



**DEPARTMENT OF WATER AND SANITATION
REPUBLIC OF SOUTH AFRICA**

DUE AT 11:00 ON

(CLOSING DATE: 31 JANUARY 2023)

BID DWS17-1222 WTE

THE APPOINTMENT OF PROFESSIONAL SERVICE PROVIDERS (PSP'S) ON A FIVE (5) YEAR TERM CONTRACT TO PROVIDE ENGINEERING DETAILED DESIGN, SITE SUPERVISION AND ENGINEERING CONTRACT MANAGEMENT FOR THE ALGOA WATER SUPPLY SYSTEM: COERNEY DAM AND ITS ASSOCIATED STRUCTURES.

SUBMIT BID DOCUMENTS TO:

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

OR

TO BE DEPOSITED IN:
THE BID BOX AT THE ENTRANCE
ZWAMADAKA BUILDING
157 FRANCIS BAARD STREET
PRETORIA
0001

Compulsory

Date: 14 December 2022

Time: 12:00 pm

Venue: Roodeplaat Training Centre for the Department of Water and Sanitation.
Dwaf-Training Centre, Roodeplaat SH, 2022.
Office contact details for directions 012 943 3300/1/3

BIDDER: (Company Address OR Stamp)

COMPILED BY: INFRASTRUCTURE MANAGEMENT

T1.1 PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)					
BID NUMBER:	BID DWS17 - 1222 WTE	CLOSING DATE:	31 JANUARY 2023	CLOSING TIME:	11:00
DESCRIPTION	THE APPOINTMENT OF PROFESSIONAL SERVICE PROVIDERS (PSP'S) ON A FIVE (5) YEAR TERM CONTRACT TO PROVIDE ENGINEERING DETAILED DESIGN, SITE SUPERVISION AND ENGINEERING CONTRACT MANAGEMENT FOR THE ALGOA WATER SUPPLY SYSTEM: COERNEY DAM AND ITS ASSOCIATED STRUCTURES.				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
THE BID BOX AT THE ENTRANCE: ZWAMADAKA BUILDING					
157 FRANCIS BAARD STREET					
PRETORIA, 0001					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	Bid Office		CONTACT PERSON	Mr. Burger Tielman / Mr. Ezekiel Koadibane	
TELEPHONE NUMBER	012 336 7780/6562/8151/7596		TELEPHONE NUMBER	060 554 9450/ 012 336 8216	
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS	bidenquirieswte@dws.gov.za		E-MAIL ADDRESS	BurgerT@dws.gov.za / KoadibaneE@dws.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] ☐ Yes ☐ No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX] ☐ Yes ☐ 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 /WORKSOFFERED?	☐ Yes ☐ No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED? SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?		☐ Yes ☐ No [IF YES, ANSWER PART B:3]
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?			☐ YES ☐ NO		
DOES THE ENTITY HAVE A BRANCH IN THE RSA?			☐ YES ☐ NO		
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?			☐ YES ☐ NO		
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?			☐ YES ☐ NO		

IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? ☐ YES ☐ 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.

SBD1

T1.2 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:

PRICING SCHEDULE
(Professional Services)

NAME OF BIDDER: BID NO.: **DWS17 1222 WTE**

CLOSING TIME **11:00**

CLOSING DAT: **31 JANUARY 2023**

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)
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THE APPOINTMENT OF PROFESSIONAL SERVICE PROVIDERS (PSP'S) ON A FIVE (5) YEAR TERM CONTRACT TO PROVIDE ENGINEERING DETAILED DESIGN, SITE SUPERVISION AND ENGINEERING CONTRACT MANAGEMENT FOR THE ALGOA WATER SUPPLY SYSTEM: COERNEY DAM AND ITS ASSOCIATED STRUCTURES.

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 fund contributions and skills development levies.

- 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 –

(Department of Water and Sanitation WTE)

Bid Office, Tel: 012 336 6562/7780/8241/7596.

Email: bidenquirieswte@dws.gov.za

Tel:

Or for technical information –

Mr. Ezekiel Koadinabe/ Mr. Burger Tielman

Cell: 0663007766/ 060 554 9450/ 012 336 8216.

Email: KoadibaneE@dws.gov.za / BurgerT@dws.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 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:

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.

.....
.....

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.
- 3.5 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.
- 3.6 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring 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.
- 3.7 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

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.

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 R50 000 000 (all applicable taxes included) and therefore the 80/20 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	80
B-BBEE STATUS LEVEL OF CONTRIBUTOR	20
Total points for Price and B-BBEE must not exceed	100

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

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

2. DEFINITIONS

- (a) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (b) **“B-BBEE status level of contributor”** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (c) **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price quotations, advertised competitive bidding processes or proposals;
- (d) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (e) **“EME”** means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (f) **“functionality”** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.
- (g) **“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:

80/20

or

90/10

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

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	☐	NO	☐
-----	--------------------------	----	--------------------------

- 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	☐	NO	☐
-----	--------------------------	----	--------------------------

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

--

Designated Group: An EME or QSE which is at 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
6. Patent rights
7. Performance security
8. Inspections, tests and analysis
9. Packing
10. Delivery and documents
11. Insurance
12. Transportation
13. Incidental services
14. Spare parts
15. Warranty
16. Payment
17. Prices
18. Contract amendments
19. Assignment
20. Subcontracts
21. Delays in the supplier's performance
22. Penalties
23. Termination for default
24. Dumping and countervailing duties
25. Force Majeure
26. Termination for insolvency
27. Settlement of disputes
28. Limitation of liability
29. Governing language
30. Applicable law
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 anything 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 as 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 fulfilment 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 these 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 cancelling 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 antidumping 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 wilful 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 (NIP) Programme

- 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.

Js General Conditions of Contract (revised July 2010)



water & sanitation

Department:
Water and Sanitation
REPUBLIC OF SOUTH AFRICA

DIRECTORATE: CIVIL ENGINEERING

TERMS OF REFERENCE

**WATER RECONCILIATION STRATEGY FOR ALGOA WATER SUPPLY SYSTEM:
APPOINTMENT OF PROFESSIONAL SERVICE PROVIDER FOR THE DESIGN, SITE
SUPERVISION AND CONTRACT MANAGEMENT OF THE NEWLY PROPOSED COERNEY
DAM**

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LIST OF ACRONYMS AND ABBREVIATIONS

B-BBEE	Broad based black economic empowerment
BOQ	Bill of quantities
D: HS	Directorate: Hydrological Services
DEA	Department of Environmental Affairs (now DEFF)
DEFF	Department of Environment, Forestry and Fisheries
DMR	Department of Mineral Resources (now DMRE)
DMRE	Department of Mineral Resources and Energy
DOE	Department of Energy (now DMRE)
DWA	Department of Water Affairs (now DWS)
DWAF	Department of Water Affairs and Forestry (now DWS)
DWS	Department of Water and Sanitation
DWS-CU	Department of Water and Sanitation Construction Unit
EAP	Environmental assessment practitioner
ECO	Environmental control officer
EIA	Environmental impact assessment
EWR	Ecological water requirements
FSL	Full supply level
GPS	Global positioning system
GRAII	Groundwater resource assessment phase 2
GRIP	Groundwater resource information program
HDI	Historically disadvantaged individual
HFL	High flood level
HPP	Hydropower plant
LOS	Level of service
LSY	Long-term stochastic yield
NGA	National groundwater archive
O&M	Operation and maintenance
OH&S	Occupational health and safety
PFMA	Public Finance Management Act
PPPFA	Preferential Procurement Policy Framework Act (Act No. 5 of 2000)
PPR	Preferential Procurement Regulations of 2011

