

Approved 2019/22
Eg.



public works
& infrastructure

Department:
Public Works and Infrastructure
REPUBLIC OF SOUTH AFRICA

TENDER: HP22/007GS

RETURNABLE DOCUMENTS

AND

SPECIFICATIONS

FOR

**APPOINTMENT OF TRAINING SERVICE PROVIDER
FOR THE PROVISION OF TRAINING TO
CONTRACTORS IN NQF 4 SUPERVISION OF
CONSTRUCTION PROCESSES (ID65949) ON THE
EPWP VUK'UPHILE LEARNERSHIP PROGRAMME
FOR THE EASTERN CAPE DEPARTMENT OF HUMAN
SETTLEMENT**

**YOU ARE HEREBY INVITED TO BID TO THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA**

PLEASE TAKE NOTE

BID NUMBER: HP22/007GS

CLOSING TIME: SHARP 11:00 CLOSING DATE: 15/11/2022

***BIDS RECEIVED AFTER THE CLOSING TIME AND DATE ARE LATE AND WILL, AS A RULE NOT BE
ACCEPTED FOR CONSIDERATION***

BID DOCUMENTS MAY BE POSTED TO

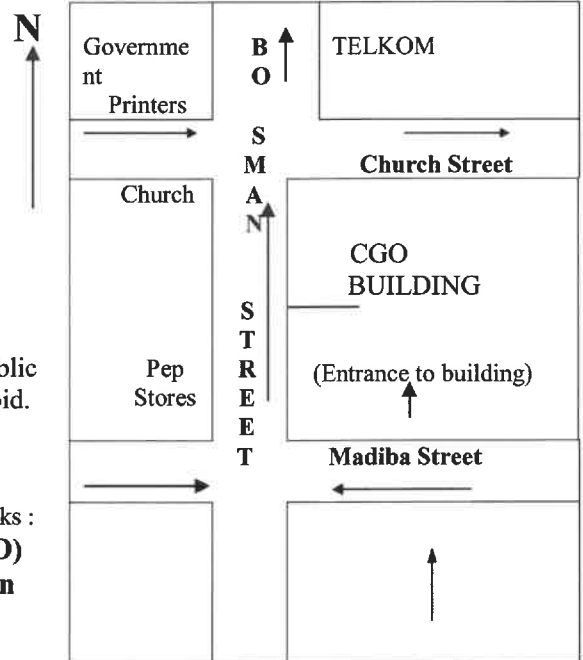
**DIRECTOR-GENERAL
Department of Public Works
Private Bag X65
PRETORIA
0001**

**ATTENTION: TENDER SECTION:
Central Government office: Room 121**

Bid documents that are posted must reach the Department of Public
Works: Tender section, before 08:00 on the closing date of the bid.

OR

The bid documents may be deposited at the Department of Public Works :
Head Office: **Room 121, Central Government Office (CGO)**
**c/o Bosman and Vermeulen Street.(Entrance Vermeulen
Street) Pretoria,0001**



The Head Office of the Department of Public Works is open **Mondays to Fridays**
07:30 – 12:30 / 13:30 – 15:30. However, if the bid is late, it will, as a rule not be accepted
for consideration.

Bidders should ensure that bids are delivered timeously to the correct address.

SUBMIT ALL BIDS ON THE OFFICIAL FORMS - DO NOT RETYPE.

Bids by telegram, facsimile or other similar apparatus will not be accepted for consideration.

**SUBMIT EACH BID IN A SEPARATE SEALED ENVELOPE,
INDICATING THE TENDER NR, CLOSING DATE AND YOUR COMPANY NAME**

The Government Tender Bulletin is available on the Internet on the following web sites:

1. <http://www.treasury.gov.za>
2. <http://www.info.gov.za/documents/tenders/index.htm>

CONTENTS OF BID DOCUMENT

Project title:	Appointment of Training Service Provider for the provision of Training to Contractors in NQF 4 Supervision of Construction Processes (ID65949) on the EPWP Vuk'uphile Learnership Programme for the Eastern Cape Department of Human Settlement		
Project Leader:	Osborne Neluvhalani	Bid / no:	HP22/007GS

SECTIONS IN BID DOCUMENT

Bidders are to ensure that they have received all pages of the bid document, which consists of the following sections:

Bid Document Name:	Number of Pages:
Cover page	1 Page
Content page	1 Page
Map of closing address	1 Page
Bid Form (PA-32)	3 Pages
PA-04(GS): Notice and invitation to tender	4 Pages
PA-09 (GS): List of returnable document	1 Page
PA-10: General Conditions of contract (GCC)	10 Pages
PA-11: Bidder's Disclosure	3 Pages
PA-15.1 Resolution of Board of Directors	2 Pages
PA-15.2: Resolution of Board of Directors to enter into Consortia or Joint Ventures	2 Pages
PA-15.3: Special Resolution of Consortia or Joint Venture	3 Pages
PA-16 : Form for Claiming BBBEE points	6 Pages
PA-40: Declaration of designated groups for preferential procurement	2 Pages
Terms of reference	22 Pages
Annexure A Schedule of Prices	3 Pages
Annexure B Pricing Instruction	4 Pages
Special Conditions of a contract	14 Pages

