, repairing, impounding water in, operating, evaluating the safety of, maintaining, monitoring or abandoning a dam with a safety risk. 15

Control measures for dam with safety risk

118. (1) The owner of a dam must—
- (a) within the period specified, provide the Minister with any information, drawings, specifications, design assumptions, calculations, documents and test results requested by the Minister; or 20
 - (b) give any person authorised by the Minister access to that dam, to enable the Minister to determine whether—
 - (i) that dam is a dam with a safety risk;
 - (ii) that dam should be declared to be a dam with a safety risk;
 - (iii) a directive should be issued for specific repairs or alterations to that dam; 25
 or
 - (iv) the owner has complied with any provisions of this Act applicable to that dam.
- (2) The Minister may by notice in the *Gazette* declare a category of dams to be dams with a safety risk. 30
- (3) The Minister may—
- (a) by written notice to the owner of a dam, declare that dam to be a dam with a safety risk;
 - (b) direct the owner of a dam with a safety risk to submit, at the owner's cost, and within a period specified by the Minister, a report by an approved professional person regarding the safety of that dam; or 35
 - (c) direct the owner of a dam with a safety risk to undertake, at the owner's cost, and within a period specified by the Minister, any specific repairs or alterations to that dam which are necessary to protect the public, property or the resource quality from a risk of failure of the dam. 40
- (4) If the owner of the dam fails to comply with the directive contemplated in subsection (3)(c) within the period specified, the Minister may undertake the repairs or alterations and recover the costs from the owner.
- (5) Before issuing a directive, the Minister must—
- (a) be satisfied that the repairs or alterations directed are necessary, adequate, effective and appropriate to reduce the risk to an acceptable level; and 45
 - (b) consider the impact on public safety, property, the resource quality and socio-economic aspects if the dam fails.

Responsibilities of approved professional persons

119. (1) When carrying out a task in terms of this Chapter, an approved professional person also has a duty of care towards the State and the general public. 50

- (2) An approved professional person appointed to carry out a task on a dam must—
- (a) ensure that the task is carried out according to acceptable dam engineering practices;
 - (b) keep the prescribed records;
 - (c) compile the prescribed reports; and
 - (d) where the task includes constructing, altering or repairing a dam, issue a completion certificate to the owner of the dam to the effect that the task on that dam has been carried out according to the applicable design, drawings and specifications.
- (3) An approved professional person appointed to carry out a dam safety evaluation must—
- (a) consider whether the safety norms pertaining to the design, construction, monitoring, operation, performance and maintenance of the dam satisfy acceptable dam engineering practices; and
 - (b) compile a report on the matters contemplated in paragraph (a) according to the prescribed requirements and submit the signed and dated report to the owner of the dam within the prescribed period.

Registration of dam with safety risk

120. (1) The owner of a dam with a safety risk must register that dam.
- (2) An application for registration must be made within 120 days—
- (a) after the date on which the dam with a safety risk becomes capable of containing, storing or impounding water;
 - (b) after the date on which an already completed dam is declared to be a dam with a safety risk; or
 - (c) after publication of a notice declaring a category of dams to be dams with a safety risk,
- as the case may be.
- (3) A successor-in-title to an owner of a dam with a safety risk must promptly inform the Director-General of the succession, for the substitution of the name of the owner.

Factors to be considered in declaring dam or category of dams with safety risk

121. In declaring a category of dams or a dam to be a category of dams or a dam with a safety risk, the Minister must consider—
- (a) the need to protect the public, property and the resource quality against the potential hazard posed by the dam or category of dams;
 - (b) the extent of potential loss or harm involved;
 - (c) the cost of any prescribed measures and whether they are reasonably achievable;
 - (d) the socioeconomic impact if such a dam fails; and
 - (e) in the case of a particular dam, also—
 - (i) the manner in which that dam is designed, constructed, altered, repaired, operated, inspected, maintained or abandoned;
 - (ii) the person by whom that dam is designed, constructed, altered, repaired, operated, inspected, maintained or abandoned; and
 - (iii) the manner in which the water is contained, stored or impounded in that dam.

Exemptions

122. (1) The Minister may exempt owners of dams belonging to certain categories, by notice in the *Gazette*, from compliance with any provision of this Chapter or any regulation made under this Chapter, on conditions determined by the Minister.
- (2) The Minister may in writing exempt an owner of a dam belonging to a certain category from compliance with any provision of this Chapter on conditions determined by the Minister.

(3) The Minister may withdraw the exemption or impose further or new conditions in respect of the exemption.

(4) Before deciding on an exemption, the Minister must consider—

- (a) the degree of risk or potential risk posed by the dam or category of dams to public safety, property and the resource quality; 5
- (b) the manner of design, construction, alteration, repair, impoundment of water in, operation or abandonment of the dam or category of dams;
- (c) the supervision involved in the dam or category of dams;
- (d) alternative measures proposed for regulating the design, construction, alteration, repair, operation, maintenance, impoundment of water in, inspection or abandonment of the dam or category of dams and the effectiveness of these measures; 10
- (e) the knowledge and expertise of the persons involved in any task relating to the dam or category of dams;
- (f) the costs relating to the dam or category of dams; 15
- (g) any security provided or intended to be provided for any damage which could be caused by the dam or category of dams; and
- (h) whether the dam or category of dams are permitted in terms of a licence or any other authorisation issued by or under any other Act.

Regulations regarding dam safety 20

123. (1) The Minister may make regulations—

for the establishment of a register of approved professional persons for dealing with dams with a safety risk—

- (i) providing for— 25
 - (aa) different classes of approved professional persons;
 - (bb) the tasks or category of tasks which each class of approved professional persons may perform; and
 - (cc) the conditions under which each class of approved professional persons may perform any task or category of tasks;
- (ii) concerning the requirements for admission to each class; 30
- (iii) setting out, in respect of each class, the procedure for—
 - (aa) approval;
 - (bb) withdrawal of an approval; and
 - (cc) suspension of an approval; and
- (iv) providing for a processing fee for an approval; 35
- (b) regulating the approval of a person as an approved professional person for a specific task—
 - (i) setting out the procedure for approval;
 - (ii) setting out the procedure for canceling an approval;
 - (iii) requiring that the approved person be assisted in the task by another 40
 - person or a group of persons with specific experience and qualifications;
 - and
 - (iv) providing for a processing fee for an approval;
- (c) in respect of dams with a safety risk— 45
 - (i) classifying such dams into categories;
 - (ii) requiring the owner of a dam of a specific category to appoint an approved professional person to—
 - (aa) design that dam or any repair, alteration or abandonment of the dam;
 - (bb) ensure that a task is carried out according to the applicable design, drawings and specifications; and 50
 - (cc) carry out dam safety evaluations on the dam;
 - (iii) requiring that licences be issued by the Minister before any task relating to a specific category of dams may commence, and the conditions, requirements and procedure to obtain a specific licence;
 - (iv) laying down licence conditions and requirements that must be met when 55
 - carrying out a task on a specific category of dams;

- (v) requiring an approved professional person, appointed for a dam of a specific category, to keep records of information and drawings, and to compile reports;
 - (vi) requiring—
 - (aa) an owner of a dam belonging to a specific category of dams; and
 - (bb) an approved professional person appointed for a specific task for a specific dam,
 to submit information, drawings, reports and manuals;
 - (vii) determining the duties of—
 - (aa) an owner of a dam belonging to a specific category of dams; and
 - (bb) an approved professional person appointed for a specific task for a specific dam;
 - (d) requiring the owner of a dam with a safety risk to accomplish regular monitoring of the dam, to the extent and manner prescribed;
 - (e) requiring the registration of a specific dam with a safety risk, and setting out the procedure and the processing fee payable for registration; and
 - (f) specifying time periods that must be complied with.
- (2) In making regulations under subsection (1)(a), the Minister must consider—
- (a) the expertise required for the effective design, construction, alteration, repair, operation, maintenance and abandonment of a dam in the category concerned; and
 - (b) the qualifications and experience needed to provide the expertise for a particular category of tasks.
- (3) Before making regulations under subsection (1), the Minister must consult the Engineering Council of South Africa, established by section 2 of the Engineering Profession of South Africa Act, 1990 (Act No. 114 of 1990), and any other appropriate statutory professional bodies.

CHAPTER 13

ACCESS TO AND RIGHTS OVER LAND

Part 1: Entry and inspection

Part 1 of this Chapter allows authorised persons to enter and inspect property for a number of purposes associated with implementing this Act. The rights of property owners are protected in that only authorised persons may enter and inspect property; authorised persons must carry a certificate of authorisation and must produce that certificate on request; in certain circumstances notice of entry must be given and the consent of the person owning or occupying the property must be obtained before entry; and in certain circumstances a warrant must be obtained prior to entry.

Appointment of authorised persons

124. (1) The Minister or a water management institution may, in writing, appoint any suitable person as an authorised person to perform the functions contemplated in section 125(1), (2) and (3).

(2) An authorised person must be provided with a certificate of appointment signed by or on behalf of the Minister or a water management institution in which the nature of the authorised person's functions is described.

Powers and duties of authorised persons

125. (1) An authorised person may, at any reasonable time and without prior notice, enter or cross a property with the necessary persons, vehicles, equipment and material in order to carry out routine inspections of the use of water under any authorisation.



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Regulation Gazette

No. 9689

Regulasiekoerant

Vol. 560

Pretoria, 24 February 2012
February 2012

No. 35062

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GOVERNMENT NOTICE

DEPARTMENT OF WATER AFFAIRS

No. R. 139

24 February 2012

NATIONAL WATER ACT, 1998

REGULATIONS REGARDING THE SAFETY OF DAMS IN TERMS OF SECTION 123(1) OF THE NATIONAL WATER ACT, 1998

By virtue of the powers vested in me by section 123(1) of the National Water Act, 1998 (Act No. 36 of 1998), I, B.E.E. Molewa, in my capacity of Minister of Water and Environmental Affairs, hereby make the Regulations contained in the Schedule relating to the safety of dams.



B.E.E. MOLEWA

Minister of Water Affairs and Environmental Affairs

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Definitions

1. Section 117 of the National Water Act, 1998 (Act No. 36 of 1998 - hereafter "the Act") should be consulted for the definitions of "approved professional person", "dam", "dam with a safety risk", "owner of a dam" and "task". In addition, in these Regulations any other word or expression to which a meaning has been assigned in the Act shall have that meaning and, unless the context otherwise indicates –
 - (1) **"alter a dam with a safety risk"** means significant construction work to alter components or sections of the dam that may have an impact on the safety of the dam, but excluding normal maintenance or refurbishment work;
 - (2) **"catchment parameters"** includes the average slope of the longest watercourse, average slope of the catchment area, catchment shape and distance to its centre of gravity, vegetation type and coverage and particulars of dolomitic or endorheic areas;
 - (3) **"completion certificate"** means a written statement issued by the approved professional person confirming that construction work, in his or her view, has been completed in accordance with the applicable design, drawings and specifications;
 - (4) **"condition affecting the safety of a dam"** means any condition of or event in respect of a dam with a safety risk, or a component thereof, including –
 - (a) significant damage of the dam wall or spillway caused by natural phenomena such as floods and earthquakes;
 - (b) failure or unusual movements or subsidence of any part of the dam or foundation thereof;
 - (c) unusual seepage or leaks which occur or which increase abnormally in the course of time or which remove material;
 - (d) defects in the dam wall or its components, which could in the course of time lead to a failure of the dam;
 - (e) deterioration of the dam wall or the forming of cracks, including the starting of new cracks or the lengthening or widening of existing cracks;
 - (f) the occurrence of sinkholes in the dam wall or reservoir;
 - (g) the movement of material masses near the perimeter of the reservoir;
 - (h) abnormal instrument readings;
 - (i) significant damage to slope protection;
 - (j) unserviceability of spillways and floodgates;
 - (k) unserviceability of outlet works required for lowering of the water-level in an emergency; and
 - (l) incidents of sabotage or vandalism,which poses a threat to the safety of the dam or holds a risk of loss of life, economic loss, or detrimental effect to resource quality, or is likely to pose a threat or hold any risk, or is likely to develop into any condition or event;