LIST OF UNITS AND SYMBOLS

GW	Gigawatt
GWh	Gigawatt hour
Ha	Hectare
km	Kilometre
km ²	Square kilometre
m	Metre
m ²	Square metre
masl	Metre above sea level
million m ³	Million cubic metres
million m ³ /a	Million cubic metres per annum
Mℓ	Megalitre
M/d	Megalitres per day
mm/a	Millimetres per annum
m ³ /s	Cubic metres per second
MW	Megawatt
MWh	Megawatt hour

WATER RECONCILIATION STRATEGY FOR ALGOA WATER SUPPLY SYSTEM (WRSWSS)

TERMS OF REFERENCE FOR COERNEY DAM DESIGN, SITE SUPERVISION AND CONTRACT MANAGEMENT

1 INTRODUCTION

1.1 Background to the Project

Bulk water is supplied to the Port Elizabeth region from the Orange River system via the Orange-Fish-Sundays Transfer Scheme. The scheme was implemented as an emergency works due to the extreme drought works due to extreme drought of 1987 to 1992.

The Scheepersvlakte Balancing Dam, which was designed and sized only to operate as a balancing facility for the Lower Sundays River Water User Association (LSRWUA), was selected as the only suitable point of abstraction available for such an emergency supply. The gravity supply pipeline from the Scheepersvlakte Balancing Dam was sized for long term flow requirement of both the Nelson Mandela Bay Municipality (NMBM) and the right bank (Sunday River) irrigators.

In 1993 the first phase of the Nooitgedagt Water Treatment Works (Nooitgedagt WTW) was completed and the Orange River allocation then became a permanent water source for the region. Following the expected completion of the Nooitgedagt WTW phase 3 in 2021, the WTW will have a maximum capacity of 210 MP/day. The scheme has been designed to cater for peak/back-up supplies from the Nooitgedagt WTW at times when the older infrastructure, from sources to the west of Port Elizabeth, will be requiring maintenance or emergency repairs.

The Scheepersvlakte Balancing Dam has been identified by NMBM officials and the Department of Water and Sanitation (DWS) as a growing operational risk to the bulk water supply of the NMBM system. The capacity is only sufficient for two days peak supply to the NMBM, which is inadequate to provide water during emergencies, such as a canal break.

A canal break occurred on 17 May 2017 when the main canal failed due to an embankment failure in the canal fill, which affected the supply to Nooitgedagt WTW. The repair of the failure was carried out timeously by DWS Construction South, with the assistance of the Citrus Growers Association. This canal failure highlighted the need to have sufficient balancing storage to limit the risk of failure of supply to the NMBM.

The situation described above was investigated during the Feasibility Component of the Support of the Water Reconciliation Strategy for the Algoa Water Supply System (WRSWSS) study. The objective of the study is to:

- Limit risks of shortfall in supply to NMBM and the Lower Sundays River Government Water Scheme (LSRGWS);
- Remove potential operating system constraints for the sustainable delivery of bulk Orange River water supply to the LSRGWS and NMBM, for water requirements up to 2040; and
- Limit operational risks to acceptable levels.

1.2 Declaration as an Emergency Works

The Coerney Dam project has been declared as an Emergency Works by the Minister of Human Settlements, Water and Sanitation on 10 July 2020, in order to reduce the implementation time of the project.

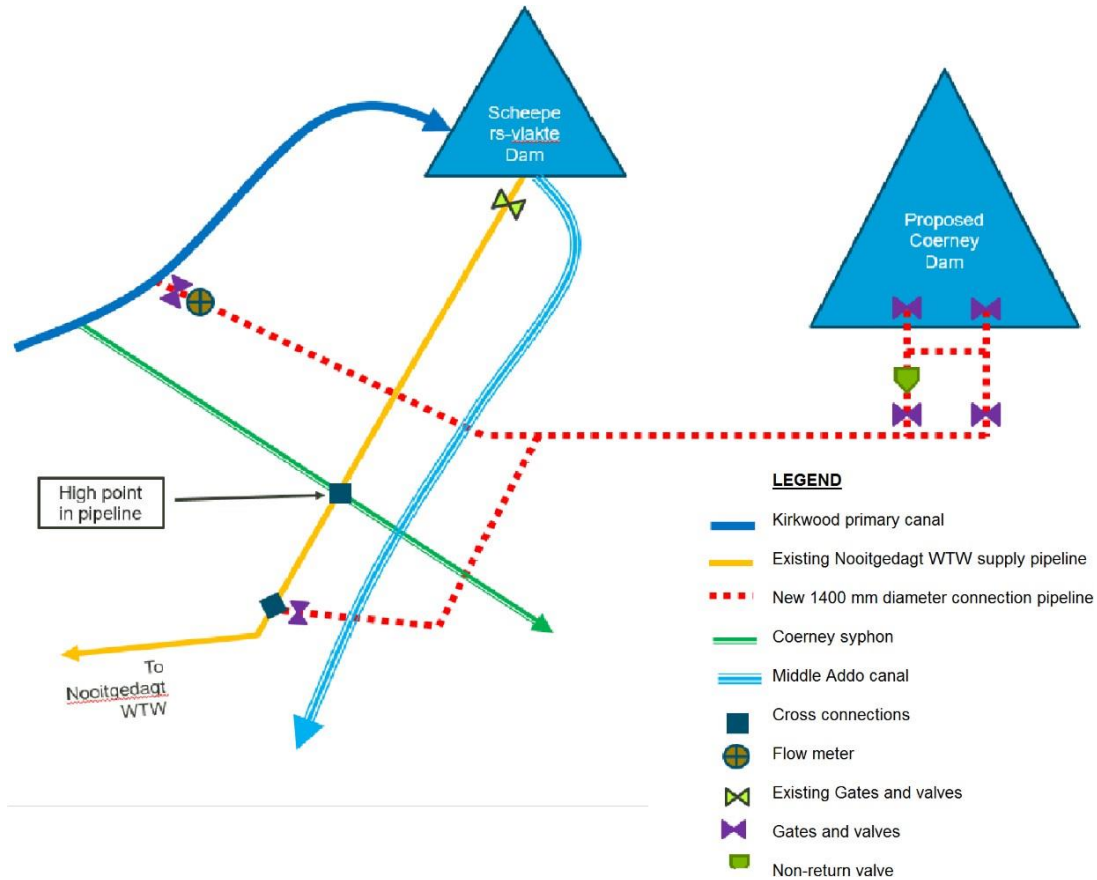
This project is necessary to reduce the risk of failure of water supply to NMBM by providing a dedicated balancing storage dam. The declaration of the project as an Emergency Works will enable the detailed design to be undertaken in parallel with the Environmental Impact Assessment (EIA) process.