PA 32: INVITATION TO BID PART A

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)				
BID NUMBER:	HP22/007GS	CLOSING DATE:	15 November 2022	CLOSING TIME: 11:00AM
DESCRIPTION	Appointment of Training Service Provider for the provision of Training to Contractors in NQF 4 Supervision of Construction Processes (ID65949) on the EPWP Vuk'uphile Learnership Programme for the Eastern Cape Department of Human Settlement			
THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (DPW04.1 GS or DPW04.2 GS).				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)				
Department of Public works: CGO Building: Bosman and Madiba ST				
Pretoria Central: Reception area				
OR POSTED TO:				
Attention to Procurement Office: Bid Admin: Department of Public Works: CGO Building: Bosman and Madiba ST: Private bag x65:				
Pretoria Central:0001				
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				
	TCS PIN:		OR	CSD No:
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE (TICK APPLICABLE BOX)	☐ Yes ☐ No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT ☐ Yes ☐ No	
IF YES, WHO WAS THE CERTIFICATE ISSUED BY?				
AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA) AND NAME THE APPLICABLE IN THE TICK BOX	☐	AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA)		
	☐	A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN ACCREDITATION SYSTEM (SANAS)		
	☐	A REGISTERED AUDITOR DETAILS: NAME:		
	☐	REGISTRATION NUMBER: BUSINESS ADDRESS:		

PA-32: Invitation to Bid

TELEPHONE NUMBER:.....
E-MAIL ADDRESS:.....

[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/SWORN AFFIDAVIT(FOR EMEs& QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	☐ 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 BELOW]
SIGNATURE OF BIDDER		DATE	
CAPACITY UNDER WHICH THIS BID IS SIGNED (Attach proof of authority to sign this bid; e.g. resolution of directors, etc.)			

TOTAL NUMBER OF ITEMS OFFERED		TOTAL BID PRICE ('ALL APPLICABLE TAXES)	
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:		TECHNICAL INFORMATION MAY BE DIRECTED TO:	
DEPARTMENT/ PUBLIC ENTITY	DPWI	CONTACT PERSON	Osborne Neluvhalani
CONTACT PERSON	Sindile Thobela	TELEPHONE NUMBER	0124921449/0829744632
TELEPHONE NUMBER	012 406 1897	FACSIMILE NUMBER	
FACSIMILE NUMBER		E-MAIL ADDRESS	osborne.neluvhalani@dpw.gov
E-MAIL ADDRESS	Sindile.thobela@dpw.gov.za		v.za

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 ONLINE
1.3. BIDDERS MUST REGISTER ON THE CENTRAL SUPPLIER DATABASE (CSD) TO UPLOAD MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS; AND BANKING INFORMATION FOR VERIFICATION PURPOSES). B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION.
1.4. WHERE A BIDDER IS NOT REGISTERED ON THE CSD, MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS MAY NOT BE SUBMITTED WITH THE BID DOCUMENTATION. B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION.
1.5. 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 LEGISLATION OR SPECIAL CONDITIONS OF CONTRACT.
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 VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.
2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS TOGETHER WITH THE BID.
2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A

SEPARATE PROOF OF TCS / 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.

3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

- 3.1. IS THE BIDDER A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? ☐ YES ☐ NO
- 3.2. DOES THE BIDDER HAVE A BRANCH IN THE RSA? ☐ YES ☐ NO
- 3.3. DOES THE BIDDER HAVE A PERMANENT ESTABLISHMENT IN THE RSA? ☐ YES ☐ NO
- 3.4. DOES THE BIDDER HAVE ANY SOURCE OF INCOME IN THE RSA? ☐ YES ☐ NO
- IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN, IT IS NOT A REQUIREMENT TO OBTAIN A TAX COMPLIANCE STATUS / TAX COMPLIANCE SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.**

NB: FAILURE TO PROVIDE ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID. AN ORIGINAL OR CERTIFIED COPY OF THE B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE.

Note Well:

- a) In respect of non VAT vendors the bidders may not increase the bid price under Section 67(1) of the Value Added Tax Act of 1991 where the relevant transaction would become subject to VAT by reason of the turnover threshold being exceeded and the bidder becomes liable for VAT.
- b) **All delivery costs must be included in the bid price, for delivery at the prescribed destination.**
- c) The price that appears on this form is the one that will be considered for acceptance as **a firm and final offer**.
- d) The grand total in the pricing schedule(s), inclusive of VAT, attached to the bid offer must correlate and be transferred to this form (PA32).
- e) Where there are inconsistencies between the grand total price offer in the pricing schedule(s) and the PA32 price offer, the price offer on the PA32 shall prevail and deemed to be firm and final. No further correspondence shall be entered into in this regard.

¹ All applicable taxes¹ includes value- added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies

PA-04 (GS): NOTICE AND INVITATION TO BID

THE DEPARTMENT OF PUBLIC WORKS INVITES BIDDERS FOR THE PROVISION OF Appointment of Training Service Provider for the provision of Training to Contractors in NQF 4 Supervision of Construction Processes (ID65949) on the EPWP Vuk'uphile Learnership Programme for the Eastern Cape Department of Human Settlement

Project title:	Appointment of Training Service Provider for the provision of Training to Contractors in NQF 4 Supervision of Construction Processes (ID65949) on the EPWP Vuk'uphile Learnership Programme for the Eastern Cape Department of Human Settlement
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Bid no:	HP22/007GS		
Advertising date:	20 October 2022	Closing date:	15 November 2022
Closing time:	11:00am	Validity period:	60 days

Only bidders who are responsive to the following responsiveness criteria are eligible to submit bids:

1.	☒	Bid offer must be properly received on the bid closing date and time specified on the invitation, fully completed and signed in ink.
2.	☐	Submission of other compulsory returnable schedules / documents as per (PA-09 (GS)): List of returnable documents.
3.	☐	Submission of (PA-16): Preference points claim form in terms of the Preferential Procurement Regulations 2017.
4.	☐	Compliance to Local Production and Content requirements as per PA36 and Annexure C
5.	☒	Registration on National Treasury's Central Supplier Database (CSD)
6.	☐	Compliance with Pre-qualification criteria for Preferential Procurement
7.	☒	Use of correction fluid is prohibited
8.	☒	Submission of CETA Accreditation letter for qualification 65949 Supervision of Construction Processes NQF 4 CETA for Learnership no 05Q050093362184 for the Company/Bidder
9.	☒	Submission of Curriculum Vitae for all project staff namely Facilitator(s), Assessor(s), Moderator(s) and Project Manager
10.	☒	Submission of sworn affidavit indicating that should the bidder change the personnel during implementation, the replacement should have the same or higher qualifications and experience as the one originally submitted
11.	☒	Submission of proof of ETDP SETA qualification for Facilitator(s), Assessor(s) and Moderator(s) that allows them to facilitate, assess or moderate on qualification 65949 Supervision of Construction Processes NQF 4.
12.	☒	Submission of annexure B (Pricing Schedule)
13.	☒	Attendance of compulsory briefing session
14.	☒	submission of BBBEE certificate or sworn affidavit in case of EME or QSE

Indicate administrative requirements applicable for this tender. Tenderers may be required to submit the below documents where applicable.

1	☒	Any correction to be initialled by the person authorised to sign the tender documentation as per PA 15.1 or PA 15.2 resolution of board/s of directors / or PA15.3 Special Resolution of Consortia or JV's .
2	☒	Submission of applicable (PA-15.1, PA-15.2, PA-15.3): Resolution by the legal entity, or consortium / joint venture, authorising a dedicated person(s) to sign documents on behalf of the firm / consortium / joint venture.
3	☒	Submission of (PA-11): Declaration of Interest and Tenderer's Past Supply Chain Management Practices.
4	☒	Submission of (PA-29): Certificate of Independent Bid Determination.
5	☒	Submission of (PA 40): Declaration of Designated Groups for Preferential Procurement.

6	☒	Submission of proof of Registration on National Treasury's Central Supplier Database (CSD).
7	☐	Submission of record of attending compulsory virtual bid clarification / site inspection meeting.
8	☒	Submission of (PA16) preference point claim form in form interms of the preferential procurement regulations 2017
9	☐	
10	☐	<i>Specify other responsiveness criteria</i>
11	☐	<i>Specify other responsiveness criteria</i>
12	☐	<i>Specify other responsiveness criteria</i>

Tenderer must comply with the Pre-qualification criteria for Preferential Procurement listed below

☒	A tenderer having stipulated minimum B-BBEE status level of contributor: ☒ Level 1 or ☒ Level 2 or ☐ Level 3
☐	An EME or QSE
☐	A tenderer subcontracting a minimum of 30% to: ☐ An EME or QSE which is at least 51% owned by black people ☐ An EME or QSE which is at least 51% owned by black people who are youth ☐ An EME or QSE which is at least 51% owned by black people who are women ☐ An EME or QSE which is at least 51% owned by black people with disabilities ☐ An EME or QSE which is at least 51% owned by black people living in rural or underdeveloped areas or townships ☐ A co-operative which is at least 51% owned by black people ☐ An EME or QSE which is at least 51% owned by black people who are Military veterans ☐ An EME or QSE;

This bid will be evaluated according to the preferential procurement model in the PPPFA:
(Tick applicable preference point scoring system)

☒ 80/20 Preference points scoring system	☐ 90/10 Preference points scoring system	☐ Either 80/20 or 90/10 Preference points scoring system
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In case where below/above R 50 000 000 is selected, the lowest acceptable tender will be used to determine the applicable preference point system.

Note: Functionality will be applied as a prequalification criterion. Such criteria is used to establish minimum requirements where after bids will be evaluated solely on the basis of price and preference.

Minimum functionality score to qualify for further evaluation:	60
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Functionality criteria:	Weighting factor:
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A) PROJECT MANAGER POST QUALIFICATION EXPERIENCE WITHIN THE SKILLS DEVELOPMENT INDUSTRY OR BUILT ENVIRONMENT INDUSTRY 5 Points = 61 months and above relevant experience; 4 Points = 49 to 60 months relevant experience; 3 Points = 37 to 48 months relevant experience; 2 Points = 25 to 36 months relevant experience; 1 Point = 0 to 24 months relevant experience;	15
B) MODERATOR POST QUALIFICATION EXPERIENCE WITHIN THE SKILLS DEVELOPMENT INDUSTRY AS A ETDP SETA QUALIFIED MODERATOR 5 Points = 61 months and above relevant experience; 4 Points = 49 to 60 months relevant experience; 3 Points = 37 to 48 months relevant experience; 2 Points = 25 to 36 months relevant experience; 1 Point = 0 to 24 months relevant experience;	15
C) ASSESSOR POST QUALIFICATION EXPERIENCE WITHIN THE SKILLS DEVELOPMENT INDUSTRY AS A ETDP SETA QUALIFIED ASSESSOR 5 Points = 61 months and above relevant experience; 4 Points = 49 to 60 months relevant experience; 3 Points = 37 to 48 months relevant experience; 2 Points = 25 to 36 months relevant experience; 1 Point = 0 to 24 months relevant experience;	15
D) FACILITATOR POST QUALIFICATION EXPERIENCE WITHIN THE SKILLS DEVELOPMENT INDUSTRY AS A ETDP SETA QUALIFIED FACILITATOR 5 Points = 61 months and above relevant experience; 4 Points = 49 to 60 months relevant experience; 3 Points = 37 to 48 months relevant experience; 2 Points = 25 to 36 months relevant experience; 1 Point = 0 to 24 months relevant experience; NB: If any of the personnel listed above are not in the fulltime employment of the Bidder, the Bidder must submit a sworn affidavit stating that 'These or similarly qualified personnel will be employed should the bid be awarded to such bidder'	25