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- (5) **“decommission a dam with a safety risk”** means taking steps to ensure that the remaining structure will, without any further operational action, maintenance, inspection or safety evaluation, hold no danger or potential danger to human life or property, have no significant adverse impact on resource quality, or significant detrimental effect on the environment;
- (6) **“development”** includes but is not limited to houses, dwellings, churches, places of worship, schools, factories, buildings, roads, bridges, river crossings, railway lines, dams, canals, pipelines, power lines, telephone lines, other lines of communication, other infrastructure, cultivated lands, orchards, or any land use;
- (7) **“emergency”** means an imminent, expected, foreseen, anticipated or actual sudden release of water from a dam with a safety risk as a result of a natural disaster, an accident, a condition affecting the safety of the dam, or failure of the dam or a part thereof;
- (8) **“emergency preparedness plan”** means formal documents that identify potential emergency conditions at a dam and which specify pre-planned actions to be followed to minimise loss of life, damage to property and adverse effects on resource quality: and –
- (a) describe actions that the owner of the dam with the safety risk, or person in control, must take to address safety problems at the dam;
 - (b) contains appropriate procedures and information to assist the owner of the dam in issuing early warning notification messages to responsible disaster management authorities, representatives of local authorities, representative bodies or of any communities potentially threatened by the condition of the dam and with whom arrangements have been made in connection with the issue of warnings; and
 - (c) contains engineering drawings of the dam and inundation maps to show disaster management authorities critical areas for action in case of an emergency.
- (9) **“full supply level”** means the level at the dam where the reservoir is considered to be one hundred percent (100%) full under normal operating conditions. For a reservoir where the outflow is wholly or partly controlled by movable gates, siphons or by other means, it is the maximum level at the dam to which water may rise under normal operating conditions, exclusive of any provision for flood surcharge;
- (10) **“hazard potential”** means a qualitative indication of the potential loss of life, potential economic loss, or potential adverse impact on resource quality that any failure of a dam with a safety risk could have as a result;
- (11) **“maximum wall height”** means the vertical distance between the lowest downstream ground elevation on the outside of the dam wall and the non-overspill crest level or the general top level of the dam wall;
- (12) **“owner”** means “owner of a dam” or “owner of a dam with a safety risk” and includes the person in control of that dam;
- (13) **“person in control of a dam”** includes the person appointed by the owner to be in control of the dam;
- (14) **“potential adverse impact on resource quality”** means the adverse effect that failure of a dam could have on the water resource and is, for the purposes of these

Regulations, related to a prescribed system for classifying water resources, or equivalent system being used by the Director-General at the time of classification of a dam with a safety risk;

- (15) **“professional team”** means one or more persons with expertise in disciplines in which expertise is required, and which disciplines have been determined by the approved professional person concerned with the concurrence of the Director-General, and who after submission of particulars of their names, qualifications and professional experience have been approved by the Director-General;
- (16) **“regional maximum flood”** is an empirical upper limit estimation of the expected flood peak at a dam site based on the Francou-Rodier approach. The regional maximum flood must be calculated from technical report TR 137 or revisions thereof, obtainable from the Department;
- (17) **“repair a dam with a safety risk”** means significant construction work to re-instate damaged components or sections of the dam excluding normal maintenance, but includes the reconstruction of dams that have failed or breached;
- (18) **“reservoir”** means the body of water impounded by a dam or a dam with a safety risk;
- (19) **“risk”** means the measure of the probability and severity of an adverse effect to life, health, property, or the environment. In the general case, risk is estimated by the combined impact of all triplets of scenario, probability of occurrence and the associated consequence. In the special case, average risk is estimated by the mathematical expectation of the consequences of an adverse event occurring (that is, the product of the probability of occurrence and the consequence, combined over all scenarios);
- (20) **“safety evaluation flood”** means an extreme flood considered appropriate for the specific structure, which after routing through the reservoir and spillway system may bring the dam close to the point of failure whilst the resulting damage, although substantial, must not be of such a nature so as to cause failure of the dam;
- (21) **“storage capacity”** means the total volume of free water (excluding groundwater) that could be stored below the lowest unobstructed spillway crest level or free outlet level of a dam, or below the maximum operating level (established by the penstock inlet level or free decant level and as prescribed in the operation and maintenance manual or code of practice) in the case of any residue deposit including tailings dams;
- (22) **“total freeboard”** means the vertical distance between the normal full supply level of the reservoir and the non-overspill crest of the dam, excluding camber, but including adequately designed parapet walls or wave barriers proud of the crest.

Classification of dam with safety risk

- 2. (1) Every dam with a safety risk must be classified in accordance with this regulation 2 on the basis of its size and hazard potential to determine the level of control over the safety of the structure that is applicable in terms of these Regulations.
- (2) The size classification of a dam with a safety risk is based on the maximum wall height in accordance with Table 1 of the Annexure.

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- (3) The hazard potential classification of a dam with a safety risk must be effected as set out in Table 2 of the Annexure and in accordance with the following parameters:
- (a) When the potential adverse impact on resource quality due to failure of a dam with a safety risk is assessed, the quality of water stored in the reservoir as well as the estimated volume of sediment and water that can be released from the reservoir must be taken into account;
 - (b) if the water stored in the reservoir contains polluted water or hazardous substances the potential adverse impact on resource quality must be regarded as significant or severe, respectively; and
 - (c) the hazard potential rating for a given dam as set out in Table 2 of the Annexure must be the highest level as determined by the separate consideration of the potential loss of life, potential economic loss and potential adverse impact on resource quality downstream of the dam.
- (4) The Director-General or an officer of the Department designated by him or her must carry out the size and hazard potential classification of each dam with a safety risk and notify the owner of the dam of the category classification in accordance with Table 3 of the Annexure.
- (5) The Director-General or the designated officer of the Department may from time to time, or when new information comes to his or her attention, revise the classification of any dam with a safety risk, and must notify the owner of the dam concerned in writing of any alteration in the classification.
- (6) The owner of a dam with a safety risk must, when requested in writing to do so by the Director-General, furnish any information needed for classification of the dam.
- (7) When an owner intends to construct a new dam with a safety risk or to enlarge, alter or repair an existing dam with a safety risk, he or she must, after completion of the feasibility studies for the proposed project, furnish the Director-General with the following information for purposes of classification:
- (a) The full name, contact details and address of the owner of the dam and that of the person in control;
 - (b) the locality of the dam including a description as contained in the title deed of the property concerned, magisterial district, nearest town, the distance to the nearest town, the name of the river or watercourse wherein situated (if any), the location in terms of latitude and longitude (to the nearest second of accuracy) and the water management area;
 - (c) the purpose of the scheme, the water use and the users of the water;
 - (d) the type of dam;
 - (e) in the case of an enlargement, alteration or repair to an existing dam, a description of the nature and extent of the intended enlargement, alteration or repair;
 - (f) the proposed maximum wall height of the dam;

- (g) the total crest length of the wall;
- (h) the storage capacity of the reservoir;
- (i) the surface area of the reservoir at full supply level;
- (j) the maximum depth of water at full supply level; and
- (k) particulars on a plan of a suitable scale of the nature and locality of development downstream of the dam in the area that would be threatened by a failure of the dam.

Use of classification of dam with safety risk

3. The requirements to be complied with relating to a dam with a safety risk in respect of design, construction, putting into operation, maintenance, monitoring, dam safety inspections, dam safety evaluations, and decommissioning of the dam must be determined in accordance with the category classification as set out in Regulation 2.

Requirements for issuing of licence to construct, enlarge, alter or repair dam with safety risk

4. (1) No person who intends to construct a dam with a safety risk, or enlarge, alter or repair an existing dam with a safety risk, may begin any construction work, including –
- (a) any preparation of the foundations;
 - (b) storage of construction materials, including aggregate, earth and rock;
 - (c) development of quarries or borrow areas;
 - (d) diversion of the watercourse concerned or any works incidental thereto; and
 - (e) in the case of the enlargement, alteration or repair of an existing dam, steps to change the existing structure or equipment,
- before he or she is in possession of a licence to construct, enlarge, alter or repair, issued by the Director-General, provided that urgent emergency repair work to prevent failure of the dam or its components may be constructed without a licence on condition that the Director-General must be informed thereof within seven days.
- (2) The Director-General may refuse a licence if the application contains incorrect information, is incomplete, does not comply with acceptable dam engineering criteria or if the water use is illegal.

Licence application for category I dam

5. An owner who intends to construct a Category I dam, or to enlarge, alter or repair an existing dam so that the completed dam can be classified as a Category I dam must apply for a licence to construct, enlarge, alter or repair by submitting to the Director-

General a proposed design complying with acceptable dam engineering practices and criteria consisting of the following documents:

- (a) An official application form obtained from the Department and signed by the applicant;
- (b) a design report in accordance with regulation 6;
- (c) engineering drawings in accordance with regulation 7; and
- (d) an evaluation of the safety of existing development (including river crossings) that could be affected by the dam in accordance with regulation 8, and which must be included in the design report.

Design report for category I dam

6. A design report contemplated in regulation 5 for a Category I dam must include the following information on the proposed project:

- (a) General details of the project:
 - (i) The name and address of the owner of the dam and that of the person in control;
 - (ii) the locality of the dam including a description as contained in the title deed of the property concerned, magisterial district, nearest town, the distance to the nearest town, the name of the river or watercourse wherein situated (if any), the location in terms of latitude and longitude (to the nearest second of accuracy) and the water management area;
 - (iii) the purpose of the scheme, the water use and the users of the water; and
 - (iv) in the case of an enlargement, alteration or repair of an existing dam, a description of the nature and extent of the intended enlargement, alteration or repair;
- (b) hydrological particulars of the project:
 - (i) The catchment area;
 - (ii) the catchment parameters;
 - (iii) the mean annual precipitation;
 - (iv) the storage capacity of the reservoir;
 - (v) the surface area of the reservoir at full supply level;
 - (vi) the elevation versus capacity and elevation versus surface area curves for the reservoir;
 - (vii) the design flood and the estimated annual exceedance probability thereof;
 - (viii) the regional maximum flood, if applicable, depending on the size of the catchment area; and

- (ix) the safety evaluation flood and the estimated annual exceedance probability thereof;
- (c) particulars of the proposed dam and structural stability:
 - (i) Type of wall, with an indication of the quantities of construction material (for example, volume of earthfill, concrete, masonry and rockfill);
 - (ii) the maximum wall height of the dam;
 - (iii) the base width and crest width at the maximum cross-section;
 - (iv) the slope of the upstream and the downstream sides and nature of slope protection measures;
 - (v) the total crest length of the wall;
 - (vi) a description of the construction materials for use in different zones of the wall, with an indication of their composition, nature and origin;
 - (vii) a description of the general nature and distribution of the materials forming the foundation of the dam;
 - (viii) a description of seepage control measures;
 - (ix) a description of seepage monitoring measures; and
 - (x) a statement of load assumptions, methods of calculation, assumed material properties and design norms used for the stability calculations;
- (d) particulars of hydraulic structures and components:
 - (i) A description of the type of spillway;
 - (ii) the height difference between the spillway crest and the lowest part of the non-overspill crest, excluding camber;
 - (iii) the total freeboard for the dam;
 - (iv) the crest length of the spillway;
 - (v) the relative elevations of the river bed immediately downstream of the structure (that is lowest downstream ground elevation on the outside of the dam wall), spillway crest and non-overspill crest;
 - (vi) the maximum discharge capacity of the spillway before overtopping of the non overspill crest;
 - (vii) a description of any type of energy dissipators and their dimensions;
 - (viii) a description of the river diversion works, when applicable;
 - (ix) a description of the outlet works of the dam; and

- (x) the number of days needed to draw down the water-level of the reservoir to different depths between full and ten percent of the full water depth with no flow into the reservoir;
- (e) measures to ensure public safety as contemplated in subregulation 11(e).
- (f) particulars relating to the construction of the works:
 - (i) Particulars of the quality control to be applied;
 - (ii) the planned date of commencement of the construction work;
 - (iii) the expected duration of the construction work;
 - (iv) the name of the contractor, if known; and
 - (v) the name and particulars of the person responsible for supervision during the construction phase, if known; and
- (g) name and qualifications of the person responsible for the design of the project.

Engineering drawings for category I dam

7. Engineering drawings for a project contemplated in regulation 5 in respect of a Category I dam must show –
- (a) the general locality of the dam, with an indication of access routes from the nearest town;
 - (b) the contour plan of the reservoir up to at least one metre above the non-overspill crest height;
 - (c) the general layout of the proposed works;
 - (d) the typical particulars of the various sections or zones of the wall, including the outlet works, spillway, foundation excavation and treatment, wall and foundation drainage, and special or unusual characteristics;
 - (e) in the case of an enlargement, alteration or repair of existing works, particulars of the connection between existing and new works;
 - (f) the nature and locality of any development within and adjacent to the flooded area within the reservoir;
 - (g) areas in and adjacent to the reservoir where access to the public is restricted;
 - (h) the particulars on a plan of suitable scale of the nature and locality of development downstream of the dam in an area that could be threatened during floods or by a failure of the dam; and
 - (i) the particulars on a plan of suitable scale of the locality of other dam projects in the catchment area upstream of the proposed works that could influence its safety in the event of an emergency occurring at those dams.

Safety of existing development affected by category I dam

8. (1) An evaluation of a project contemplated in regulation 5 in respect of a Category I dam must be carried out if –
- (a) existing development can be submerged or adversely affected by a reservoir formed by the construction, enlargement, repair or alteration of a dam with a safety risk;
 - (b) existing development can be affected by changes in natural flood levels caused by the construction, enlargement, repair or alteration of a dam with a safety risk; or
 - (c) the hydraulic and geometric characteristics of a watercourse can be transformed by the construction, enlargement, alteration or repair of a dam with a safety risk, with the result that there could be a significant increase in the risk of harm to persons, damage to property, or damage to resource quality.
- (2) The evaluation contemplated in subregulation 8(1) must include –
- (a) upstream development, downstream development and river crossings that may be affected by the dam;
 - (b) a detailed description of the existing development or crossings, locality, current use (which includes recreation), and frequency of pedestrians, vehicles, or other type of traffic;
 - (c) an assessment of the hazards that the development and crossings are subjected to during normal use, dry and normal river flow conditions and floods, and the potential loss of life during the various conditions;
 - (d) where applicable, proposals for the replacement, relocation, or compensation of existing development; and
 - (e) where applicable, proposals for the provision of an alternative safe crossing, or other reasonable access such that anticipated risks to persons, property, animals, or other type of traffic are not higher than the risks at the original crossing prior to the construction, enlargement, alteration or repair of a dam with a safety risk;
- (3) The evaluation of the safety of existing development as set out in subregulation 8(2) must be included in the design report contemplated in subregulation 5(b).