1.3 Purpose of the Project

The Coerney Dam project comprises the proposed Coerney Dam and associated conveyance infrastructure. The purpose of the dam is to provide a dedicated balancing facility for water supply to the Nooitgedagt WTW, which supplies potable water to the NMBM supply area.

The storage capacity of the dam will enable the WTW to continue supplying potable water to NMBM during emergency, such as a canal break. The capacity of the dam is 4,69 million m³, which is sufficient to supply 21 days of the Phase 3 treatment capacity of 210 MP/day.

1.4 General Description of the Project



- **Schematic Layout of Coerney Dam and connecting pipeline**

The Kirkwood primary canal is the main canal supplying transferred Orange River water to the Lower Sundays River Government Water Scheme (LSRGWS). This canal has a design capacity at the Korhaansdrift Weir offtake of 22,7 m³/s.

The proposed Coerney Dam will be filled via a new supply pipeline from the Kirkwood primary canal under gravity. A new intake structure is proposed just upstream of the existing long weir in the canal near Scheepersvlakte Dam. The Coerney Dam will be able to supply the Nooitgedagt WTW under gravity via a new connecting pipeline to the existing 1 400 mm Nooitgedagt WTW pipeline.

The Coerney Dam wall comprises a 20,5 m high homogeneous earthfill embankment with a length of 600 m and a side channel spillway on the left abutment. The spillway has an ogee shaped overflow crest with a length of 50 m.

1.5 Water Requirement and Design Capacity

A balancing storage of 21 days average daily demand is mentioned to limit the risk of shortfall in supply to NMBM. This is based on the risk of failure of the old canal system, as highlighted by the recent failure of a 100 m long section of the main canal on 17 May 2017, as well as the age of the conveyance infrastructure. The design water requirement for NMBM is 76,6 million m³/a (210 MI/day), which equates to a required 21 day balancing storage of 4,41 million m³.

The design storage capacity of 4,69 million m³ for the proposed Coerney Dam makes provision for losses and 150 000 m³ for Scheepersvlakte Farms, the planned private development on which the dam will be situated. The latter planned to build a storage dam on the site chosen for Coerney Dam, as balancing storage for their citrus irrigation. It has been agreed that additional storage will be provided in Coerney Dam for the Scheepersvlakte Farms development.

No additional balancing storage is required by LSRWUA to supply the irrigators, as the balancing storage currently provided by the Scheepersvlakte Balancing Dam is enough. This was confirmed by the LSRWUA at the Study Management meeting held on 30 November 2016.

1.6 The Record of Implementation Decisions (RID)

The Record of Implementation Decision (RID) is the official documentation to transfer a project from the feasibility stage to the implementation stage (detailed design, construction (including site supervision) and commission). The RID is signed off by the Chief Director: Integrated Water Resources Planning (CD: IWRP) and accepted by the Chief Director: Infrastructure Development (CD: ID), as the employer's representative who holding the budget.

The RID records the scheme configuration and other requirements for implementation, after approval by the Minister. The RID describes the scope of the Project and specific configuration of the scheme, summarizes all decisions as approved, and stipulates the required implementation timelines and the financing or funding arrangement, and the finalization of required institutional arrangements.

The RID provide the outcomes of the detailed planning, conceptual designs and cost estimates as recommendations for construction of the proposed Coerney Dam project. This document should be read with the Feasibility Study Report for Coerney Dam.

Due to the project being declared as an Emergency Works, as described in Section 1.2, on page 8, the RID excludes the Environmental Authorization, as the EIA is still in progress. An Addendum to the RID will therefore be issued after the EIA process is completed and Environmental Authorization has been received.

2 Intended User

For this appointment, the Chief Directorate Engineering Services (CD: ES), will act as the Employer's Agent. The Employer is represented by the Chief Directorate: Infrastructure Development (CD:ID). The dam and appurtenant works will be operated by the Chief Directorate: Strategic Asset Management (SAM), and the water will be intended for use by the NMBM as well as the Scheepersvlakte Farms development.

3 Compensation

The contract is a fixed-price amount. The Professional Service Provider (PSP) will be remunerated on a time and cost basis against the deliverables as per **Table 9.1: Deliverables**.

4 Timeline

The contract term is for five years (60 months) and the starting date for all services will be the date on the DWS purchase order and the end date will be as per the programme accompanying the financial proposal submitted by the PSP or five years, whichever is less.

5 Available Documents

The full list of reports for the feasibility study is as follows:-

- I. Environmental Constraints Analysis.
- II. Topographical Survey.
- III. Geotechnical Report: Lower Coerney Dam Site.
- IV. Geotechnical Report: Lower Coerney Dam Site: Supplementary Investigations.
- V. Options Analysis Report.
- VI. Feasibility-Level Engineering Design – Balancing Dam.
- VII. Feasibility-Level Engineering Design – Conveyance Infrastructure.
- VIII. Feasibility-Level Cost and Implication Analysis.
- IX. Implementation Support.
- X. Feasibility Study Report.

- XI. Stakeholder Participation – Feasibility Component Report.
- XII. Feasibility Study for Coerney Dam: Record of Implementation Decisions.
- XIII. Flood Frequency Analysis: Estimation of Flood Peaks for Required Probabilities, November 2020.

All above reports are available on the attached CD to be issued to each potential tenderer.