E) DETAILED APPROACH TO TRAINING DEMONSTRATING A COMPREHENSIVE UNDERSTANDING OF THE FOLLOWING COMPONENTS 1. Programme of activities, 2. CETA accreditation system, 3 Project monitoring and evaluation system, 4. Learner assessment programme, and 5. Training provider project organisational structure, that is specific to this Project 5. Points= Provided five of the above listed items 4 points= Provided four of the above listed items 3 Points= Provided three of the above listed items 2 Points= Provided two of the above listed items 1 Point= provided one of the above listed items 0 Point= Did not provide any of the above listed items	30
Total	100 Points

Subject to sub-regulation 6(2) and /or 7(2), points must be awarded to a tenderer for attaining B-BBEE status level contributor 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

- The points scored by a tenderer in respect of the level of BBEE contribution contemplated in sub regulation 6(2) and 7(2) must be added to the points scored for price as calculated in accordance with sub regulation 6(1) and 7(1) respectively
- Subject to regulation 11(1), the contract must be awarded to the tenderer who scores the highest total number of points.
- A contract may be awarded to a tenderer that did not score the highest total number of points, only in accordance with section 2 (1) (f) of the Act

COLLECTION OF BID DOCUMENTS:

- ☒ Bid documents are available for free download on e-Tender portal www.etenders.gov.za

- ☒ Alternatively; Bid documents may be collected during working hours at the following address Department of Public Works, CGO Building, Bosman and Madiba Street, Pretoria CBD, Room number 121.. A non-refundable bid deposit of R 100.00 is payable, (Cash only) is required on collection of the bid documents.
- ☒ A **compulsory** pre bid meeting with representatives of the Department of Public Works will take place at a) Department of Public Works (Head Office) CGO Building, Bosman and Madiba Street . on 31st October 2022 starting at 10:00 AM to 12:00 PM. Venue CGO Boardroom. b) Mthatha Regional Office, PRD, Southerland Street, Auditorium, 1st floor on 02 November 2022 at 10h00. C) Port Elizabeth (Gqeberha) Regional Office on 04 November 2022 at 10h00. *(if applicable)*

ENQUIRIES RELATED TO BID DOCUMENTS MAY BE ADDRESSED TO:

DPW Project Leader:	Osborne Neluvhalani	Telephone no:	012 492 1449
Cell no:	082 9744632	Fax no:	n/a
E-mail:	osborne.neluvhalani@dpw.gov.za		

DEPOSIT / RETURN OF BID DOCUMENTS:

Telegraphic, telephonic, telex, facsimile, electronic and / or late tenders will not be accepted.

Requirements for sealing, addressing, delivery, opening and assessment of tenders are stated in the bid document.

All tenders must be submitted on the official forms –

BID DOCUMENTS MAY BE POSTED TO: THE DIRECTOR -GENERAL DEPARTMENT OF PUBLIC WORKS PRIVATE BAG X 65 Pretoria 0001 ATTENTION: PROCUREMENT SECTION: ROOM 121 Tender Box at the Reception Area POSTED TENDERS MUST BE RECEIVED PRIOR CLOSING DATE AND TIME AT 11H00 BY THE DEPARTMENT	OR	DEPOSITED IN THE TENDER BOX AT: Department of Public Works Central Government Offices Corner of Bosman & Madiba streets Room 121
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COMPILED BY:

Osborne Neluvhalani		Project Manager	20 October 2022
Name of Project Leader	Signature	Capacity	Date

PA-09 (GS): LIST OF RETURNABLE DOCUMENTS

Project title:	Appointment of Training Service Provider for the provision of Training to Contractors in NQF 4 Supervision of Construction Processes (ID65949) on the EPWP Vuk'uphile Learnership Programme for the Eastern Cape Department of Human Settlement		
Project Leader:	Osborne Neluvhalani	Bid / Quote no:	HP22/007GS

1. THE BIDDER MUST COMPLETE THE FOLLOWING RETURNABLE DOCUMENTS:

(Bidders may use the "Returnable document" column to confirm documents have been completed and returned by inserting a tick)

Bid Document Name:	Number of Pages:	Returnable document:
Cover page	1 Page	☐
Content page	1 Page	☐
Map of closing address	1 Page	☐
Bid Form (PA-32)	3 Pages	☐
PA-04(GS): Notice and invitation to tender	4 Pages	☐
PA-09 (GS): List of returnable document	1 Page	☐
PA-10: General Conditions of contract (GCC)	10 Pages	☐
PA-11: Bidder's Disclosure	3 Pages	☐
PA-15.1 Resolution of Board of Directors	2 Pages	☐
PA-15.2: Resolution of Board of Directors to enter into Consortia or Joint Ventures	2 Pages	☐
PA-15.3: Special Resolution of Consortia or Joint Venture	3 Pages	☐
PA-16 : Form for Claiming BBBEE points	6 Pages	☐
PA-40: Declaration of designated groups for preferential procurement	2 Pages	☐
Terms of reference	22 Pages	☐
Annexure A Schedule of Prices	3 Pages	☐
Annexure B Price Instruction	4 Pages	☐
Special Conditions of a contract	14 Pages	☐