Additional information with regard to design report, engineering drawings and safety of existing development affected by category I dam

9. Any other information than the information contemplated in regulations 6, 7 and 8 of a project contemplated in regulation 5 must be submitted by the owner when requested by the Director-General.

Licence application for category II dam

10. Any person who intends to construct a Category II dam or to enlarge, alter or repair an existing dam so that the completed dam can be classified as a Category II dam, must –

- (a) acquire the services of an approved professional person to design the proposed project and to draw up plans and specifications for it; and
- (b) apply for a licence to construct, enlarge, alter or repair by submitting to the Director-General a proposed design complying with acceptable dam engineering practices and criteria consisting of the following documents:
 - (i) An official application form obtained from the Department and signed by the applicant;
 - (ii) a design report in accordance with regulation 11;
 - (iii) project specifications in accordance with regulation 12;
 - (iv) engineering drawings in accordance with regulation 13; and
 - (v) an evaluation of the safety of existing development that could be affected by the dam in accordance with regulation 8, and which must be included in the design report.

Design report for category II dam

11. A design report contemplated in regulation 10 for a Category II dam must be compiled by the approved professional person and must include the following information:

- (a) General particulars of the project:
 - (i) The name and address of the owner of the dam and that of the person in control;
 - (ii) the locality of the dam including a description as contained in the title deed of the property concerned, magisterial district, nearest town, the distance to the nearest town, the name of the river or watercourse wherein situated (if any), the location in terms of latitude and longitude (to the nearest second of accuracy) and the water management area;
 - (iii) the purpose of the scheme, the water use and the users of the water;
 - (iv) the type of wall, with an indication of the quantities of construction material (for example, volume of earthfill, concrete, masonry and rockfill); and
 - (v) in the case of an enlargement, alteration or repair of an existing dam, a description of the nature and extent of the intended alteration, enlargement or repair;
- (b) hydrological particulars of the project:
 - (i) The catchment area;
 - (ii) the catchment parameters;
 - (iii) the mean annual precipitation;
 - (iv) the storage capacity of the reservoir;

- (v) the surface area of the reservoir at full supply level;
 - (vi) the elevation versus capacity and elevation versus surface area curves for the reservoir;
 - (vii) the hydrological methods used to determine the flood estimates;
 - (viii) the design flood and the estimated annual exceedance probability thereof;
 - (ix) the regional maximum flood, if applicable, depending on the size of the catchment area;
 - (x) the safety evaluation flood and the estimated annual exceedance probability thereof;
 - (xi) particulars of the design and safety evaluation flood hydrographs, indicating the criteria, data source and methods used for their determination; and
 - (xii) inflow and outflow hydrographs for design flood and safety evaluation flood conditions when significant attenuation of a flood entering the reservoir is expected, with a full motivation for selection of attenuated floods;
- (c) particulars of the hydraulic structures and components:
- (i) The type of spillway and its dimensions;
 - (ii) the amount of dry freeboard (that is the vertical difference between the design flood level and the non-overspill crest);
 - (iii) the relative elevations of the river bed immediately downstream from the structure (or the lowest downstream ground elevation on the outside of the dam wall), spillway crest and non-overspill crest;
 - (iv) the maximum discharge capacity of the spillway before overtopping of the non overspill crest;
 - (v) a description of any spillway gates and associated equipment;
 - (vi) the operating rules for the spillway gates;
 - (vii) the energy dissipators and their dimensions;
 - (viii) a description of the flood-handling procedure, indicating the criteria and methods used to determine the dimensions of the spillways, energy dissipators and river diversion works, when applicable;
 - (ix) the tail water-level during the design flood;
 - (x) a description of the auxiliary spillway and its function, when applicable;
 - (xi) a description of the outlet works; and

- (xii) the number of days needed to draw down the water-level of the reservoir to different depths between full and ten per cent of the full water depth with no flow into the reservoir.
- (d) structural design and stability of the dam, ancillary structures and foundations:
- (i) The maximum wall height of the dam;
 - (ii) the base width and crest width at the maximum cross-section;
 - (iii) the upstream and downstream slope;
 - (iv) the total crest length of the wall;
 - (v) a general engineering description of the construction materials, including the parameters used in the design of the different zones of the wall, with an indication of their source (that is borrow areas), composition, nature, grading and geological origin;
 - (vi) design assumptions, design parameters, load combinations, methods of calculation, assumed material properties and design norms;
 - (vii) geological maps and profiles with a description of the general geology of the dam site and the classification of foundation materials to indicate their engineering geological characteristics, including the parameters used in the design, geological composition, type, origin and distribution; and
 - (viii) a dam safety risk analysis and/or risk assessment on the dam, ancillary structures and foundations with an indication of probabilities of failure, *when requested by the Director-General*.
- (e) precautions and measures to ensure public safety:
- (i) The designation of restricted areas (for example, the dam wall or certain portions thereof, the entrance to the spillway, the spillway, spillway return channel, energy dissipators, plunge pool, outlet works, any other ancillary structures on or near the dam, a specified zone of the reservoir upstream of the dam wall between the left bank and right bank, a specified zone of the river downstream of the dam between left bank and right bank);
 - (ii) the provision of a floating safety boom upstream of the spillway, where applicable;
 - (iii) the provision of safe access within designated areas of the dam wall or ancillary structures;
 - (iv) when applicable, the provision of parapet walls, handrails, guard rails, fences or vehicle barriers;
 - (v) the provision of appropriate warning signs at the dam wall and ancillary structures; and
 - (vi) the provision of appropriate warning signs related to the use of the reservoir for recreational purposes, at or nearby the dam wall, when required by the Director-General.

- (f) estimated life of a dam; and
- (g) a de-commissioning plan, when requested by the Director-General.

Project specifications for category II dam

12. Project specifications for a Category II dam must be compiled for the construction of the dam and related structures, wherein the following is specified:
- (a) The requirements with which construction and foundation materials must comply;
 - (b) the procedures that must be followed for the construction of the dam;
 - (c) the permissible tolerances for the finishing of structural parts; and
 - (d) the particulars of quality control to be applied.

Engineering drawings for category II dam

13. Engineering drawings for a project contemplated in regulation 10 in respect of a Category II dam must show –
- (a) the general locality of the dam, with an indication of access routes from the nearest town;
 - (b) the contour plan of the reservoir up to at least one metre above the non-overspill crest height;
 - (c) the general layout of the proposed works;
 - (d) the typical particulars of the dam, including the wall, outlet works, spillways, foundation excavation and treatment, wall and foundation drainage, joint grouting, instrumentation and special or unusual characteristics;
 - (e) in the case of the enlargement, alteration or repair of existing works, particulars of the connection between existing and new works;
 - (f) the particulars of river diversion works, where applicable;
 - (g) the nature and locality of any development within and adjacent to the flooded area of the reservoir as well as areas where access to the public is restricted;
 - (h) the particulars on a plan of suitable scale of the nature and locality of infrastructure and development downstream of the dam in an area that could be threatened during floods or by a failure of the dam; and
 - (i) the particulars on a plan of suitable scale of the locality of other dam projects in the catchment area upstream of the proposed works that could influence its safety in the event of an emergency occurring at one or more of the upstream projects.

Safety of existing development affected by category II dam

14. An evaluation of the safety of existing development as set out in regulation 8 must be included in the design report contemplated in regulation 10.

Additional information related to design report, project specifications, engineering drawings and safety of existing development affected by category II dam

15. Any other information than the information contemplated in regulations 11, 12, 13 and 14 for a project contemplated in regulation 10 must be submitted by the owner when requested by the Director-General.

Professional team and independent experts

16. (1) Any person who intends to construct a Category III dam or to enlarge, alter or repair an existing dam so that the completed dam will be classified as a Category III dam, must obtain the services of an approved professional person, assisted by a professional team, to design the proposed project and to draw up plans and specifications for it.
- (2) In the case of a dispute or if the Director-General is of the opinion that –
- (a) a project is an extraordinarily large one;
 - (b) unusual design principles or methods of analysis have been used;
 - (c) unusual construction procedures or construction materials have been specified; or
 - (d) extraordinary circumstances exist;
- he or she may require that the owner in respect of the proposed project appoint an independent expert or team of experts to evaluate the proposed design, drawings, specifications, anticipated circumstances during construction of the dam or first filling of the reservoir, in whole or in part or any aspect thereof, and submit a report on its findings to the Director-General.
- (3) The appointment of experts in terms of subregulation 16(2) must be approved by the Director-General beforehand, and for this purpose particulars of the qualifications and experience of the experts must be submitted to the Director-General.
- (4) Any change in the membership or composition of a professional team or independent experts contemplated in subregulation 16(2) must be submitted to the Director-General for approval.

Licence application for category III dam

17. Any person who intends to construct a Category III dam, or to enlarge, alter or repair an existing dam so that the completed dam will be classified as a Category III dam, must apply for a licence by submitting to the Director-General a proposed design complying with acceptable dam engineering practices and criteria consisting of the following documents:
- (a) An official application form obtained from the Department and signed by the applicant;
 - (b) a design report in accordance with regulation 18;
 - (c) project specifications in accordance with regulation 19;
 - (d) engineering drawings in accordance with regulation 20; and

- (e) an evaluation of the safety of existing development that could be affected by the dam in accordance with regulation 8, and which must be included in the design report.

Design report for category III dam

18. A design report contemplated in regulation 17 for a Category III dam must contain the information set out in regulation 11 and include –

- (a) an evaluation of the reliability and acceptability of the hydrological data used for the design of the spillway and river diversion;
- (b) the results of the proposed flood handling procedure applied to various alternative inflow hydrographs;
- (c) the calculated or model study results to demonstrate the hydraulic characteristics of the spillways and energy dissipators;
- (d) the results of backwater curve calculations upstream of the dam wall, when requested by the Director-General;
- (e) an evaluation of the expected rate of silting and its influence on backwater curves along and upstream of the reservoir, when requested by the Director-General;
- (f) the hydraulic aspects of the river diversion works;
- (g) the discharge curves for outlets that could be used to lower the water-level in the reservoir;
- (h) geological maps and profiles with a description and evaluation, based on tests performed on samples or *in situ* tests, of the distribution and engineering-geological characteristics of foundation materials and geological discontinuities that could have an effect on the dam wall;
- (i) an evaluation of the stability of natural slopes in and in the immediate proximity of the reservoir based on a geological map with information on the distribution and characteristics of geological materials and discontinuities;
- (j) an evaluation of the potential for induced seismicity by the reservoir where appropriate and an evaluation of the natural seismicity at sources within a radius that could have an impact on the dam based on a geological map with information on the distribution and characteristics of geological materials and discontinuities, and particulars of any historical earthquakes which had a significant effect at the dam site;
- (k) a description of the scope of the materials investigations for the dam and foundations and results obtained;
- (l) the results of structural and stability analyses of the dam and foundations, including safety factors, stresses and displacements;

- (m) a dam safety risk analysis and/or risk assessment on the dam, ancillary structures and foundations with an indication of probabilities of failure, when requested by the Director-General;
- (n) a discussion of the objectives and design principles of the monitoring equipment and instrumentation layout.

Project specifications for category III dam

19. Project specifications for a Category III dam must be compiled for the construction of the dam and related structures that include the particulars set out in regulation 12.

Engineering drawings for category III dam

20. Engineering drawings for a project contemplated in regulation 17 in respect of a Category III dam must show the particulars set out in regulation 13.

Safety of existing development affected by category III dam

21. An evaluation of the safety of existing development as set out in regulation 8 must be included in the design report contemplated in regulation 17.

Additional information related to design report, project specifications, engineering drawings and safety of existing development affected by category III dam

22. Any other information than the information contemplated in regulations 18, 19, 20 and 21 for a project contemplated in regulation 17 must be submitted by the owner when requested by the Director-General.

Conditions and requirements of licence to construct, enlarge, alter or repair dam with safety risk

23. (1) The following conditions and requirements that the holder of a licence to construct, enlarge, alter or repair a dam with a safety risk must comply with, may be specified in a licence for a Category I dam:
- (a) A deviation from the expected condition of the foundation, or the expected quality of construction materials that comes to light during the construction phase, must be reported to the Director-General without delay;
 - (b) any deviation from the design must be reported to the Director-General without delay;
 - (c) any design adjustment that the Director-General may deem to be reasonably necessary on the grounds of new information becoming available, must be executed and effected meticulously and without delay;
 - (d) any information in connection with the construction work that is required by the Director-General must be supplied to him or her without delay; and
 - (e) assistance must be given to the Director-General or any person instructed by him or her, to conduct an investigation or obtain information or carry out inspections without delay that the Director-General or that person may deem to be reasonably necessary in connection with the evaluation of the safety of the dam during construction.