6 Proposed Organogram and Lines of Communications

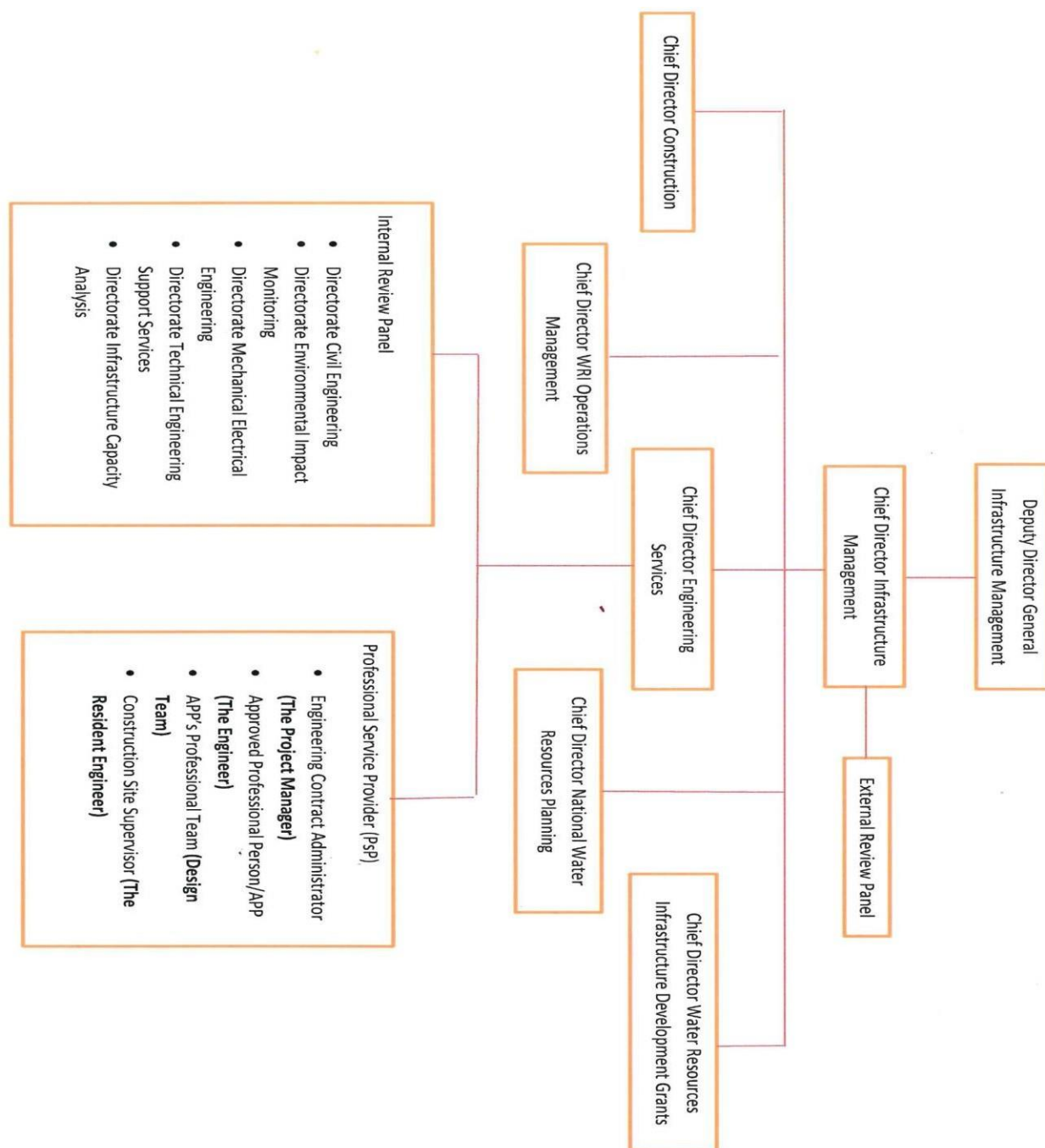


Fig. 6.1: Proposed Organogram and Lines of Communication

Note: Delegated powers to the PSP are as defined in the General Condition of Contract 2015. Technical design meetings will be chaired by CD:ES

7 Services Required

The various tasks described in Section 8 needs to be implemented based on the PSP's approved design implementation programme, in a co-ordinated manner with Engineering Services as well as Infrastructure Development, to ensure efficiency and value for money, to comply to the in terms of the PFMA, as well as compliance to ECSA Board Notice 41 of 2017 for registered person.

8 Scope of Services required (As per ECSA board Notice 138 of 2015)

8.1 Normal Services

8.1.1 Stage 1 – Inception

Establishment of Employer's requirements and preferences refine user needs and options, appointment of necessary consultations, establish the project brief including project objectives, priorities, constraints, assumptions aspirations and strategies.

1. Assist in developing a clear project brief.
2. Attend project initiation meetings.
3. Advise on procurement policy for the project.
4. Advise on the rights, constraints, consents and approvals.
5. Defined the services and scope of work required.
6. Conclude the terms of the agreement with the DWS.
7. Inspect the site and advise on the necessary surveys, analyses, tests and site or other investigations where such information will be required for stage 2 including the availability and location of infrastructure and services.
8. Determine the availability of data, drawings and plans relating to the project.
9. Provide necessary information within the agreed scope of the project to other PSPs involved.

8.1.2 Stage 3 – Design Development (Detail Design)

Developing the approved concept to finalise the design, outline specification, cost plan, financial viability and programme for the project.

1. Review documentation programme with the Employer's Agent and other parties as may be required.

2. Attend design and Employers' meetings.
3. Incorporate DWS and authorities' detailed requirements into the design.
4. Incorporate other Internal DWS's designs and requirements into the design.
5. Prepare design development drawings including draft technical details and specifications.
6. Review and evaluate design and outline specification and exercise cost control.
7. Prepare detail estimates of construction cost.
8. Liaise, co-operate and provide necessary information to the Employer's Agent and consultants involved.
9. Submit the necessary design documentation to local and other authorities for approval.

8.1.3 Stage 4 – Documentation and Procurement

Preparation of procurement and construction documentation, confirm and implement the procurement strategies and procedures for effective and timeous procurement of necessary resources for execution of the project.

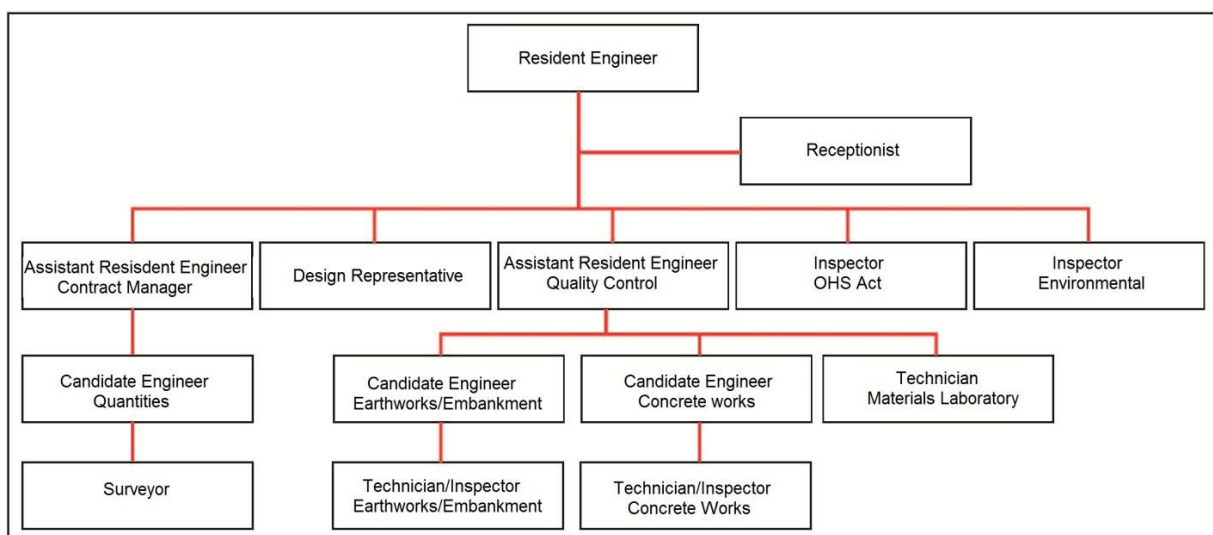
1. Attend design and Employers' meetings.
2. Prepare specifications and preambles for the works.
3. Accommodate services design.
4. Check cost estimates and adjust designs and documents if necessary to remain within budget.
5. Formulate the procurement strategy for contractors or assist the main PSP where relevant.
6. Prepare documentation for contractor procurement.
7. Review design, drawings and schedules for compliance with approved budget.
8. Call for tender and/or negotiation of prices and/or assist the main PSP where relevant.
9. Liaise, co-operate and provide necessary information to the main PSP and the other PSPs as required.
10. Evaluate tenders.
11. Prepare contract documentation for signature.