Name of Bidder	Signature	Date

PA-10: GENERAL CONDITIONS OF CONTRACT (GCC)

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

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21. Delays in the supplier's performance
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24. Dumping and countervailing duties
25. Force Majeure
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27. Settlement of disputes
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General Conditions of Contract

1. Definitions

1. The following terms shall be interpreted as indicated:

- 1.1. **"Closing time"** means the date and hour specified in the bidding documents for the receipt of bids.
- 1.2. **"Contract"** means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- 1.3. **"Contract price"** means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
- 1.4. **"Corrupt practice"** means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
- 1.5. **"Countervailing duties"** are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
- 1.6. **"Country of origin"** means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 1.7. **"Day"** means calendar day.
- 1.8. **"Delivery"** means delivery in compliance of the conditions of the contract or order.
- 1.9. **"Delivery ex stock"** means immediate delivery directly from stock actually on hand.
- 1.10. **"Delivery into consignees store or to his site"** means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
- 1.11. **"Dumping"** occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
- 1.12. **"Force majeure"** means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13. **"Fraudulent practice"** means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14. **"GCC"** means the General Conditions of Contract.
- 1.15. **"Goods"** means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.

- 1.16. **"Imported content"** means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17. **"Local content"** means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18. **"Manufacture"** means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19. **"Order"** means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20. **"Project site"** where applicable, means the place indicated in bidding documents.
- 1.21. **"Purchaser"** means the organization purchasing the goods.
- 1.22. **"Republic"** means the Republic of South Africa.
- 1.23. **"SCC"** means the Special Conditions of Contract.
- 1.24. **"Services"** means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.
- 1.25. **"Written" or "in writing"** means handwritten in ink or any form of electronic or mechanical writing.

2. Application

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

3. General

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

4. Standards

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

5. Use of contract documents and information; inspection.

- 5.1. The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be

made in confidence and shall extend only so far as may be necessary for purposes of such performance.

- 5.2. The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3. Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
- 5.4. The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

6. Patent rights

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

7. Performance security

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

8. Inspections, tests and analyses

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

- 8.6. Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7. Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.
- 8.8. The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

9. Packing

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

10. Delivery and documents

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

11. Insurance

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

12. Transportation

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

13. Incidental services

- 13.1. The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
 - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
 - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
 - (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and

- (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

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

14. Spare parts

- 14.1. As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:
 - (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
 - (b) in the event of termination of production of the spare parts:
 - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
 - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

15. Warranty

- 15.1. The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.
- 15.2. This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.
- 15.3. The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 15.4. Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 15.5. If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

16. Payment

- 16.1. The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2. The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon 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 this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

21. Delays in the supplier's performance

- 21.1. Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2. If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3. No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4. The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.
- 21.5. Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.
- 21.6. Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without 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 of not exceeding 10 years.
- 23.4 If a purchaser intends imposing a restriction on a supplier or any person with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide 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 on any person by the Accounting Officer/ Authority will, at the discretion of the Accounting Officer/ Authority, also be applicable to any 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 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 the 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 ten years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its 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 the 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 contract unless they Otherwise agree; and
- (b) the purchaser shall pay the supplier any monies due the supplier.

28. Limitation of Liability

- 28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;
- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss 12 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

33. National Industrial Participation Programme (NIPP)

- 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.

Name of Bidder	Signature	Date

PA-11: 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 interest (1) 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

(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.

- 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:

.....
.....

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.

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.

- 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

This form has been aligned with SBD4

Any reference to words "Bid" or Bidder" herein and/or in any other documentation shall be construed to have the same meaning as the words "Tender" or "Tenderer".

For External Use

Effective date 5 July 2022

Page 3 of 3
Version: 2022/03

PA-15.1: RESOLUTION OF BOARD OF DIRECTORS

RESOLUTION of a meeting of the Board of *Directors / Members / Partners of:

(legally correct full name and registration number, if applicable, of the Enterprise)

Held at _____ (place)

on _____ (date)

RESOLVED that:

1. The Enterprise submits a Bid / Tender to the Department of Public Works in respect of the following project:

(project description as per Bid / Tender Document)

Bid / Tender Number: _____ (Bid / Tender Number as per Bid / Tender Document)

2. *Mr/Mrs/Ms: _____

in *his/her Capacity as: _____ (Position in the Enterprise)

and who will sign as follows: _____

be, and is hereby, authorised to sign the Bid / Tender, and any and all other documents and/or correspondence in connection with and relating to the Bid / Tender, as well as to sign any Contract, and any and all documentation, resulting from the award of the Bid / Tender to the Enterprise mentioned above.

	Name	Capacity	Signature
1			
2			
3			
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The bidding enterprise hereby absolves the Department of Public Works from any liability whatsoever that may arise as a result of this document being signed.

Note:

1. * Delete which is not applicable.
2. **NB:** This resolution must, where possible, be signed by all the Directors / Members / Partners of the Bidding Enterprise.
3. In the event that paragraph 2 cannot be complied with, the resolution must be signed by Directors / Members / Partners holding a majority of the shares / ownership of the Bidding Enterprise (attach proof of shareholding / ownership hereto).
4. Directors / Members / Partners of the Bidding Enterprise may alternatively appoint a person to sign this document on behalf of the Bidding Enterprise, which person must be so authorized by way of a duly completed power of attorney, signed by the Directors / Members / Partners holding a majority of the shares / ownership of the Bidding Enterprise (proof of shareholding / ownership and power of attorney are to be attached hereto).
5. Should the number of Directors / Members / Partners exceed the space available above, additional names and signatures must be supplied on a separate page.