- (2) The following conditions and requirements with which the holder of a licence referred to in subregulation 23(1) must comply, may in addition to the conditions and requirements determined in that subregulation, be specified in a licence in respect of a Category II dam:
- (a) In the case of any fundamental changes from the design principles set out in the design report submitted in accordance with regulation 11, project specifications submitted in accordance with regulation 12, or change of typical particulars that appear on engineering drawings submitted in accordance with regulation 13, the Director-General must be advised in the form of a written report dealing with the nature, extent and implications of the changes;
 - (b) the report contemplated in subregulation 23(2)(a) must be compiled by the approved professional person and submitted to the Director-General at least 30 days before the changes are implemented;
 - (c) where the changes contemplated in subregulation 23(2)(a) are made to deal with an emergency situation, the approved professional person must report them to the Director-General within seven days, followed by the submission of a written report on the changes;
 - (d) an approved professional person must be appointed –
 - (i) to monitor construction and to see to it that adequate measures are taken to ensure that the provisions of the design drawings and specifications are complied with;
 - (ii) to ensure that an up to date set of "as built" drawings on which all alterations are shown is compiled;
 - (iii) to ensure that up to date information on the construction of the dam, including foundation treatment, is kept and to compile a construction completion report; and
 - (iv) to issue a completion certificate.
 - (e) where an existing dam is enlarged, altered or repaired, a maximum controlled water-level as determined by the Director-General, must not be exceeded before a licence to impound water contemplated in regulation 24 has been issued;
 - (f) in the case of a new dam, the river diversion works, outlet works or similar structure may not be closed before a licence to impound water has been issued;
 - (g) copies of the completion certificate, the "as built" drawings and specifications, and the construction completion report must be submitted to the Director-General within 120 days after the date of the completion certificate;
 - (h) if the approved professional person is no longer able to carry out his or her duties, the Director-General must be notified thereof within 14 days, and steps must be taken to replace that person; and

- (i) if so required by the Director-General, the approved professional person must have an approved alternate to take over his or her duties if he or she is not able to carry them out.
- (3) The following conditions and requirements that the holder of a licence referred to in subregulation 23(1) must comply with, may in addition to the conditions and requirements determined in that regulation and in subregulations 23(1) and 23(2), be specified in the licence in respect of a Category III dam:
 - (a) Reports on the quality control of the construction work and progress reports be submitted to the Director-General by the approved professional person at times specified by the Director-General;
 - (b) in cases where the Director-General is reasonably of the opinion that it is justified, construction work on a part of the project may not begin before information or particulars requested by the Director-General are submitted to the Director-General, and these requirements have been complied with;
 - (c) the approved professional person must keep a record of geological conditions as exposed by excavations or drilling work during construction of the dam, in order to identify deviations from assumed conditions and to compile information on true "as built" foundation conditions; and
 - (d) the approved professional person must have an alternate approved by the Director-General to take over his or her duties if he or she is unable to carry them out.

Licence to impound water in dam with safety risk

24. (1) No licence to impound water is required for a Category I dam.
- (2) Any person who constructs a new dam which will on completion be classified as a Category II or III dam, may not close the river diversion works, outlet works or similar structure, before he or she is in possession of a licence to impound water.
 - (3) Any person who enlarges, alters or repairs an existing dam so that it will thereafter be classified as a Category II or III dam, may not allow the water-level in the reservoir to rise above the maximum controlled level, if specified in the licence to construct, enlarge, alter or repair before he or she is in possession of a licence to impound water.
 - (4) The Director-General may refuse a licence if the application contains incorrect information, is incomplete, does not comply with acceptable dam engineering criteria or if the water use is illegal.

Application for licence to impound water in dam with safety risk

25. (1) An application for a licence to impound water must be submitted to the Director-General at least 60 days before the planned date for closure of the river diversion works or outlet works, where applicable, and must include –
- (a) an official application form of the Department that has been completed and signed by the owner, person in control of the dam or approved professional person;

- (b) the particulars set out in regulation 26;
 - (c) an operation and maintenance manual that has been compiled and signed by an approved professional person;
 - (d) an emergency preparedness plan that has been compiled and signed by an approved professional person;
 - (e) an affidavit by the owner stating that all residential areas and buildings frequented by people in the dam basin have been vacated; and
 - (f) in cases where induced seismicity is expected, proof that the owner has instituted an awareness programme to prepare persons in the vicinity of the dam for any associated events.
- (2) The approved professional person must consider whether a combined operation and maintenance manual and emergency preparedness plan, or a separate operation and maintenance manual and emergency preparedness plan is the most effective for operation, maintenance as well as disaster management related to the dam and the downstream area threatened by failure of the dam.

Licence application to impound water in category II dam

26. Any person who constructs, alters, enlarges or repairs a Category II dam must subject to regulation 25 apply to the Director-General for a licence to impound water by supplying the following particulars and documents:

- (a) The name and address of –
 - (i) the owner and person in control of the dam;
 - (ii) the representative of the owner or person who has been granted authority to issue instructions in connection with the operation of the dam;
 - (iii) the person directly responsible for the day-to-day operation of the dam;
 - (iv) the person responsible for the taking of monitoring instrument readings at the dam;
 - (v) the person responsible for the regular evaluation of the monitoring instrument readings contemplated in subregulation 26(a)(iv); and
 - (vi) the person responsible for routine inspections of the dam that must be carried out in accordance with the operation and maintenance manual;
- (b) the name and address of –
 - (i) the provincial disaster management office;
 - (ii) where applicable, the district, municipal, or designated disaster management authority or office with whom arrangements have been made in connection with the issue of warnings, and who is responsible for evacuation should a condition that affects the safety of the dam arise;

- (iii) the South African Police Services station nearest to the dam; and
 - (iv) representatives of local authorities, representative bodies, or of any communities potentially threatened by the presence of the dam and with whom arrangements have been made in connection with the issue of warnings should a condition that affects the safety of the dam arise.
- (c) the methods that will be used to issue warnings timeously to the areas downstream of the dam if a condition affecting the safety of the dam arises, determined in consultation with the relevant disaster management authority;
 - (d) information on existing road, air, telephone, cellular telephone, radio, facsimile, electronic and any other communication links with the dam;
 - (e) information on slipways for boats around the reservoir;
 - (f) a construction progress report with an indication of work that has not yet been completed;
 - (g) a control programme for the first filling period until the dam reaches 100% of its full storage capacity and the assumptions on which it is based; and
 - (h) the planned date on which the river diversion works or outlet works, where applicable, will be closed.

Operation and maintenance manual for category II dam

27. An operation and maintenance manual for the dam must include the names and addresses set out in subregulation 26(a), and must include –

- (a) a description of the project and a concise description of the dam;
- (b) detailed information, including the catchment area and a description of the downstream development, as well as –
 - (i) basic flood hydrological data;
 - (ii) elevation versus capacity and elevation versus surface area curves for the reservoir; and
 - (iii) spillway and outlet discharge tables (or curves) for the dam.
- (c) a site plan of the project showing the reservoir, dam, and access routes to the dam;
- (d) a small scale map of the upstream and downstream river reach that would be affected in times of flood, which –
 - (i) provides an overview of the river for the purpose of disaster management or operation of the dam during floods;
 - (ii) indicates developments within close proximity of the reservoir including resorts, picnic spots and hiking trails; and

- (iii) is not necessarily the same as detailed inundation maps required for an emergency preparedness plan.
- (e) a set of engineering drawings of the general layout of the dam and basic details of outlet works and spillway gates, where applicable;
- (f) plans, elevations, and sections that show characteristic features of the dam to indicate important operating particulars, including the locality of control points, monitoring instruments, access routes to the dam that could be used during floods, slipways for boats for rescue operations and areas where access to the public is restricted;
- (g) instructions for the maintenance of the civil components of the dam, including drainage systems, slope protection, hydraulic structures and other parts requiring maintenance;
- (h) instructions for the operation and maintenance of the mechanical and electrical components of the dam that are used for the control of floodwater or that could be used in an emergency to lower the water-level of the reservoir;
- (i) particulars of a regular inspection programme to check the condition and the serviceability of the various components of the dam, including an item list to serve as a guideline for inspections;
- (j) information on the layout, reading procedure and reading frequency of monitoring instruments, and particulars on the procedure for the processing and assessment of monitoring instrument readings, including guideline values for the assessment of monitoring instrument readings;
- (k) any limitations on the rate of releases or changes in the water-level of the reservoir;
- (l) in the case of a dam with an uncontrolled spillway, particulars on flood warning systems for incoming and outgoing floods, water-levels and water-level changes where appropriate or applicable;
- (m) in the case of a dam with a controlled spillway, or a dam equipped with floodgates, particulars of –
 - (i) the gate operating rules, operational systems and required personnel;
 - (ii) the limits on water-levels, water-level changes and rate of releases;
 - (iii) the warning systems to alert the dam operator of floods or flow releases;
 - (iv) the warning systems to alert persons downstream of the dam of floods or flow releases;
 - (v) the measures to be implemented when one or more floodgates cannot be opened;
 - (vi) the alternative power supply in the event of a power failure;
 - (vii) the measures to remove and prevent obstructions caused by floating objects such as boats, jetties, trees, logs and other debris; and

- (viii) the security measures to prevent unauthorised persons access to the dam, critical parts of the dam or appurtenant works.
- (n) particulars on recording of observations and incidents, issuing of communications and instructions, filing and dispatching of reports, log book entries and recording deviations from an operating rule that relate to prevailing conditions when floods are released in a controlled or uncontrolled manner;
- (o) descriptions of circumstances at the dam that should be considered a condition affecting the safety of the dam, together with guidelines for the evaluation of conditions and procedures and actions to be followed to limit the impact of these circumstances on the works and downstream areas; and
- (p) precautions or measures to ensure public safety as contemplated in subregulation 11(e).

Emergency preparedness plan for category II dam

28. An emergency preparedness plan must include applicable names and addresses set out in subregulation 26(a) and 26(b), as well as the following particulars:

- (a) Detailed information describing the dam, its catchment area and downstream development, as well as –
 - (i) basic flood hydrological data;
 - (ii) elevation versus capacity and elevation versus surface area curves for the reservoir;
 - (iii) spillway and outlet discharge tables (or curves) for the dam; and
 - (iv) a set of engineering drawings of the general layout of the dam and basic details of outlet works, sluices and spillway gates, where applicable.
- (b) descriptions of circumstances at the dam that should be considered a condition affecting the safety of the dam, together with guidelines for the evaluation of such a condition and procedures and actions to be followed;
- (c) a notification flowchart that shows who is to be notified, by whom, and in what priority, to enable timely notification of persons and organisations who are responsible for taking emergency actions;
- (d) a description of the responsibilities of the owner for developing, implementing, maintaining and updating the emergency preparedness plan;
- (e) a clear statement that the emergency preparedness plan compiled in terms of these Regulations is not an emergency evacuation plan, and –
 - (i) where applicable, a statement that the designated disaster management authority or office, is responsible for warning and evacuation within affected areas; or

- (ii) if no formal disaster management structure exists, the name and address of the person who will be responsible for the evacuation of people and animals.
- (f) a description of preparedness actions to limit or alleviate the effects of a dam failure, operational spillway release, or to deal with the effects of seismicity where this is deemed to be reasonably necessary by the Director-General or approved professional person, and to facilitate response to emergencies;
- (g) identification of historical flood marks in built up areas; and
- (h) inundation maps delineating areas downstream of the dam that would be flooded as a result of a dam failure, and where deemed to be reasonably necessary by the approved professional person, areas flooded by selected small, medium, large or major natural floods.

Licence application to impound water in category III dam

29. Any person who constructs a Category III dam or enlarges, alters or repairs an existing dam so that it can be classified as a Category III dam must –
- (a) apply to the Director-General for a licence to impound water by submitting the particulars and documents prescribed in respect of a Category II dam in regulations 25 and 26; and
 - (b) submit an operation and maintenance manual contemplated in regulation 27 and an emergency preparedness plan contemplated in regulation 28 to the Director-General.

Operation and maintenance manual and emergency preparedness plan for category III dam

30. An operation and maintenance manual and an emergency preparedness plan contemplated in subregulation 29(b) must be drawn up by an approved professional person assisted by a professional team.

Conditions and requirements of licence to impound water

31. The following conditions and requirements that the holder of a licence to impound water referred to in subregulation 24(2) and 24(3) must comply with, may be specified in a licence to impound water:
- (a) The Director-General must be notified in writing within 30 days of any change in the names and addresses furnished in terms of subregulation 26(a) and 26(b);
 - (b) instructions and procedures in the operation and maintenance manual and emergency preparedness plan submitted in terms of regulations 27 and 28 must be complied with;
 - (c) the requirements of subregulations 32(1), 32(2), 32(3) and 32(4) in so far as they apply to the dam, must be complied with;
 - (d) the owner must notify the Director-General without delay as soon as a condition affecting the safety of a dam is identified;

- (e) a written report on the nature, extent and causes of the condition and the steps that have been taken to improve the safety of the dam, must be submitted to the Director-General within 30 days of identification of the condition affecting the safety of the dam;
- (f) if the Director-General, on reasonable grounds is of the opinion that the circumstances of a particular project require it, that the controlled water-level in the reservoir must not exceed a height determined by him or her; and
- (g) any condition related to the structural safety (or stability) of the dam which the Director-General deems necessary to reduce the risk of potential loss of life, to reduce the risk of damage to property, to reduce the risk of an adverse effect on resource quality or damage to the environment.