12. Assist in pricing, documentation and tender evaluation as required when the detailed services for these activities are provided by others.
13. Assess samples and products for compliance and design intent.

8.1.4 Stage 5 – Contract Administration and Site Inspection

Manage, administer and monitor the construction contract and processes including preparation and coordination of procedures and documentation to facilitate practical completion of the works.

1. Attend site handover.
2. Issue construction documentation in accordance with the documentation schedule including, in the case of structural engineering, reinforcing bending schedules and detailing and specifications of structural steel sections and connections.
3. Carry out contract administration procedures in terms of the contract.
4. Prepare schedules of predicted cash flow.
5. Prepare pro-active estimates of proposed variations for the DWS decision making.
6. Attend regular site, technical and progress meetings.
7. Review the Contractor's quality control programme and advice and agree a quality assurance plan.
8. Full-time Construction Monitoring. The Site Supervision Organogram will be as shown as follows:



- a. The full time construction monitoring staff shall:-
 - i. Maintain a full time presence on site to constantly review samples of materials and work procedures, for conformity to contract documentation, and review completed work prior to covering up, or on completion, as appropriate.
 - ii. Assist with the preparation of as-built records and drawings to the extent required in the agreement with client.
 - iii. Where the consulting engineer is the sole professional service provider or principal agent, carry out such administration of the project as is necessary on behalf of the PSP.
9. Review the outputs of quality assurance procedures and advise the contractor and DWS on the adequacy and need for additional controls, inspections and testing.
10. Adjudicate and resolve financial claims by contractor(s).
11. Assist in the resolution of contractual claims by the contractor.
12. Establish and maintain a financial control system.
13. Clarify details and descriptions during construction as required.
14. Prepare valuations for payment certificates to be issued by the principal agent.
15. Instruct witness and review all tests and mock ups carried out both on and off site.
16. Check and approve contractor drawings for design intent.
17. Update and issue drawings register.
18. Issue contract instructions as and when required.
19. Review and comment on operation and maintenance manuals, guarantee certificates and warranties.
20. Inspect the works and issue practical completion and defects lists.
21. Arrange for the delivery of all test certificates, statutory (regulatory) and other approvals, as built drawings and operating manuals.
22. Quarterly DWS Dam Safety Reports shall be prepared and submitted by the Approved Professional Person (APP). The reports will be signed off by the APP. The reports shall be submitted in compliance with the national Dam Safety Office requirements. Reports on unusual occurrences should be submitted promptly to the Client. The PSP shall

provide any special report related to the Works as reasonably requested by the DWS. Submissions and required number of copies are listed in Table 8.1.

• **Table 8.1: Submittals for Construction Supervision**

Submission	No of reports*
Summary Progress Report	40
IPC	40
Financial Reviews	5
Technical Reports	5
Completion Reports	5
Quarterly DWS Dam Safety Report	14

* The number of copies shall be subject to approval by the DWS.

8.1.5 Stage 6 – Close-Out

Fulfill and complete the project close-out including necessary documentation to facilitate effective completion, handover and operation of the project.

1. Inspect and verify the rectification of defects.
2. Receive, comment and approve relevant payment valuations and completion certificates.
3. Facilitate and/or procure final operations and maintenance manuals, guarantees and warranties.
4. Prepare and/or procure as-built drawings and documentation.
5. Conclude the final accounts where relevant.

8.2 Additional Services

The following services are additional to the normal services provided by the PSP unless specifically agreed otherwise between the PSP and the client. The agreement on the services and remuneration shall be in writing and should, if at all possible, be concluded before such services are rendered. Additional services shall be on an assignment basis.

8.2.1 Additional Services pertaining to all Stages of the Project

1. All services related to defining the scope of work that are normally paid for on time and cost basis.
2. Enquiries not directly concerned with the works and its subsequent utilization.
3. Valuation for purchase, sale or leasing of plant, equipment, material, systems, land or buildings or arranging for such valuation.

4. Making arrangements for way leaves, servitudes or expropriations.
5. Negotiating and arranging for the provision or diversion of services not forming part of the works.
6. Additional work in obtaining the formal approval of the appropriate Government Department or Public Authorities and Utilities, including the making of such revisions as may be required as a result of decisions of such Departments or Authorities arising out of changes in policy, undue delay, or other causes beyond the consulting engineer's control.
7. Additional work related to monitoring as required by any Government Departments or Authorities in order to facilitate regulatory approvals and certification (e.g. Mines Health and Safety Act 29 of 1996).
8. Topographical and environmental surveys, analyses, tests and site or foundation or other investigations, model tests, laboratory tests and analyses carried out on behalf of the client.
9. Setting out or staking out the works and indicating any boundary beacons and other reference marks.
10. Preparation of drawings for manufacture and installation or detailed checking of such for erection or installation fit.
11. Detailed inspection, reviewing and checking of designs and drawings not prepared by the consulting engineer and submitted by any contractor or potential contractor as alternative to those embodied in tender or similar documents prepared by the consulting engineer.
12. Travel/accommodation and travel time costs related to offsite inspection and testing of materials and plant during manufacture and/or prior to delivery to site.
13. Preparing and setting out particulars and calculations in a form required by any relevant authority.
14. Abnormal additional services by, or costs incurred by the consulting engineer due to the failure of a contractor or others to perform their required duties adequately and on time. For example:-
 - a. When the works Contract is extended beyond the awarded contract period due to poor contractor performance or any other unforeseen circumstances beyond the control of the consulting engineer, attendance at meetings and related inspections are considered as additional services. Alternatively, the portion of the fee due for the Contract Administration and Inspection Stage is adjusted pro-rata to the extended duration versus the originally expected duration.
 - b. Where more frequent inspections are required due to poor contractor performance or other extraneous factors beyond the control of the consulting engineer, these are normally considered to be additional services.

- c. Dealing with excessive, unreasonable and spurious claims by the Contractor.
15. Executing or arranging for the periodic monitoring and adjustment of the works, after final handover and completion of construction and commissioning, in order to optimize or maintain proper functioning of any process or system.
 16. Investigating or reporting on tariffs or charges leviable by or to the client.
 17. Advance ordering or reservation of materials and obtaining licenses and permits.
 18. Preparing detailed operating, operation and maintenance manuals.
 19. Additional services, duties and/or work resulting from project scope changes, alterations and/or instructions by client, or his duly authorized agents, requiring the consulting engineer to advise upon, review, adapt and/or alter his complete designs and/or any other documentation and/or change the services and/or duties. Such additional services are subject to agreement in writing between the consulting engineer and client prior to executing thereof.
 20. The frequency and extent of site administration and inspections that are required relative to the norm: the frequency and duration of works inspections will depend on many factors, such as the nature, complexity and duration of the project, site location, project programme, contractor competence, important elements of the works being enclosed or covered etc. the norm is that meetings and inspections should occur at an average frequency of once every 2 weeks with more frequent occurrences during critical stages of the works as described for Level 1 Construction Monitoring in 4.3.2. When the frequency of meetings and inspections exceeds this norm then such additional attendance at meetings and related inspections are considered as additional services.
 21. Preparing As-Builts drawings on designs done by others or related to alterations to existing works.
 22. Work and/or services related to targeted procurement that could entail, but is not necessarily limited to any or all of the following:
 - a. Incorporation of any targeted participation goals and training outcomes.
 - b. The measuring of key participation indicators.
 - c. The selection, appointment and administration of participation and;
 - d. Auditing compliance with the above by any contractors and/or professional consultant.
 23. Exceptional arrangements, communication, facilitation and agreements with any stakeholders other than the client and contractors appointed for the works on which the consulting engineer provides services.