ENTERPRISE STAMP

**PA-15.2: RESOLUTION OF BOARD OF DIRECTORS TO ENTER INTO CONSORTIA OR JOINT VENTURES****RESOLUTION** of a meeting of the Board of *Directors / Members / Partners of:

(Legally correct full name and registration number, if applicable, of the Enterprise)

Held at _____ (place)

on _____ (date)

RESOLVED that:

1. The Enterprise submits a Bid /Tender, in consortium/Joint Venture with the following Enterprises:

(List all the legally correct full names and registration numbers, if applicable, of the Enterprises forming the Consortium/Joint Venture)

to the Department of Public Works in respect of the following project:

(Project description as per Bid /Tender Document)

Bid / Tender Number: _____ (Bid / Tender Number as per Bid / Tender Document)

2. *Mr/Mrs/Ms: _____

in *his/her Capacity as: _____ (Position in the Enterprise)

and who will sign as follows: _____

be, and is hereby, authorised to sign a consortium/joint venture agreement with the parties listed under item 1 above, and any and all other documents and/or correspondence in connection with and relating to the consortium/joint venture, in respect of the project described under item 1 above.

3. The Enterprise accepts joint and several liability with the parties listed under item 1 above for the due fulfilment of the obligations of the joint venture deriving from, and in any way connected with, the Contract to be entered into with the Department in respect of the project described under item 1 above.
4. The Enterprise chooses as its *domicilium citandi et executandi* for all purposes arising from this joint venture agreement and the Contract with the Department in respect of the project under item 1 above:

Physical address: _____

_____ (code)

Postal Address: _____

_____ (code)

Telephone number: _____

Fax number: _____

	Name	Capacity	Signature
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			

The bidding enterprise hereby absolves the Department of Public Works from any liability whatsoever that may arise as a result of this document being signed

Note:

1. * Delete which is not applicable.
2. **NB:** This resolution must, where possible, be signed by *all* the Directors / Members / Partners of the Bidding Enterprise.
3. In the event that paragraph 2 cannot be complied with, the resolution must be signed by Directors / Members / Partners holding a majority of the shares / ownership of the Bidding Enterprise (attach proof of shareholding / ownership hereto).
4. Directors / Members / Partners of the Bidding Enterprise may alternatively appoint a person to sign this document on behalf of the Bidding Enterprise, which person must be so authorized by way of a duly completed power of attorney, signed by the Directors / Members / Partners holding a majority of the shares / ownership of the Bidding Enterprise (proof of shareholding / ownership and power of attorney are to be attached hereto).
5. Should the number of Directors / Members / Partners exceed the space available above, additional names and signatures must be supplied on a separate page.

ENTERPRISE STAMP

Any reference to words "Bid" or "Bidder" herein and/or in any other documentation shall be construed to have the same meaning as the words "Tender" or "Tenderer".

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Effective date April 2012

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PA-15.3: SPECIAL RESOLUTION OF CONSORTIA OR JOINT VENTURES

RESOLUTION of a meeting of the duly authorised representatives of the following legal entities who have entered into a consortium/joint venture to jointly bid for the project mentioned below: *(legally correct full names and registration numbers, if applicable, of the Enterprises forming a Consortium/Joint Venture)*

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

Held at _____ *(place)*

on _____ *(date)*

RESOLVED that:

RESOLVED that:

- A. The above-mentioned Enterprises submit a Bid in Consortium/Joint Venture to the Department of Public Works in respect of the following project:

(Project description as per Bid /Tender Document)

Bid / Tender Number: _____ *(Bid / Tender Number as per Bid /Tender Document)*



- B. *Mr/Mrs/Ms: _____
in *his/her Capacity as: _____ (Position in the Enterprise)
and who will sign as follows: _____

be, and is hereby, authorised to sign the Bid, and any and all other documents and/or correspondence in connection with and relating to the Bid, as well as to sign any Contract, and any and all documentation, resulting from the award of the Bid to the Enterprises in Consortium/Joint Venture mentioned above.

- C. The Enterprises constituting the Consortium/Joint Venture, notwithstanding its composition, shall conduct all business under the name and style of:

- D. The Enterprises to the Consortium/Joint Venture accept joint and several liability for the due fulfilment of the obligations of the Consortium/Joint Venture deriving from, and in any way connected with, the Contract entered into with the Department in respect of the project described under item A above.
- E. Any of the Enterprises to the Consortium/Joint Venture intending to terminate the consortium/joint venture agreement, for whatever reason, shall give the Department 30 days written notice of such intention. Notwithstanding such decision to terminate, the Enterprises shall remain jointly and severally liable to the Department for the due fulfilment of the obligations of the Consortium/Joint Venture as mentioned under item D above.
- F. No Enterprise to the Consortium/Joint Venture shall, without the prior written consent of the other Enterprises to the Consortium/Joint Venture and of the Department, cede any of its rights or assign any of its obligations under the consortium/joint venture agreement in relation to the Contract with the Department referred to herein.
- G. The Enterprises choose as the *domicilium citandi et executandi* of the Consortium/Joint Venture for all purposes arising from the consortium/joint venture agreement and the Contract with the Department in respect of the project under item A above:

Physical address: _____

_____ (code)

Postal Address: _____

_____ (code)

Telephone number: _____

Fax number: _____

	Name	Capacity	Signature
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			

The bidding enterprise hereby absolves the Department of Public Works from any liability whatsoever that may arise as a result of this document being signed.