Conditions and requirements regarding operation and maintenance of dam with safety risk

32. (1) The Director-General may –

- (a) inspect any dam with a safety risk or test any component thereof;
 - (b) direct the owner of the dam to have an inspection or test carried out or to have instruments for monitoring the behaviour of the dam installed;
 - (c) direct the owner to provide information in a prescribed form on any matter affecting the safety of the dam or the protection of life, property and resource quality related to the existence of the dam;
 - (d) require that maintenance work and dam safety betterment work, which according to a dam safety evaluation report are found to be necessary, be carried out under the supervision of an approved professional person;
 - (e) in consequence of a dam safety evaluation, require that further studies or investigations be undertaken by an approved professional person to investigate any potential defects; and
 - (f) determine a time for the submission of information or the taking of steps in terms of subregulations 32(b), 32(c) and 32(e).
- (2) The owner of a Category II or III dam must appoint an approved professional person to compile an operation and maintenance manual and emergency preparedness plan in accordance with regulations 27 and 28 and submit a copy to the Director-General when requested by him or her.
- (3) In respect of a Category III dam the approved professional person contemplated in subregulation 32(2) must be assisted by a professional team.
- (4) The operation and maintenance manual and emergency preparedness plan contemplated in subregulation 32(2) must be kept up to date by the owner of the dam.
- (5) The owner of a dam with a safety risk must –
- (a) regularly inspect the dam or have it inspected, using the guidelines for routine inspections described in the operation and maintenance manual, to

check whether all the components of the dam are in a satisfactory serviceable condition and are capable of performing the function for which they are intended;

- (b) as soon as a condition affecting the safety of a dam arises at the dam, investigate, or cause to be investigated and evaluate the circumstances and without delay take steps that are necessary to clear up or control the condition using the guidelines in the emergency preparedness plan.
 - (c) In the case of a Category II dam or Category III dam the nature of the steps contemplated in subregulation 32(5)(b), as well as a programme for the implementation thereof, must be reported in writing to the Director-General within 60 days after the development of a condition;
 - (d) when an emergency develops at the dam, immediately release information in accordance with the emergency preparedness plan to make it possible to evacuate threatened areas downstream of the wall;
 - (e) report to the Director-General any emergencies that may develop at the dam without delay, and carry out any instructions arising there from, and must within a period of 30 days provide the Director-General with a written report containing full details of the circumstances giving rise to the emergency, of how the conditions developed or were controlled and of the nature and extent of the damage;
 - (f) apply appropriate operational procedures to prevent people or property downstream of the dam from being flooded without warning by sudden changes in water-levels; and
 - (g) furnish full co-operation and assistance in any investigation or inspection of any component of the dam being carried out at the direction of the Director-General.
- (6) The owner of a dam with a safety risk may appoint a competent person as the person in control of a dam with a safety risk.

Keeping of records, storage of documents, change of ownership and change of use of dam with safety risk

33. (1) The owner of a dam with a safety risk must keep detailed and up to date records of the dam, which must include –
- (a) the operation and maintenance manual and emergency preparedness plan for the dam;
 - (b) dam safety evaluation and investigation reports on the dam;
 - (c) drawings of the dam and any reports on the geology, design, construction, maintenance, operation and improvements or changes to the dam;
 - (d) in the case of a Category II or Category III dam equipped with monitoring instruments, instrumentation observation data, and tables and graphs, that are kept continuously up to date to illustrate the data collected; and

- (e) in the case of a Category II or Category III dam, information regarding fluctuation of water-levels in the reservoir and flow in the river downstream of the dam wall, as requested by the Director-General in each particular instance.
- (2) The original records referred to in subregulation 33(1), or usable copies thereof, must be stored at the dam site or in a nearby office where they can be inspected and be protected against any damage.
- (3) When ownership or control of a dam with a safety risk is transferred to another person the owner of the dam must –
 - (a) transfer the records of the dam to the new owner of the dam, within 60 days of the change of ownership of the dam;
 - (b) notify the Director-General in writing, and within 60 days after the change of ownership of the dam, of the change in ownership and that the records have been transferred to the new owner of the dam; and
 - (c) submit the name and address of the new owner or person in control of the dam to the Director-General.
- (4) If a dam with a safety risk is unusable owing to silting up or for any other reason, the owner of the dam must notify the Director-General in writing thereof within 60 days after such an occurrence.
- (5) If a dam with a safety risk is to be used for any purpose other than that for which it was originally constructed, the owner or other person in control of the dam must notify the Director-General in writing thereof at least 60 days before any change comes into effect.

Dam safety evaluation for category I dam

- 34.** (1) The owner of a Category I dam must –
- (a) submit, at his or her cost, an evaluation report on the safety of the dam when requested to do so by the Director-General, and within a period specified by the Director-General, in accordance with subregulations 34(2) and 34(3); and
 - (b) submit further dam safety evaluation reports at intervals of between five and ten years when requested by the Director-General; and
 - (c) regularly report to the Director-General on progress with implementation of the recommendations made in the dam safety evaluation report until all recommendations have been addressed.
- (2) Dam safety evaluation reports for Category I dams must include the following information:
- (a) A description of the project of which the dam is part;
 - (b) details of the dam, including –
 - (i) the type of wall;

- (ii) the maximum wall height of the dam;
 - (iii) the storage capacity of the reservoir;
 - (iv) the surface area of the reservoir at full supply level;
 - (v) the total crest length of the wall;
 - (vi) the crest width of the wall;
 - (vii) the upstream and downstream slopes of the wall;
 - (viii) a description of the materials in different zones of the wall, including slope protection measures, where applicable;
 - (ix) a description of the general nature and distribution of materials forming the foundation of the dam;
 - (x) a description of drainage and seepage control measures;
 - (xi) a description of the outlet works of the dam; and
 - (xii) the completion date of the construction of the dam.
- (c) hydrological particulars and flood estimates, including –
- (i) the catchment area;
 - (ii) the catchment parameters;
 - (iii) the mean annual precipitation;
 - (iv) the methods used for flood estimates;
 - (v) the design flood and the estimated annual exceedance probability thereof;
 - (vi) the regional maximum flood, if applicable, depending on the size of the catchment area;
 - (vii) the safety evaluation flood and the estimated annual exceedance probability thereof; and
 - (viii) the guidelines used for the choice of alternative floods used to evaluate the adequacy of the spillway.
- (d) a description and evaluation of the spillways, including –
- (i) the type of spillway;
 - (ii) the crest length of the spillway;
 - (iii) the height difference between the spillway crest and lowest level of the non-overspill crest;

- (iv) the dimensions of all possible hydraulic control sections;
 - (v) the length of the spillway return channel, if applicable;
 - (vi) the maximum discharge capacity of the spillway before overtopping of the non overspill crest;
 - (vii) the freeboard during the design flood; and
 - (viii) the expected damage or erosion during various floods.
- (e) an evaluation of the safety, structural stability, operating procedures and the maintenance of the dam based on the inspection carried out in accordance with subregulation 34(3);
 - (f) the name of the designer of the dam and contractor;
 - (g) the remedial works since completion of the dam;
 - (h) the major problems, which occurred previously;
 - (i) a description of the observations and findings made during the on-site inspection carried out in accordance with subregulation 34(3);
 - (j) a site plan of the project;
 - (k) the plans, elevations and sections that show characteristic features of the dam and spillway; and
 - (l) an appropriate number of colour photographs that reflect the observations made during the on-site inspection.
- (3) An on-site inspection for a Category I dam must be carried out by the owner of the dam, or person appointed by the owner, where note is taken of –
- (a) the general condition of the crest, upstream face and downstream face of the dam wall (for example, presence and size of trees, erosion gullies and other irregularities);
 - (b) the position and size of any wet patches or leakages through the wall or foundation thereof, mentioning the turbidity and flow rate of any leaking water;
 - (c) the position and extent of any cracks, subsidences, bulges or signs of relative movement on any part of the dam wall;
 - (d) the position and size of holes or nests made by burrowing animals, rodents or insects (for example, aardvark, moles, meercats, rats, crabs, termites and ants);
 - (e) the condition of the spillway, including any erosion thereof in the area directly upstream or downstream of the spillway;
 - (f) the condition and serviceability of the outlet works of the dam;

- (g) the effectiveness of precautions and measures to ensure public safety as contemplated in subregulation 11(e).
- (h) any buildings or developed areas downstream of the wall that could be threatened by floodwater due to failure of the dam;
- (i) any adverse impact on resource quality as a result of failure of the dam; and
- (j) any other aspect related to the safety of the dam or hazard potential due to the existence of the dam.

Dam safety evaluation for category II and III dams

35. (1) The owner of a Category II or III dam must—

- (a) have a dam safety evaluation of the dam carried out at his or her expense when requested to do so, and within the period specified by the Director-General;
 - (b) have a first dam safety evaluation of a newly completed dam carried out at his or her expense within 3 years of the functional completion of the dam;
 - (c) have further dam safety evaluations carried out at intervals of not more than 5 years, provided that the Director-General may increase the length of the interval period to a maximum of 10 years, taking into account the condition of the dam; and
 - (d) regularly report to the Director-General on progress with implementation of the recommendations made in the dam safety evaluation report until all recommendations have been addressed.
- (2) A dam safety evaluation of a Category II dam must be carried out by an approved professional person to identify any actual or potential shortcomings in the condition of the dam or in the quality and adequacy of the procedures followed for the maintenance, operation and monitoring of behaviour that might endanger human lives, damage of property, or have an adverse impact on resource quality.
- (3) A report on the dam safety evaluation must be compiled by the approved professional person and submitted to the Director-General within the period that he or she may determine, and who may refer the report back for improvement if the report contains incorrect information, is incomplete or does not comply with acceptable dam engineering criteria.
- (4) A dam safety evaluation by an approved professional person referred to in subregulation 35(2) must include the following:
- (a) A study of all existing reports on the design, construction and safety of the dam and related matters;
 - (b) an on-site inspection during which —

- (i) available data on the condition and structural behaviour of the dam and its foundations are inspected and assessed;
 - (ii) note is taken of any visible signs of subsidence, movement, cracking, internal stress, erosion, sink-holes, seepage, leakage, ageing of materials, the functioning of drainage and pressure relief systems, extent and height of vegetation, presence and size of trees and anything else that may affect the safety of the dam;
 - (iii) the serviceability of equipment used to regulate floodwater or reservoir water-levels and to draw down the water-level quickly in an emergency is investigated; and
 - (iv) note is taken of the level of supervision, keeping of records required in accordance with the operation and maintenance manual, operating rules, warning systems, and the security measures at the dam.
- (c) an assessment of the geological conditions on site and of the stability of slopes near the dam and around the reservoir rim;
- (d) an evaluation, based on available information, of –
 - (i) the adequacy of the spillways and floodgates, if applicable, including the possibility that one or more floodgates cannot be opened or the possibility that flow may be obstructed by floating objects, such as, boats, jetties, trees, logs and debris;
 - (ii) the consequences of overtopping of the non-overspill crest;
 - (iii) the potential loss of life, potential economic loss, and damage to resource quality as a result of a failure of the dam;
 - (iv) the structural adequacy and stability of structures under the effect of normal and abnormal load conditions;
 - (v) applicable hydrological data collected since the dam was constructed or since any previous dam safety evaluation in terms of these Regulations or any regulation made in terms of a law repealed by the Act;
 - (vi) the behaviour of the dam, with due consideration of the available monitoring instrument observations or data;
 - (vii) the quality and adequacy of the level of operation and maintenance, monitoring programme, and emergency procedures to reduce the potential for harm to human lives, damage to property or to resource quality; and
 - (viii) precautions to safeguard members of the public who gain unrestricted access to the dam and appurtenant works against accidents, including the adequacy of a floating safety boom upstream of the spillway, where applicable.
- (e) where applicable and in the case of dams equipped with floodgates, an evaluation of the adequacy of –

- (i) the security measures to prevent unauthorised persons access to the dam, critical parts of the dam or appurtenant works, provided that confidentiality of sensitive information is observed where necessary;
 - (ii) the warning systems to alert the dam operator of incoming floods;
 - (iii) the warning systems to warn persons downstream of the dam of floods or flow releases;
 - (iv) the gate operating rules, operational systems and personnel;
 - (v) the alternative power supply in the event of a power failure; and
 - (vi) the structural adequacy of all elements of the floodgates.
- (f) an evaluation of the safety of existing development upstream and downstream of the dam wall as set out in subregulations 8(1) and 8(2).
- (5)
 - (a) An approved professional person, when carrying out a dam safety evaluation must compile a diagram, sketch or drawing showing actual surveyed levels at appropriate intervals along the non-overspill crest of the dam and the crest of the spillway to verify the total freeboard of the dam.
 - (b) If the spillway of a dam is an excavated channel where the full supply level is not well defined, several lines of levels must be shown.
 - (c) An approved professional person, when carrying out a dam safety evaluation must ensure that adequate level determinations are available for the dam safety evaluation for which he or she has been approved.
- (6) A dam safety evaluation report submitted in respect of a dam in terms of these Regulations must contain the following information:
 - (a) A concise description of the project of which the dam is part;
 - (b) a site plan of the project;
 - (c) the plans, elevations and sections that show the characteristic features of the dam and the position of any monitoring instruments, as well as a diagram, sketch or drawing contemplated in subregulations 35(5)(a) and 35(5)(c);
 - (d) a summary of the design assumptions, design analyses, design flood data and safety factors used during the design phase to evaluate the structural adequacy and stability of the dam;
 - (e) where applicable, hydrological particulars of the project, including –
 - (i) the catchment area;
 - (ii) the catchment parameters;
 - (iii) the mean annual precipitation;