24. Any other additional services, of whatever nature, specifically agreed to in writing between the consulting engineer and client.
25. Arranging forward cover for imported goods, materials or services.

9 Deliverables (As per ECSA board Notice 138 of 2015)

The following outputs/outcomes are expected from the PSP:-

Table 9.1: Deliverables

Deliverables per each stage	Due dates
Stage 1 – Inception • Inception Report. • Approved Professional Person (APP) and Professional Team appointment letter from the Dam Safety Office. • Agreed services and scope of work. • Signed agreement. • Report on project, site and functional requirements. • Schedule of required surveys, test, analyses, site and other investigations. • Schedule of consents and approvals and related lead times.	As per programme in the financial proposal submitted by the Professional Services Provider
Stage 3 – Design Development (Detail Design) • Design Criteria Memorandum • Approved Detailed Design Reports and drawings by the Approved Professional Person (APP). • Approved Design Report by the APP. • Bill of Quantities and Project Specifications. • Local and other authority submission drawings and reports. • License to Construct • Detailed estimates of construction costs.	As per programme in the financial proposal submitted by the Professional Services Provider

Stage 4 – Documentation and Procurement • Specifications. • Services co-ordination. • Working drawings (Construction drawings) • Budget construction cost. • Tender documentation. • Tender evaluation. • Tender recommendations. • Priced contract documentation.	As per programme in the financial proposal submitted by the Professional Services Provider
Stage 5 – Contract Administration and in section • Schedule of predicted cash flow. • Construction documentation. • Quarterly DWS Dam Safety Reports. • Drawings register. • Estimates for proposed variations. • Contract instructions. • Financial control reports. • Valuations for payment certificates. • Progressive and draft final account(s). • Practical completion and defects list. • All statutory certification and certificates of compliance as required by the local and other Statutory Authorities. • Construction Permit from DOL • Construction Completion Reports • Emergency Preparedness Plan • Operation and Maintenance Manual • License to Impound	As per programme in the financial proposal submitted by the Professional Services Provider
Stage 6 – Close-Out • Valuations for payment certificates. • Works and final completion list. • Operations and maintenance manuals, guarantees and warranties. • DWS Dam Safety reports. • As-built drawings and documentation. • Final accounts.	As per programme in the financial proposal submitted by the Professional Services Provider

Capacity Building and Training • Three positions for DWS Civil Engineering candidates trained for professional registration (during site supervision) and two Engineering Geologist Candidates trained for professional registration (During excavations and foundation mapping) and including 2 training workshops	As per programme in the financial proposal submitted by the Professional Services Provider
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10 Project Proposal

Bidders are required to submit, at their own cost, a Proposal (Bid), which consists of the following documents in a single sealed envelope:

- Standard Bidding Documents, as described under **Section 10.3**;
- A Technical Proposal, to demonstrate the capability of the bidder to perform the full scope presented in this Terms of Reference; and
- A Financial Proposal, to provide the cost to undertake this assignment.

Bidders should submit comprehensive Technical and Financial Proposals as this project is managed to avoid variation orders as far as possible. There is a limit to the amount of variation of the original Contract Amount that is permitted by National Treasury regulations; and any variation of scope or cost requires the approval of DWS regardless of extent. Bids that show a lack of understanding of the Scope of Services and that are not comprehensive enough will be evaluated accordingly.

10.1 Technical Proposal

10.1.1 Introduction

An introductory section should provide a brief overview of the bidding organization with particular emphasis on available capacity to perform this project.

The DWS reserves the right to second DWS officials to the team of the supervising engineer, PSP, as training, as shown on the site supervision organogram. The seconded personnel will be paid by the DWS.

10.1.2 Past Experience

Bidders are required to provide information on dam engineering related projects undertaken by the bidding organisation as outlined in **Table 10.2: Functionality Criteria** below. Specific details must be given to indicate the extent of each past dam engineering related project. The responsibility of the proposed Approved Professional Person (APP) and the Professional Team members (Task Leaders and Specialists) in these past projects must be specified. The Client organisation and contact details (name and telephone number), indicative professional fees and duration of the work programme must also be specified for each assignment.

10.1.3 Approach and Methodology

The Scope of Services indicates that this assignment should be undertaken in a modular manner, structured around clearly defined and related tasks.

Bidders are expected to provide a brief description of the approach, methodology and comments on the Terms of Reference (ToR), illustrating their understanding of the challenges of the Deliverables in Table 9.1, time frames, and proposed method to complete the project on programme. The bidder is required to provide a brief outline of the work to be undertaken, placing emphasis on the important or critical aspects of each task. Particular attention must be given to compliance with standing legislation.

Where the Scope of Services is silent on particular issues, bidders must be clear in stating which issues can be expected to arise during the each stage and which additional tasks may be necessary. These assumptions / additional tasks must be clearly indicated in the Technical Proposal.

Bidders are required to propose their own programme of work, preferably by means of a Gantt chart in MS Project, illustrating their understanding of the best way to organise the Project. Any representation used should clearly show the phases of the assignment, tasks within stages and, where necessary, sub-tasks. The work programme must also indicate the dates at which critical milestones can be reached and the critical path.

10.1.4 Team Capability and Availability

Bidders are required to provide a team of professionals with the necessary knowledge, experience and expertise to undertake and complete all the tasks contained in this Terms of Reference. A **project team organogram** must be presented indicating key positions such as APP and Professional Team members. Persons proposed for these positions must be identified and supported by CVs of one to two A4 pages each, which are to be included in an Appendix. Brief capability statements must be given for each designated team member, emphasising recent experience relevant to the task envisaged.

The availability of each designated team member for the expected duration of the assignment must be indicated by reference to limitations that may be placed by other known commitments. Information must also be given on the key support staff envisaged for the assignment, supported by brief CVs, also included in an Appendix. **CVs, with telephone numbers, must be signed and dated** to show commitment by each team member.

Company profiles and other commercial information may be **provided in a separate appendix** but will not be used for the evaluation of bids, so keep this section to a minimum.

10.2 Financial Proposal

The **Financial Proposal** is a stand-alone document that should provide comprehensive information on the cost of undertaking the all the deliverables required in table 9.1. The Financial Proposal must be labelled accordingly and be submitted in the same envelope with the Technical Proposal.