Note:

1. * Delete which is not applicable.
2. **NB:** This resolution must be signed by all the Duly Authorised Representatives of the Legal Entities to the consortium/joint venture submitting this tender, as named in item 2 of Resolution PA-15.2.
3. Should the number of the Duly Authorised Representatives of the Legal Entities joining forces in this tender exceed the space available above, additional names, capacity and signatures must be supplied on a separate page.
4. Resolution PA-15.2, duly completed and signed, from the separate Enterprises who participate in this consortium/joint venture, must be attached to this Special Resolution (PA-15.3).

PA16: 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 AND THE AMENDED B-BBEE CODES.

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. The value of this bid is estimated to **Not Exceed** R50 000 000 (all applicable taxes included) and therefore the... **80/20**.....system shall be applicable.

1.3. Preference points for this bid shall be awarded for:

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

1.3.1 The maximum points for this bid are allocated as follows:

POINTS

1.3.1.1 PRICE

80

1.3.1.2 B-BBEE STATUS LEVEL OF CONTRIBUTION

20

Total points for Price and B-BBEE must not exceed

100

1.4. Failure on the part of a bidder to fill in and/or to sign this form and submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS) or an Accounting Officer as contemplated in the Close Corporation Act (CCA) together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

1.5. An Exempted Micro Enterprise (EME) is only required to obtain a sworn affidavit or a certificate issued by Companies and intellectual property Commission (CIPC) confirming their annual turnover of R10 Million or less and level of black ownership to claim points.

1.6. Qualifying Small Enterprise (QSE) is only required to obtain a sworn affidavit or a certificate issued by Companies and intellectual property Commission (CIPC) confirming their annual turnover of R10 Million or less and level of black ownership to claim points.

Any reference to words "Bid" or Bidder" herein and/or in any other documentation shall be construed to have the same meaning as the words "Tender" or "Tenderer".

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- 1.7 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.
- 1.8 CERTIFICATES ISSUED BY IRBA AND ACCOUNTING OFFICER HAVE BEEN DISCONTINUED; HOWEVER VALID CERTIFICATES ALREADY ISSUED BEFORE 01 JANUARY 2017 MAY BE USED UNTIL THEY PHASE OUT COMPLETELY BY DECEMBER 2017

2. DEFINITIONS

- (a) **“all applicable taxes”** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- (b) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (c) **“B-BBEE status level of contributor”** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (d) **“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 services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- (e) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (f) **“comparative price”** means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration;
- (g) **“consortium or joint venture”** 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;
- (h) **“contract”** means the agreement that results from the acceptance of a bid by an organ of state;
- (i) **“EME”** means an Exempted Micro Enterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (j) **“Firm price”** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- (k) **“functionality”** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;
- (l) **“non-firm prices”** means all prices other than “firm” prices;
- (m) **“person”** includes a juristic person;
- (n) **“QSE”** means a Qualifying Small Enterprise as defines by Codes of Good Practice under

Any reference to words “Bid” or Bidder” herein and/or in any other documentation shall be construed to have the same meaning as the words “Tender” or “Tenderer”.

section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

- (o) **“rand value”** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;
- (p) **“sub-contract”** means the primary contractor’s assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;
- (q) **“total revenue”** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette* on 9 February 2007;
- (r) **“trust”** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- (s) **“trustee”** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

3. ADJUDICATION USING A POINT SYSTEM

- 3.1 The bidder obtaining the highest number of total points will be awarded the contract.
- 3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts;.
- 3.3 Points scored must be rounded off to the nearest 2 decimal places.
- 3.4 In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.
- 3.5 However, when functionality is part of the evaluation process and two or more bids have scored equal points including equal preference points for B-BBEE, the successful bid must be the one scoring the highest score for functionality.
- 3.6 Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

4. POINTS AWARDED FOR PRICE

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

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

80/20 or 90/10

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

Where

P_s = Points scored for comparative price of bid under consideration

P_t = Comparative price of bid under consideration

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Pmin = Comparative price of lowest acceptable bid

5. Points awarded for B-BBEE Status Level of Contribution

- 5.1 In terms of Regulation 6(2) and /or 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

- 5.2 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 5.3 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 5.4 Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- 5.5 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.

6. BID DECLARATION

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

7. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.3.1.2 AND 5.1

7.1 B-BBEE Status Level of Contribution: =(maximum of 10 or 20 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 5.1 and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or Sworn Affidavit for EME's and QSE's.

8 SUB-CONTRACTING (relates to 5.5)

8.1 Will any portion of the contract be sub-contracted? YES / NO (delete which is not applicable)

8.1.1 If yes, indicate:

(i) what percentage of the contract will be subcontracted?%

(ii) the name of the sub-contractor?

(iii) the B-BBEE status level of the sub-contractor?

(iv) whether the sub-contractor is an EME/ a QSE YES / NO (delete which is not applicable)

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		

9 DECLARATION WITH REGARD TO COMPANY/FIRM

9.1 Name of company/firm

9.2 VAT registration number

9.3 Company registration number

:

9.4 TYPE OF COMPANY/ FIRM
Partnership/Joint Venture / Consortium
One person business/sole propriety
Close corporation
Company
(Pty) Limited

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[TICK APPLICABLE BOX]

9.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

.....