- (iv) the storage capacity of the reservoir;
 - (v) the surface area of the reservoir at full supply level;
 - (vi) the elevation versus capacity and elevation versus surface area curves for the reservoir;
 - (vii) the design flood and the estimated annual exceedance probability thereof, assuming that the existing dam is being designed as a "new dam";
 - (viii) the regional maximum flood, if applicable, depending on the size of the catchment area;
 - (ix) the safety evaluation flood and the estimated annual exceedance probability thereof;
 - (x) particulars of the design flood hydrograph, indicating the criteria, data source and methods used to determine the floods;
 - (xi) particulars of a flood hydrograph, that when routed through the reservoir, would be attenuated in a manner that the outflow hydrograph flood peak is the same value as the maximum discharge capacity of the spillway; and
 - (xii) inflow and outflow hydrographs for design flood and safety evaluation flood conditions when significant attenuation of a flood entering the reservoir is expected, with a full motivation for the selection of attenuated floods.
- (f) a description and evaluation of the spillway, including –
- (i) the type of spillway;
 - (ii) the crest length of the spillway;
 - (iii) the height difference between the spillway crest and lowest level of the non-overspill crest;
 - (iv) the dimensions of all possible hydraulic control sections;
 - (v) the length of the spillway return channel, if applicable;
 - (vi) the maximum capacity of the spillway;
 - (vii) the freeboard during the design flood; and
 - (viii) the expected damage or erosion during various floods.
- (g) a summary of the geological and geotechnical conditions that could affect the safety of the dam, provided that where any of the said geological or geotechnical information is not available, or is inadequate, the approved professional person must indicate in his or her report what additional information or investigations are required;

- (h) an analysis of the safety and stability of the dam, and the operating procedures and the maintenance of the dam, based on the inspections, assessment and evaluations effected by the approved professional person in terms of subregulation 35(4), as well as reference to the methods used, assumptions made and standards applied for the evaluation as required in terms of subregulation 35(4)(d);
- (i) the identification of any change in respect of the information required in terms of subregulation 35(4) that has come into effect since the last dam safety evaluation, and an analysis of the effects of any change;
- (j) if the dam is equipped with monitoring instruments, the monitored information to provide a representative picture of the results upon which assessments of the behaviour and safety have been based, the information being presented graphically to represent the changes over time on a scale that makes it possible to distinguish trends in the pattern of behaviour, and including a drawing to indicate the position and distribution of instruments in the structure;
- (k) an analysis of the adequacy of the existing monitoring instrument installation, the monitoring programme and the programme of the owner for periodic inspections of the dam in the light of the potential threat to human life, damage to property, and any adverse impact on resource quality;
- (l) a dam safety risk analysis and/or risk assessment on the dam and an indication of the probabilities of failure, when requested so by the Director-General;
- (m) particulars of the precautions and measures to ensure public safety contemplated in subregulation 11(e), when applicable;
- (n) recommendations by the approved professional person based on his or her inspections, assessments, analyses and evaluations as required in terms of these Regulations, with regard to –
 - (i) any corrective measures required to reduce to acceptable levels actual or potential shortcomings in the condition of the dam or in the quality and adequacy of the procedures for the maintenance, operation and monitoring of the dam or emergency preparedness plans as well as keeping of records in accordance with the operation and maintenance manual;
 - (ii) the urgency in respect of the taking of corrective measures;
 - (iii) updating or upgrading the operation and maintenance manual and emergency preparedness plan for the dam. If there is no operation and maintenance manual and emergency preparedness plan for the dam, a statement must be made with regard to the need for such documents to be compiled in terms of these Regulations;
 - (iv) the need for further studies to investigate any potential shortcomings; and
 - (v) any additional monitoring instruments, evaluations, inspections or observations considered necessary.

- (o) if the analyses required in subregulations 35(6)(d) to 35(6)(h) and 35(6)(k) amount only to a confirmation of the findings of a previous dam safety evaluation, a summary of those findings must be included in the report, with a full reference to the previous report in which the analyses were set out;
 - (p) an appropriate number of annotated colour photographs that reflect the observations or findings made during the on-site inspection;
 - (q) a list of all professional staff who have taken part in the inspection evaluation or compilation of the report; and
 - (r) the signature of the approved professional person responsible for the dam safety evaluation.
- (7) The contents of the dam safety evaluation report referred to in subregulation 35(6) must be limited to the information necessary to support the findings and recommendations contained in the dam safety evaluation.

Additional requirements for dam safety evaluation for category III dam

36. (1) The requirements and conditions set out in regulation 35 in respect of a dam safety evaluation for a Category II dam, also apply to an evaluation for a Category III dam, except that –
- (a) the dam safety evaluation and on-site inspection must be carried out by an approved professional person assisted by a professional team;
 - (b) the information required by subregulation 35(6)(h) must also include characteristic results obtained in the process of evaluation in terms of subregulation 35(4)(d);
 - (c) a dam safety risk analysis and/or risk assessment must be carried out on the dam and an indication of the probabilities provided, when requested by the Director-General; and
 - (d) the members of the professional team must sign the relevant sections of the report for which they are responsible.

Registration of dam with safety risk

37. Unless a dam with a safety risk is already registered with the Department at the commencement of these Regulations, the owner of the dam must register that dam in terms of section 120 of the Act on an official application form obtained from the Department. The completed form must be signed by the owner and submitted to the Director-General.

Decommission dam with safety risk

38. (1) No person may –
- (a) begin to alter a dam with a safety risk with the intent to decommission the dam; or

- (b) alter the normal operation of a dam with a safety risk with the intent to decommission the dam unless he or she is in possession of a licence to decommission the dam issued by the Director-General.
- (2) Any person who intends to decommission a Category II dam or Category III dam must acquire the services of an approved professional person to design the alterations to the dam and to draw up plans and specifications for it.
- (3) In the case of decommissioning of a Category III dam the approved professional person must be assisted by a professional team.

Licence application to decommission category I dam

39. Any person who intends to decommission a Category I dam must apply for a licence to decommission the dam by submitting to the Director-General –

- (a) an official application form obtained from the Department and signed by the applicant;
- (b) general details of the project in accordance with subregulation 41(a);
- (c) safety precautions to protect the public, property and resource quality that must be implemented during the construction work;

and when required by the Director-General –

- (d) engineering drawings in accordance with regulation 43;
- (e) a description setting out in full the principles and assumptions applied in determining the proposed changes and alterations to the dam as shown on the engineering drawings;
- (f) an impact assessment of the decommissioning on the resource quality;
- (g) a social and environmental impact assessment.

Licence application to decommission category II or category III dam

40. Any person who intends to decommission a Category II or III dam must apply for a licence to decommission by submitting to the Director-General –

- (a) an official application form obtained from the Department and signed by the applicant;
- (b) a design report in accordance with regulation 41;
- (c) project specifications in accordance with regulation 42;
- (d) engineering drawings in accordance with regulation 43;

and when required by the Director-General –

- (e) an impact assessment of the decommissioning on the resource quality;
- (f) a social and environmental impact assessment.

Design report to decommission category II or category III dam

41. A design report for the decommissioning of a Category II or III dam must include the following information:

- (a) General details of the project, including –
 - (i) the name and address of the owner of the dam and that of the person in control;
 - (ii) the locality of the dam including a description as contained in the title deed of the property concerned, magisterial district, nearest town, distance to the nearest town, the name of the river or watercourse wherein situated (if any), the location in terms of latitude and longitude (to the nearest second of accuracy) and the water management area;
 - (iii) the reasons for decommissioning the dam;
 - (iv) the type of dam to be decommissioned, with a description of proposed alterations to the dam with reference to decommissioning;
 - (v) an indication of the quantities and types of material to be removed, demolished, and disposed of (for example, volume of earthfill, rockfill, concrete, masonry and miscellaneous waste construction material) including the physical and chemical description of any waste; and
 - (vi) the measures or works required to deal with sediment that has been deposited in the reservoir.
- (b) a description setting out in full the principles and assumptions applied in determining the proposed changes and alterations to the dam as shown on the engineering drawings;
- (c) hydrological particulars of the project, including –
 - (i) the catchment area;
 - (ii) the size of the design flood used to determine the width, side slopes, shape of the final breach, if applicable, or other relevant dimensions of the decommissioned dam wall;
 - (iii) the estimated annual exceedance probability of the design flood; and
 - (iv) the regional maximum flood, if applicable.
- (d) hydraulic particulars of the project, including –
 - (i) relative elevations of the river bed immediately upstream and downstream of the decommissioned dam and non-overspill crest of the remaining structure, if applicable; and
 - (ii) the maximum discharge capacity of the breach in the remaining structure, if applicable.

- (e) particulars of the remaining structure, if applicable, including –
 - (i) the maximum wall height;
 - (ii) the height, base width and crest width at appropriate cross-sections;
 - (iii) the upstream and downstream slopes;
 - (iv) the crest lengths of the remaining structure;
 - (v) the slopes of any breach or opening of the remaining structure; and
 - (vi) the material description type, quality, and erodibility of surfaces exposed to storm rainfall, flow of water or floods.

Project specifications for decommissioning of category II or category III dam

- 42.** Project specifications must be compiled for the decommissioning of the dam and related structures, specifying –
- (a) the procedures that must be followed for decommissioning of the Category II or III dam and the equipment to be used;
 - (b) Safety precautions to protect the public, property and resource quality that must be implemented during the construction work;
 - (c) the permissible tolerances for finished surfaces;
 - (d) the burial and disposal of materials removed or demolished for abandonment of the dam; and
 - (e) the particulars of quality control to be applied.

Engineering drawings for decommissioning of category II or category III dam

- 43.** Engineering drawings for the decommissioning of a Category II or III dam must include the following particulars:
- (a) The location of the dam with an indication of access routes from the nearest town;
 - (b) the contour plan of the reservoir up to non-overspill crest height of the dam, if this plan is readily available;
 - (c) the proposed alterations and changes to the hydraulic components of the dam to release water that could be dammed up by the remaining structure;
 - (d) the proposed structural alterations and changes to the dam;
 - (e) the measures or works required to deal with sediment that has been deposited in the reservoir;
 - (f) the location of burial and disposal sites for materials removed or demolished to decommission the dam;

- (g) the particulars on a plan of a suitable scale of the nature and locality of infrastructure and development upstream and downstream of the dam that could influence the design of the decommissioning of the dam; and
- (h) the particulars on a plan of suitable scale of the locality of other dams in the catchment area upstream of the dam that must be taken into account in the design of the decommissioning.

Conditions and requirements of licences to decommission dam with safety risk

44. (1) The following conditions and requirements that the holder of a licence to decommission a Category I dam must comply with, may be specified in a licence to decommission that dam:
- (a) Any deviation from the expected extent of the excavations, or the expected nature or position of structures to be exposed, demolished or altered that comes to light during the decommissioning phase, must be reported to the Director-General without delay;
 - (b) any design adjustment that in the opinion of the Director-General may be necessary on the grounds of new information becoming available, must be executed and effected meticulously and without delay;
 - (c) further information in connection with the decommissioning that is required by the Director-General must be supplied to him or her without delay; and
 - (d) assistance must be given to the Director-General or any person instructed by him or her, to conduct an investigation or obtain information or carry out inspections that, in his or her opinion, are needed during decommissioning of the dam.
- (2) In addition to the conditions and requirements contained in subregulation 44(1) the following conditions and requirements must be specified in a licence to decommission a Category II dam:
- (a) In the case of any change of typical particulars that appear on engineering drawings submitted in terms of regulation 43 or changes to design principles that are considered necessary by the approved professional person and on which information has been furnished in the documents submitted in terms of regulations 41 and 42, a report must be made in writing to the Director-General on the nature, extent and implications of the changes at least 30 days before the changes are implemented;
 - (b) the approved professional person must –
 - (i) see to it that the necessary measures are taken to ensure that the changes and alterations to the dam are performed in accordance with the engineering drawings and specifications;
 - (ii) when applicable, see to it that the requirements for impact assessments related to resource quality, social aspects and the environment have been addressed;
 - (iii) ensure that an up to date set of “completion” drawings showing all alterations is compiled;

- (iv) ensure that up to date information on the decommissioning of the dam is kept, and compile a completion report; and
 - (v) issue a completion certificate for decommissioning.
 - (c) copies of the completion certificate, "completion" drawings and specifications, and a completion report on the decommissioning must be submitted to the Director-General within 120 days after the date of the issuance of the completion certificate;
 - (d) if the approved professional person is no longer able to carry out his or her duties, the Director-General must be notified without delay, and steps must be taken to replace him or her; and
 - (e) if the Director-General deems it necessary, the approved professional person must have an approved alternate to take over his or her duties if he or she is not able to carry them out.
- (3) In addition to the conditions and requirements contained in subregulations 44(1) and 44(2), the following conditions and requirements must be specified in a licence to decommission a Category III dam:
- (a) Reports on the quality control of the construction work and progress reports must be submitted to the Director-General at prescribed times;
 - (b) in cases where the Director-General deems it reasonably necessary, excavation, drilling, demolition, burial and disposal of materials, landscaping, rehabilitation or other activities on a part of the project may not begin before information or particulars requested by the Director-General are supplied to him or her, and his or her requirements have been complied with;
 - (c) record must be kept of earth, concrete, rock interfaces and buried structures as exposed by excavations, drilling work or demolition during decommissioning of the dam in order to identify deviations from assumed conditions and to compile information on true "as built" foundation conditions; and
 - (d) the approved professional person must have an alternate approved to take over his or her duties if he or she is unable to carry them out.
- (4) Upon receipt of the completion certificate the Director-General may remove the dam from the register of dams with a safety risk, or amend the register to indicate that the dam has been decommissioned.