Bidders shall make provision in their Financial Proposal for all costs and expenses to undertake and complete the tasks described in the Scope of Services (Table 9.1) including provision for necessary **Contingencies** and bidders must add them to the Proposal.

The Financial Proposal shall include the following:

- **Breakdown of deliverables** and associated costs based on the allocation of resources to the various tasks, sub-tasks and other activities described in the Scope of Services;
- **Value Added Tax (VAT)** at 15% on the total estimated cost. VAT must only be added as a penultimate item before the total cost, right at the bottom of the table;
- **Escalation of professional fees** over the contract period must be built into the deliverable costs and may not be claimed separately later. However, escalation of professional fees beyond the contract period, if the contract is extended, must be stated separately as a percentage;
- **Monthly cash flow** for the contract period based on the work programme; and
- **Breakdown of professional fees** to show the amount earned each team member and the fees earned by **sub-contracting parties as indicated in Phase 2 Pre-Qualification**.

10.2.1 Cost of Deliverables

The cost of deliverables must be defined in the **Financial Proposal** as it is the intention to manage this Design and Construction Supervision based on deliverables in Table 9.1 and not on the number of hours worked, except for full-time site supervision which will be man-months claimed per approved time sheet. The person-hours, which also need to be provided, must therefore be linked to suitable deliverables that can be achieved on a regular basis to provide a smooth cash flow that meets the requirements of the PSP. Past experience has shown that, on average, most service providers cannot survive periods longer than three months without a payment. The expected deliverables have been presented in Table 9.1 and must be linked to professional fees as per section 10.2.3 below.

This information on the cost of deliverables will form the basis of the **Budget** and shall include the following:

- a) Professional time-based costs and disbursements for each task;
- b) Sub-consultants whose costs are part of this Bid;
- c) Provisional Sums provided by DWS (refer **10.2.3** below);
- d) Value Added Tax (VAT) at 15% on the total estimated cost (must appear on Summary Sheet);
- e) Cash flow and estimated total cost;
- f) Links to the proposed work programme; and
- g) Breakdown by study team member fees including fees earned by subcontracting parties.

10.2.2 Specialist Sub-contractors and Sub-consultants

Specialist sub-contractors and sub-consultants may need to be appointed by the DWS from time-to-time as the need arises during the implementation of the project.

Bidders are not required to provide an estimate in the Financial Proposal for the payment of these sub-contractors and sub-consultants. Bidders may, however, make provision for the management fees for these tasks.

DWS shall provide a **Provisional Sums** in the **Budget** for the payment of sub-contractors and sub-consultants, which will be paid through the **Contract** of the **appointed PSP**.

An Administrative Fee of 10% shall cover the handling by the PSP of the appointment, management and payment of any additional nominated specialist sub-contractors and sub-

10.2.3 Schedule of Tasks: Basis for Financial Proposal

Activity	Costs (R)
To be listed as per the individual stages shown in Table 9.1: Deliverables	
Provisional Amount	15 000 00-00
VAT (15%)	
Total	

The Supervising Engineer site offices, office equipment, and all computer hardware and software requirements to be specified in the Bill of Quantities (BoQ) for the dam construction and will be provided by the Main Contractor under the dam construction contract, and will become the property of DWS upon completion of construction.

Please note that payment will be made strictly as per the deliverables indicated to the PSP in the above **Table 9.1: Deliverables**.

The end of each stage will constitute a hold-point and the PSP will not proceed to the next stage unless the Employer's Agent has given written approval to that extent.

10.3 Evaluation Criteria phase

The Department of Water and Sanitation shall evaluate all proposals (bids) in terms of the latest Preferential Procurement Regulations. A copy of the Preferential Procurement Regulations 2017 can be downloaded from www.treasury.gov.za. In accordance with the preferential procurement regulations, submissions are adjudicated on the 80/20 points system and the specified evaluation criteria.

Bids will be evaluated in five (5) phases as per the Preferential Procurement Regulation, 2017, issued in terms of section 5 of the Preferential Procurement Policy Framework Act, Act number 5 of 2000 (PPPFA). The bidder scoring the highest points in phase 5 price and preference (**80/20**) will be recommended for award. Five (5) evaluation phases are as follows:.

- Phase 1: Mandatory requirements;
- Phase 2: Pre-qualification criteria;
- Phase 3: Functional / Technical evaluation;
- Phase 4: Administrative compliance; and
- Phase 5: Evaluation of Price and Preference Points.

10.3.1 Phase 1: Mandatory Requirements

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

No.	Criteria	Yes	No
1	Bidders must attend the compulsory physical briefing session and bidders name must appear on the attendance register.		
2	Lead Dam Engineer / Approved Professional Person (APP) must have active professional civil engineering registration with the Engineering Council of South Africa (ECSA) – Attach his/her proof of registration with ECSA and Curriculum Vitae (CV).		
3	Each Project team member must have active registration with ECSA- Attach his/her proof of registration with ECSA and comprehensive Curriculum Vitae (CV).		
4	A company must submit proof of valid and current professional indemnity insurance to the value of the bid price.		

10.3.2 Phase 2: Pre-qualification criteria

Prequalification qualifications to be as follows: to give effect to the Preferential Procurement Regulations, 2017 pertaining to the Preferential Procurement Policy Act (Act No. 5 of 2000), the prequalification criteria in terms of Regulation 9, will be applicable:

The successful tenderer must subcontract a minimum of 30% of the value of the contract to-

- (a) an EME or QSE which is at least 51% owned by black people;
- (b) an EME or QSE which is at least 51% owned by black people who are youth;
- (c) an EME or QSE which is at least 51% owned by black people who are women;
- (d) an EME or QSE which is at least 51% owned by black people with disabilities;
- (e) an EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships;
- (f) a cooperative which is at least 51% owned by black people;
- (g) an EME or QSE which is at least 51% owned by black people who are military veterans;

Only bidders who do have a 30% sub-contracting agreement will be considered for this bid. Verification documentation to be submitted to confirm 30% sub-contracting compliance requirements (failure to submit the supporting documents, the Bidder will be disqualified).

- Sub-contractor's Valid Sworn Affidavit
- The Sub-contractor's proof of Central Supplier Database Registration
- Tax compliance status pin code (to be verified through CSD or SARS)
- Pro-forma sub-contracting agreement signed by both parties

10.3.3 Phase 3: Functionality / Technical Evaluation

Bidders must score at least 70% for functionality to qualify for Phase 5 of adjudication. Bids that score less than 70% will be disqualified as technically incompetent and unacceptable. Bidders who fail to obtain a minimum score for each criterion will be disqualified.