Approval of professional person and professional team

45. (1) A professional person desiring for the purposes of a provision of these Regulations to be the approved professional person for a task required in terms of these Regulations in connection with a specific project, must apply in writing for the necessary approval by providing the Director-General with –
- (a) a description of the project and the nature of the task or tasks to be undertaken;

- (b) particulars of his or her qualifications, training and experience in dam engineering; and
 - (c) an official application form obtained from the Department and signed by the professional person.
- (2) An application contemplated in subregulation 45(1) must be processed by the Director-General and forwarded to the Engineering Council of South Africa for evaluation, except when the procedure provided for in subregulation 45(9) is followed.
- (3) The Engineering Council of South Africa may establish a committee to evaluate an application contemplated in subregulation 45(1) and to make a recommendation on its behalf to the Minister.
- (4) A recommendation by the Engineering Council of South Africa as a result of an evaluation contemplated in subregulation 45(2) must be recorded and submitted to the Director-General in writing.
- (5) The Engineering Council of South Africa may recommend an application contemplated in subregulation 45(1) for approval subject to conditions if shortcomings in experience or exposure related to specific fields of dam engineering have been identified in an application.
- (6) The Director-General must take into consideration the recommendation by the Engineering Council of South Africa before granting approval of an application contemplated in subregulation 45(1).
- (7) In the case of a refusal of approval of an application contemplated in subregulation 45(1), the applicant must be given an opportunity to make representations to the Director-General within a reasonable time.
- (8) A recommendation for approval in terms of subregulation 45(5) must include –
 - (a) the fields where the professional person must be assisted in the task; and
 - (b) the qualifications and experience of the person or group of persons who must provide the assistance.
- (9) The Director-General may approve an application by a professional person for any task for a dam with a safety risk taking into account a previous recommendation by the Engineering Council of South Africa, provided that –
 - (a) the type of dam is the same, or can be logically associated with a similar category or combination of dam types, for which the applicant has been previously approved;
 - (b) the maximum wall height of the dam as defined in these Regulations does not exceed that for which the applicant has been previously approved by more than –
 - (i) three metres in the case of small dams;
 - (ii) five metres in the case of medium dams; and

- (iii) seven metres in the case of large dams.
- (c) the task is, in the opinion of the Director-General, no more complex than that for which the applicant has previously been approved.
- (10) In the case of tasks to be carried out for a Category III dam, a professional person must apply to the Director-General for approval of members of the professional team on an official form provided for that purpose. The name, qualifications, curriculum vitae, employer, relevant professional experience and description of the component of the task entrusted to each team member must be provided.
- (11) The professional person must be informed in writing of any decision of the Director-General in terms of this regulation.
- (12) A professional person contemplated in subregulation 45(1) must –
 - (a) inform the owner of the dam of the decision by the Director-General whether the application has been approved, conditionally approved or not approved;
 - (b) apply to the Director-General for approval of a person or group of persons to assist him or her in the specified field of dam engineering if the approval is subject to conditions requiring assistance; and
 - (c) immediately inform the Director-General in writing if he or she has withdrawn from a task or if his or her appointment has been terminated by the owner of the dam.
- (13) An application contemplated in subregulation 45(12)(b) must include the name, qualifications, curriculum vitae, employer, and relevant professional experience of the person or group of persons providing assistance.

Register of approved professional persons

- 46.** (1) The Director-General may establish a register of approved professional persons in consultation with the Engineering Council of South Africa providing for different classes of approved professional persons in accordance with subregulation 46(2) to subregulation 46(7).
- (2) The different classes of approved professional persons may be established by specifying the maximum wall height of the dam, type of dam wall, regional maximum flood, and or type of task that the approved professional person may undertake and conditions in accordance with subregulations 45(5) and 45(6).
- (3) The requirements for admission to a class of approved professional persons on the register are the same as those for regulating the approval of a professional person as an approved professional person for a specific task as set out in regulation 45, with the additional requirement that the professional person has successfully completed at least one task for a specific dam as the approved professional person in accordance with these Regulations.

- (4) The register must be updated at least two times per annum and made available within a reasonable time to any person who has made a written request to the Director-General for a copy of the register.
- (5) An approved professional person on the register may undertake tasks as provided for on the register without having to re-apply as in accordance with subregulation 45(1).
- (6) An approved professional person may only perform a task or tasks within the class or classes for which he or she has been approved and must –
 - (a) follow the procedure outlined in subregulation 45(10) for tasks related to Category III dams, if applicable;
 - (b) follow the procedure outlined in subregulation 45(12)(b) in the case of a conditional approval; and
 - (c) submit a completed form obtained from the Department, signed by him or her to the Director-General and to the owner of the dam, confirming that he or she has been appointed to perform a specific task or tasks, within 7 days of the appointment.
- (7) If a professional person wishes to be admitted to a different class of approved professional persons, for example, to be approved to perform a task on a higher dam of the same type for which he or she was previously approved, or to perform a task on a different type of dam with a safety risk, then an application must be submitted to the Director-General as provided for in subregulation 45(1), with an indication of the class or classes for which approval is sought.

Procedure for cancellation, withdrawal or suspension of approval of professional person

- 47.** (1) An approval of a professional person to undertake a specific task or tasks contemplated in regulations 45 and 46 may be cancelled and an approved professional person's name removed from one or more classes on the register by the Director-General when, in the opinion of the Director-General –
- (a) the professional person fails or has failed to comply with provisions of section 119 of the Act;
 - (b) the professional person has been involved in the illegal construction, enlargement or alteration of a dam for which a licence to construct, enlarge, alter or repair in terms of these regulations has not been issued;
 - (c) the approved professional person has been identified as the responsible party for delaying completion of a task, is not able to undertake or complete a task, and there is no expectation that the task will be completed within reasonable time and there could be –
 - (i) an increased risk of potential loss of life;
 - (ii) an increased risk of damage to property; or
 - (iii) an increased risk of an adverse effect on resource quality or damage to the environment;

- (d) the task undertaken is outside the approval granted with respect to maximum wall height, dam wall type, regional maximum flood or type of task as provided for in regulations 45 or 46; or
 - (e) the professional person or person is not a registered person in terms of the Engineering Profession Act, 2000 (Act No. 46 of 2000).
- (2) The Director-General may lay down conditions that must be complied with before consideration will be given to possible re-instatement of the approval of an professional person or before consideration of new applications from the professional person in terms of regulation 45.
- (3) In the case of a proposed cancellation of an approval or removal of the professional person's name from the register in terms of subregulation 47(1), the professional person must be given an opportunity to make representations within a reasonable and specified time to the Director-General.
- (4) In the case of a proposed cancellation of an approval or removal of the professional person's name from the register in terms of subregulation 47(1) and laying down conditions in terms of subregulation 47(2), the Engineering Council of South Africa must be consulted prior to a final decision by the Director-General.
- (5) The Director-General may suspend the approval of a professional person to undertake a task or tasks in accordance with regulation 45 and 46, before and until the procedures provided for in subregulations 47(1) to 47(4) have been completed. The Director-General may withdraw the suspension on the basis of new information that comes to light.
- (6) An approval for a specific task must be cancelled by the Director-General when –
 - (a) the approved professional person informs the Director-General in writing that his or her appointment has been terminated by the owner of the dam before the task has been completed in accordance with these Regulations; and
 - (b) the approved professional person informs the Director-General in writing that he or she has been forced to withdraw as the approved professional person, before the task has been completed in accordance with these Regulations, for reasons beyond his or her control.
- (7) The name of an approved professional person must be removed from the register on written request by the approved professional person.
- (8) When an approval has been cancelled, suspended, or the name of a person removed from the register by the Director-General, the owner of the dam must –
 - (a) be notified in writing by the Director-General that the professional person is unable to carry out his or her duties; and
 - (b) take steps to appoint a professional person who can be approved as the approved professional person to carry out or complete the task in terms of these Regulations.

- (9) When an approval of a professional person has been cancelled, suspended or the name of the approved professional person removed from the register by the Director-General, the professional person must be notified thereof in writing by the Director-General within reasonable time.
- (10) A professional person may be re-instated to the register, or approved to be the approved professional person for a specific task, when he or she has satisfied the Director-General that –
 - (a) the reasons for removal of the name of the professional person from the register no longer exist;
 - (b) the reasons for cancellation of an approval for a specific task, or tasks, no longer exist; and
 - (c) the conditions laid down by the Director-General in accordance with subregulation 47(2) have been complied with.
- (11) The Director-General must consult the Engineering Council of South Africa prior to making a final decision contemplated in subregulation 47(10).

Offences and penalties

- 48.** A person who contravenes or fails to comply with any provision of these Regulations is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years.

Reason if a licence is not issued

- 49.** The Director-General must provide reasons if any licence is not issued within 3 months from the submission date of the application.

Repeal of regulations

- 50.** The Regulations promulgated by Government Notice No. R. 1560 of 25 July 1986 are hereby repealed.

Annexure

Tables for the classification of dams with a safety risk

Table 1: Size classification

Size class	Maximum wall height in metres (m)
Small	Less than 12 m.
Medium	Equal to or more than 12 m but less than 30 m.
Large	Equal to or more than 30 m.

Table 1 must be read together with subregulation 2(2).

Table 2: Hazard potential classification

Hazard potential rating	Potential loss of life	Potential economic loss	Potential adverse impact on resource quality
Low	None	Minimal	Low
Significant	Not more than ten ...	Significant	Significant
High	More than ten	Great	Severe

Table 2 must be read together with subregulation 2(3).

Table 3: Category classification of dams with a safety risk

Size class	Hazard potential rating		
	Low	Significant	High
Small	Category I	Category II	Category II
Medium	Category II	Category II	Category III
Large	Category III	Category III	Category III

Table 3 must be read together with subregulation 2(4).

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Publikasies: Tel: (012) 334-4508, 334-4509, 334-4510
Advertensies: Tel: (012) 334-4673, 334-4674, 334-4504
Subskripsies: Tel: (012) 334-4735, 334-4736, 334-4737
Kaapstad-tak: Tel: (021) 465-7531



water & sanitation

Department:
Water and Sanitation
REPUBLIC OF SOUTH AFRICA

EVALUATION CRITERIA

The 80/20 preference points system as prescribed in the Preferential Procurement Regulations, 2017 pertaining to the PPPFA (Act no. 5 of 2000) (PPPFA) will be applied to evaluate this bid. The lowest acceptable bid will score 80 points for price and a maximum of 20 points will be awarded for attaining the Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution.

The DWS has adopted a Five (4) phase evaluation process. The evaluation process includes the following phases:

- Phase 1: Mandatory Requirements
- Phase 2: Administrative Compliance
- Phase 3: Functionality Compliance
- Phase 4: 80/20 Principle Preferential Procurement Regulation

Phase 1 Mandatory requirements

No	Criteria	Yes	No
1	Bidders must attend the compulsory briefing and bidders name must appear on the attendance register.		

Phase 2: Administrative Compliance

Bidders are required to **comply** with the following listed below: - Failure to comply may lead to the disqualification of the bid.

No	Criteria	Yes	No
1	National Treasury's Central Supplier Database Registration Bidder must submit CSD report		
2	Tax compliant with SARS Attach copy of a valid Tax Compliance status pin (to be confirmed through SARS)		
3	Active registration with Company Intellectual Property Commission (to be verified through CSD and CIPC) attach copy of valid CIPC/CIPRO certificate		

4	Complete, sign and submit Standard Bidding Documents forms (SBD1, SBD 3.3, SBD4, SBD 6.1)		
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Phase 3: Functionality Compliance.

Bidders must score at least **65 out of 100** in respect of functionality in order to qualify for advancement to Stage 4. A bidder that scores less than **65 out of 100** will be regarded as submitting a non-responsive bid and will be disqualified.

The weight that will be allocated to each functionality criteria is as follows

1 = poor, 2 = average, 3 = good, 4 = very good, and 5 = excellent

The evaluators are to score the bidder on a scale of 1 to 5 and use the scored value to determine the archived weight of the criterion.