The weights that are allocated to each functionality criterion are as follows:

Definition of values: 0= Non-responsive 1= Very Poor 2 = Poor 3 = Average 4 = Good 5 = Excellent

Table 10.2: Functionality Criteria

Functionality Evaluation Criteria	Points value	Weighting Points Awarded	Bidder Score
Past Experience: (In dam engineering ONLY) a) The experience of the company to be indicated by the tender and a company profile must be provided of each member of a joint ventures or consortium. NOTE: <i>Number of successfully completed dam engineering projects as per the scope of service. Completion certificates of completed projects must be submitted. In the event of projects being undertaken appointment or reference letters should be provided.</i>		10	
10 projects or more	5		
7 to 9 projects	4		
5 to 6 projects	3		
4 projects	2		
1 to 3 projects	1		
0 projects	0		

Functionality Evaluation Criteria	Points value	Weighting Points Awarded	Bidder Score
Methodology: The methodology provided by bidders will be evaluated according to the following criteria: a) Detailed method statement for each deliverable in Table 9.1 b) The critical aspects of deliverable are emphasised c) The expected challenges associated with each deliverable are highlighted d) A detailed work programme for the deliverables in Table 9.1 is provided		20	
All 4 criteria are adequately addressed in Technical Proposal	4		
3 criteria are adequately addressed in Technical Proposal	3		
2 criteria are adequately addressed in Technical Proposal	2		
1 criterion is adequately addressed in Technical Proposal	1		
No criteria are adequately addressed in Technical Proposal	0		
Team Capability: Team Leader (Approved Professional Person) The Team Leader (Approved Professional Person) needs to comply with the following criteria: a) Must be registered as an APP with ECSA for category III dam or meet all the requirements to register as an APP for category III dam with ECSA		35	
Already registered as APP with ECSA for category III dam for 10 years or more	5		
Already registered as APP with ECSA for category III dam for 6 to 9 years	4		
Already registered as APP with ECSA for category III dam for 0 to 5 years	3		
Meet all the requirements to register as an APP with ECSA for category III dam	2		
Does not meet all the requirements to register as an APP with ECSA for category III dam	1		

Functionality Evaluation Criteria					Points value	Weighting Points Awarded	Bidder Score
Team Capability: Professional Team members						25	
Minimum members	Professional	Team	Warm body appointed (yes or no)	Professional Certificate attached (Yes or no)			
Hydraulic Engineer							
Structural Engineer							
Electrical Engineer							
Mechanical Engineer							
Environmental Scientist (Engineer)							
Hydrological Scientist (Engineer)							
For total of 12 Yeses (affirmatives)					5		
For total of 9, 10 and 11 Yeses (affirmatives)					4		
For total of 5, 6, 7 and 8 Yeses (affirmatives)					3		
For total of 1, 2, 3 and 4 Yeses (affirmatives)					2		
For 0 Yeses (affirmatives)					1		

Capacity Building and Training:					10	
Provide clear proposals on capacity building and training as per Table 9.1, which includes secondment of DWS officials and presentation of training workshops. Topics for workshops should also be provided.						
Assessment shall be as follows:						
When provision is made for DWS Civil Engineering candidate Engineers:						
Provision for	3 DWS Civil	2 DWS Civil	1 DWS Civil	0 DWS Civil		
Points	4	3	2	1		
When provision is made for DWS Geological Engineering candidate Engineers:						
Provision for	2 DWS Geo	1 DWS Geo	0 DWS Geo			
Points	3	2	1			
When provision is made for Workshops :						
Provision for	2 Workshops	1 Workshop	0 Workshop			
Points	3	2	1			
For total 10 points					5	
For total 9 and 8 points					4	
For total 7 and 6 points					3	
For total 5 and 4 points					2	
For total 3 points					1	
TOTAL					100	

10.3.4 Phase 4: Administrative Compliance

Table 10.1: Administrative Criteria

No	Criteria	Yes	No
1	Bidders must be registered with National Treasury's Central Supplier Database (CSD). Proof in the form of print-out from CSD is required.		
2	Tax compliance with SARS (verified through CSD and SARS).		
3	Bidders must complete, sign and submit forms SBD 1, SBD 3.3, SBD 4 and SBD 6.1.		

10.3.5 Phase 5: Evaluation of Price & Preference Points claimed

The bidder scoring the highest points in phase 5 price and preference (8020) will recommend for award.

Attach a valid B-BBEE certificate or copies thereof. Tenderers who qualify as Exempted Micro Enterprises (EME) may submit a Sworn Affidavit signed by the EME representative and attested by a Commissioner of Oaths confirming its annual total revenue of R10 million or less and indicating B-BBEE level Contributor. Alternatively, the bidder may submit a valid B-BBEE Certificate for Exempted Micro Enterprises issued by the Companies & Intellectual Property Commission (CIPC) on behalf of the Department of Trade and Industry on 24 April 2018.

In the case of Qualifying Small Enterprises (QSE), if the bidding entity is more than 51% black owned, the bidder may submit a valid Sworn Affidavit, signed by the QSE representative and attested by a Commissioner of Oaths (in line with the Justice of the Peace and Commissioner of Oaths Act, 1963). If the QSE is less than 51% black owned, then the bidding entity will be required to provide an original and valid BBEE Certificate or copies thereof.

Only B-BBEE Status Level Verification Certificates issued by agencies accredited by SANAS will be accepted. In case of a trust, consortium or joint venture, all bidders must submit a valid consolidated B-BBEE status Level Verification Certificate issued by an agency accredited by SANAS or copies thereof.

A maximum of **eighty (80) points** are allocated for **Price** on the following basis:

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

Where:

P_s = Points scored for comparative price of the bid under consideration

P_t = Comparative price of bid under consideration

P_{min} = Comparative price of lowest acceptable bid

Preference (B-BBEE Status Level of Contribution)

In terms of Regulation 5(2) and 6(2) of the Preferential Procurement Regulations, preference points are awarded to a bidder for attaining B-BBEE status level of contribution in accordance with **Table 10.3** below.

• **Table 10.3: B-BBEE Status Levels of Contributor**

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

Bidders must submit their original valid **B-BBEE status level verification certificate** or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.

Scores obtained for Price and B-BBEE status level are combined to obtain the overall score for each bid. The Functionality score is not factored in the final score, but is only used for screening bids to qualify for the last stage of evaluation.

1 Briefing Session and Contact Details

A compulsory on-site / physical briefing session should be attended by bidders.

- To attend to any specific questions to this Terms of Reference, service providers are required to submit formal enquiries directly to the Project Manager and the Supply Chain Management office, via email.
- Service Providers may submit questions and the Department will respond to such questions and upload all questions and answers on the departmental website www.dwa.gov.za.

The contact persons listed in Table 11.1 below will attend to all questions.

The **Directorate: Civil Engineering** working together with the **Directorate: Supply Chain Management** is administering this Terms of Reference and invitation to bid. The contact persons for enquiries about this assignment are as given in **Table 11.1** below.

• **Table 11.1: Contact Details**

Contact Person		Postal Address
For Technical Matters	For Bid Administrative Matters	
Mr. Burger Tielman / Mr. Ezekiel Koadibane Email: BurgerT@dws.gov.za KoadibaneE@dws.gov.za Cell: 060 554 9450/ 012 336 8216	Supply Chain Management E-mail: bidenquiries@dws.gov.za Tel: 012 336 7780/ 6562/ 8151/ 7596	Private Bag X 313 PRETORIA 0001

NOTE: Email correspondence