Criteria	Sub-Criteria	Points Value	Weight of Criterion	Bidder Score
Approved Professional Person	Did the Bidder's provide a name of the proposed Approved Professional Person and does that person appears on the Dam Safety Office's register of Approved Professional Persons? (NB: If yes score 5 or no score 1)		15	
Proposed Approved Professional Person task approval	Does the proposed Approved Professional Person have the necessary approval to undertake the requested dam safety evaluation task? (A recent APP register or letter of approval to be used to verify suitability in conjunction with Regulation R139 of 2012 Section 45 (9)(a) to (c). (NB: If yes score 5 or no score 1)		20	
	The proposed APP has approval for evaluation, design and quality control.	5		
	The proposed APP has approval only evaluation or design and quality control.	3		
	The proposed APP does not have any approval for either evaluation, design and quality control.	1		
Methodology (For dam safety evaluation bids, i.e., Section 1.3.1 of the ToR)	Did the Bidder submit proposal clearly outlining approach and methodology on how the task will be executed?		25	

	The methodology and approach must outline these keys tasks: Apply for approval to be Approved Professional Person to the Regulator (Dam Safety Office); Review of available information; Conduct desktop studies; Visual inspection of the dam(s); Assess or evaluate each dam component to ensure it complies with dam safety legislation; Compilation of dam safety evaluation report(s) and submission to DSO on behalf of the Client.			
	Methodology highlights all the 5 tasks	5		
	Methodology highlights 4 of 5 tasks	4		
	Methodology highlights 3 of 5 tasks	3		
	Methodology highlights 2 of 5 tasks	2		
	Methodology highlights 1 of 5 tasks	1		
OR				
Methodology (For dam safety rehabilitation bids, i.e., Section 1.3.2 of the ToR)	The bidder's ability to relate to the proposed scope of service in terms of their methodology. Bidders are expected to provide a brief description of the approach, methodology on how the works required will be executed.			
	The bidder provided comprehensive details on all 6 stages of the project scope of service.	5		
	The bidder provided comprehensive details on 4 to 5 stages of the project scope of service.	4		
	The bidder provided comprehensive details on 3 stages of the project scope of service.	3		
	The bidder provided comprehensive details on 2 stages of the project scope of service.	2		
	The bidder provided comprehensive details on 1 stage of the project scope of service.	1		
DWS APP Support	Did the bidder include commitment to support departmental Approved Professional Person as a professional of 2012 Section 45 (9)(a) to (c). (NB: If yes score 5 or no score 1)		15	
Approved Professional Persons experience in similar tasks	Did the Bidder complete similar task previously		25	
	10 and above	5		
	8 to 9 years	4		
	6 to 7 years	3		

	4 to 5 years	2		
	3 to 4 years	1		
TOTAL			100	

Phase 4: 80/20 Principle will be applied in terms of the Preferential Procurement Regulations, 2017.

During this phase, quotations will be evaluated based on 80 points for price and 20 points for attaining the B-BBEE Status Level of Contributor in accordance with the table under SBD 6.1 in paragraph 4.

In order to claim the B-BBEE Status Level of Contributor points, bidders must submit original and valid B-BBEE Status Level Verification Certificates or certified copies thereof, issued by accredited Verification Agency/s by SANAS or Registered Auditor approved by Independent Regulatory Board of Auditor (IRBA), together with their quotations to substantiate their B-BBEE rating claims. The Exempted Micro Enterprise must submit a letter from the Accounting Officer who is appointed in terms of Close Corporation Act. EMEs are allowed to submit a sworn affidavit in a template obtainable from the Department of Trade and Industry website.

Bidders who do not submit B-BBEE Status Level Verification Certificates or are non-compliant contributors to B-BBEE do not qualify for preference points for B-BBEE but will not be disqualified from the bidding process. They will score points out of 80 for price only and zero (0) points out of 20 for B-BBEE.

PRICING SCHEDULE
(Professional Services)

NAME OF BIDDER: BID NO.: DWS01-0722 WTE

CLOSING TIME 11:00

CLOSING DATE: 11 AUGUST 2022.

OFFER TO BE VALID FOR 120 DAYS FROM THE CLOSING DATE OF BID.

ITEM NO	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)	
1.	The accompanying information must be used for the formulation of proposals.		
2.	Bidders are required to indicate a ceiling price based on the total estimated time for completion of all phases and including all expenses inclusive of all applicable taxes for the project.	R.....	
3.	PERSONS WHO WILL BE INVOLVED IN THE PROJECT AND RATES APPLICABLE (CERTIFIED INVOICES MUST BE RENDERED IN TERMS HEREOF)		
4.	PERSON AND POSITION	HOURLY RATE	DAILY RATE
	.....	R.....	.....
	.....	R.....	.....
	.....	R.....	.....
	.....	R.....	.....
	.....	R.....	.....
5.	PHASES ACCORDING TO WHICH THE PROJECT WILL BE COMPLETED, COST PER PHASE AND MAN-DAYS TO BE SPENT		
	.....	R.....	..... days
	.....	R.....	..... days
	.....	R.....	..... days
	.....	R.....	..... days
5.1	Travel expenses (specify, for example rate/km and total km, class of airtravel, etc). Only actual costs are recoverable. Proof of the expenses incurred must accompany certified invoices.		
	DESCRIPTION OF EXPENSE TO BE INCURRED	RATE	QUANTITY AMOUNT
	.....	.....	..... R.....
	.....	.....	..... R.....
	.....	.....	..... R.....
	.....	.....	..... R.....
		TOTAL: R.....	

** "all applicable taxes" includes value-added tax, pay as you earn, income tax, unemployment insurance contributions and skills development levies.

Name of Bidder:

- 5.2 Other expenses, for example accommodation (specify, eg. Three star hotel, bed and breakfast, telephone cost, reproduction cost, etc.). On basis of these particulars, certified invoices will be checked for correctness. Proof of the expenses must accompany invoices.

DESCRIPTION OF EXPENSE TO BE INCURRED	RATE	QUANTITY	AMOUNT
.....	R.....
.....	R.....
.....	R.....
.....	R.....
TOTAL: R.....			

6. Period required for commencement with project after acceptance of bid
7. Estimated man-days for completion of project
8. Are the rates quoted firm for the full period of contract? *YES/NO
9. If not firm for the full period, provide details of the basis on which adjustments will be applied for, for example consumer price index.
-
-
-

*[DELETE IF NOT APPLICABLE]

Any enquiries regarding bidding procedures may be directed to the –

Bidenquirieswte@dws.gov.za

Department of Water and Sanitation
Private Bag 313
PRETORIA
0001

Tel: 012 336 6562 / 7088 / 7596

Or for technical information –

Mr C Mahlabela

Email: MahlabelaC@dwa.gov.za

BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.

Where a person/s are listed in the Register for Tender Defaulters and / or the List of Restricted Suppliers, that person will automatically be disqualified from the bid process.

2. Bidder's declaration

- 2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest¹ in the enterprise, employed by the state? **YES/NO**

- 2.1.1 If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

Full Name	Identity Number	Name of State institution

- 2.2 Do you, or any person connected with the bidder, have a relationship

¹ the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.

with any person who is employed by the procuring institution? **YES/NO**

2.2.1 If so, furnish particulars:

.....

2.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract? **YES/NO**

2.3.1 If so, furnish particulars:

.....

3 DECLARATION

I, _____ the _____ undersigned,
 (name)..... in
 submitting the accompanying bid, do hereby make the following
 statements that I certify to be true and complete in every respect:

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium² will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring

² Joint 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.

institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.

- 3.6 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids 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.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....
Signature	Date
.....
Position	Name of bidder

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2017

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution

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/not exceed** R50 000 000 (all applicable taxes included) and therefore the **.....** preference point system shall be applicable; or
- b) Either the 80/20 or 90/10 preference point system will be applicable to this tender *(delete whichever is not applicable for this tender)*.

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	
B-BBEE STATUS LEVEL OF CONTRIBUTOR	
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) **“prices”** 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;

3. POINTS AWARDED FOR PRICE

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

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

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

Where

- P_s = Points scored for price of bid under consideration
- P_t = Price of bid under consideration
- P_{\min} = Price of lowest acceptable bid

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

- 4.1 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

5. BID DECLARATION

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

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

- 6.1 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.)

7. SUB-CONTRACTING

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

(Tick applicable box)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

- 7.1.1 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	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

- 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 least 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		

8. DECLARATION WITH REGARD TO COMPANY/FIRM

8.1 Name of
company/firm:.....

8.2 VAT registration
number:.....

8.3 Company registration
number:.....

8.4 TYPE OF COMPANY/ FIRM

- ☐ Partnership/Joint Venture / Consortium
☐ One person business/sole propriety
☐ Close corporation
☐ Company
☐ (Pty) Limited
[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....
.....
.....
.....
.....

8.6 COMPANY CLASSIFICATION

- ☐ Manufacturer
☐ Supplier
☐ Professional service provider
☐ Other service providers, e.g. transporter, etc.
[TICK APPLICABLE BOX]

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

8.8 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)

DATE:

ADDRESS

.....

.....

THE NATIONAL TREASURY

Republic of South Africa



GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT

July 2010

GOVERNMENT PROCUREMENT
GENERAL CONDITIONS OF CONTRACT
July 2010

NOTES

The purpose of this document is to:

- (i) Draw special attention to certain general conditions applicable to government bids, contracts and orders; and
- (ii) To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with government.

In this document words in the singular also mean in the plural and vice versa and words in the masculine also mean in the feminine and neuter.

- The General Conditions of Contract will form part of all bid documents and may not be amended.
- Special Conditions of Contract (SCC) relevant to a specific bid, should be compiled separately for every bid (if applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the SCC shall prevail.

TABLE OF CLAUSES

1. Definitions
2. Application
3. General
4. Standards
5. Use of contract documents and information; inspection
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8. Inspections, tests and analysis
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14. Spare parts
15. Warranty
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17. Prices
18. Contract amendments
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20. Subcontracts
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22. Penalties
23. Termination for default
24. Dumping and countervailing duties
25. Force Majeure
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28. Limitation of liability
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31. Notices
32. Taxes and duties
33. National Industrial Participation Programme (NIPP)
34. Prohibition of restrictive practices

General Conditions of Contract

1. Definitions

1. The following terms shall be interpreted as indicated:
 - 1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
 - 1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
 - 1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
 - 1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
 - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
 - 1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
 - 1.7 "Day" means calendar day.
 - 1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.
 - 1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
 - 1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
 - 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the

RSA.

- 1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14 "GCC" means the General Conditions of Contract.
- 1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17 "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 "Project site," where applicable, means the place indicated in bidding documents.
- 1.21 "Purchaser" means the organization purchasing the goods.
- 1.22 "Republic" means the Republic of South Africa.
- 1.23 "SCC" means the Special Conditions of Contract.
- 1.24 "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such

obligations of the supplier covered under the contract.

- 1.25 “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.

2. Application

- 2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.
- 2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

3. General

- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za

4. Standards

- 4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.

5. Use of contract documents and information; inspection.

- 5.1 The supplier shall not, without the purchaser’s prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2 The supplier shall not, without the purchaser’s prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier’s performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier’s records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

6. Patent rights

- 6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.

7. Performance security

- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
 - (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
 - (b) a cashier's or certified cheque
- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

8. Inspections, tests and analyses

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or

analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

9. Packing

- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

10. Delivery and documents

- 10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.
- 10.2 Documents to be submitted by the supplier are specified in SCC.

11. Insurance

- 11.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.

12. Transportation

- 12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.

13. Incidental services

- 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
 - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
 - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

- (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
- (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

14. Spare parts

14.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:

- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
- (b) in the event of termination of production of the spare parts:
 - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
 - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

15. Warranty

15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.

15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take

such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

16. Payment

- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.

17. Prices

- 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.

18. Contract amendments

- 18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.

19. Assignment

- 19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.

20. Subcontracts

- 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

21. Delays in the supplier's performance

- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the

supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

22. Penalties

22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

23. Termination for default

23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:

- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
- (b) if the Supplier fails to perform any other obligation(s) under the contract; or
- (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.

23.4 If a purchaser intends imposing a restriction on a supplier or any

person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.

23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:

- (i) the name and address of the supplier and / or person restricted by the purchaser;
- (ii) the date of commencement of the restriction
- (iii) the period of restriction; and
- (iv) the reasons for the restriction.

These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.

23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

24. Anti-dumping and countervailing duties and rights

24.1 When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which

may be due to him

25. Force Majeure

- 25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

26. Termination for insolvency

- 26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

27. Settlement of Disputes

- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- 27.5 Notwithstanding any reference to mediation and/or court proceedings herein,
- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
 - (b) the purchaser shall pay the supplier any monies due the supplier.

28. Limitation of liability

- 28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;
- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

- (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

29. Governing language	29.1	The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
30. Applicable law	30.1	The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
31. Notices	31.1	Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
	31.2	The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.
32. Taxes and duties	32.1	A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
	32.2	A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
	32.3	No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
33. National Industrial Participation Programme (NIP)	33.1	The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.
34 Prohibition of Restrictive practices	34.1	In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
	34.2	If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

- 34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.