.....

9.6 COMPANY CLASSIFICATION

Manufacturer

Supplier

Professional service provider

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

[TICK APPLICABLE BOX]

9.7 Total number of years the company/firm has been in business?

9.8 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 contribution indicated in paragraph 7 of the foregoing certificate/ Sworn Affidavit, 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 paragraph 7, 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 contribution 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) restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, 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 BIDDER(S)

DATE:..... ADDRESS:.....

.....

PA- 40: DECLARATION OF DESIGNATED GROUPS FOR PREFERENTIAL PROCUREMENT

Name of Tenderer ☐ EME¹ ☐ QSE² ☐ Non EME/QSE (tick applicable box)

1. LIST ALL PROPRIETORS, MEMBERS OR SHAREHOLDERS BY NAME, IDENTITY NUMBER, CITIZENSHIP AND DESIGNATED GROUPS.

Name and Surname #	Identity/ Passport number and Citizenship##	Percentage owned	Black	Indicate if youth	Indicate if woman	Indicate if person with disability	Indicate if living in rural / under developed area/township	Indicate if military veteran
1.		%	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
2.		%	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
3.		%	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
4.		%	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
5.		%	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
6.		%	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
7.		%	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
8.		%	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
9.		%	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
10.		%	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
11.		%	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
12.		%	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No

Where Owners are themselves a Company, Close Corporation, Partnership etc, identify the ownership of the Holding Company, together with Registration number
State date of South African citizenship obtained (not applicable to persons born in South Africa)

¹ EME: Exempted Micro Enterprise

² QSE: Qualifying Small Business Enterprise

PA- 40: DECLARATION OF DESIGNATED GROUPS FOR PREFERENTIAL PROCUREMENT

2. DECLARATION:

The undersigned, who warrants that he/she is duly authorized to do so on behalf of the Tenderer, hereby confirms that:

- 1 The information and particulars contained in this Affidavit are true and correct in all respects;
- 2 The Broad-based Black Economic Empowerment Act, 2003 (Act 53 of 2003), Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000), the Preferential Procurement Regulations, 2017, National Small Business Act 102 of 1996 as amended and all documents pertaining to this Tender were studied and understood and that the above form was completed according to the definitions and information contained in said documents;
- 3 The Tenderer understands that any intentional misrepresentation or fraudulent information provided herein shall disqualify the Tenderer's offer herein, as well as any other tender offer(s) of the Tenderer simultaneously being evaluated, or will entitle the Employer to cancel any Contract resulting from the Tenderer's offer herein;
- 4 The Tenderer accepts that the Employer may exercise any other remedy it may have in law and in the Contract, including a claim for damages for having to accept a less favourable tender as a result of any such disqualification due to misrepresentation or fraudulent information provided herein;
- 5 Any further documentary proof required by the Employer regarding the information provided herein, will be submitted to the Employer within the time period as may be set by the latter;

Signed by the Tenderer

Name of representative	Signature	Date



public works
& infrastructure

Department:
Public Works and Infrastructure
REPUBLIC OF SOUTH AFRICA

**TERMS OF REFERENCE
FOR
APPOINTMENT OF TRAINING SERVICE
PROVIDER FOR THE PROVISION OF
TRAINING TO CONTRACTORS IN NQF 4
SUPERVISION OF CONSTRUCTION
PROCESSES (ID65949) ON THE EPWP
VUK'UPHILE LEARNERSHIP
PROGRAMME FOR THE EASTERN CAPE
DEPARTMENT OF HUMAN SETTLEMENT**

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1. DEFINITIONS

For the purposes of this TOR the following definitions apply:

Act	: means the skills development Act, 1998 (act No. 97 of 1998) as amended.
Assessor	: A person who is registered by the relevant ETQA body to measure the achievement of specified National Qualification Framework standards or qualifications
Business Hours	: Business hours of the employer are from 07:30 to 16:00 Monday to Friday.
CETA	: the Construction and Education Training Authority, a sector education and training authority established in terms of section 9(1) of the Skills Development Act of 1998.
CETA ETQA	: Construction Seta's Education and Training Quality Assurance
CIDB	: Construction Industry Development Board
Contracting Company	: The juristic entity owned by individuals who have entered into Learnership Agreements
Classroom training	: All instructional training at a venue provided by the Lead Implementer, as specified by EPWP
Close out Report	: The report issued to CETA and DPWI – , on completion of all classroom training and workplace assessment

Employer	: Refers to Department of Public Works and Infrastructure
EPWP	: Expanded Public Works Programme a national government initiative aimed at drawing a significant number of employed people into productive work
Facilitator	: A person who offers learning process and training related activities
Lead Implementer	: All provincial departments, municipalities and state owned entities implementing EPWP projects. The words Public Body shall have a corresponding meaning.
Learner	: shall have the meaning assigned to it in the Learnership Regulations.
Learnership	: means a structured outcome-based learning programme leading to a qualification registered by the South African Qualification Authority (SAQA) as described in Section 16 of the Act.
Learnership Agreement	: an agreement entered into between an organ of state and a Learner in terms of Section 14 of the Skills Development Act 97 of 1998, in terms of which the Learner will be educated and trained in accordance with the Learnership Agreement.
Mentor	: an experienced and trusted advisor appointed by the Department of Public Works and Infrastructure or the Public Body and tasked with the provision of assistance to the Learners and their Contracting Companies in the planning, execution and management of the on-site

training projects in accordance with this Terms of Reference.

Moderator	: A person who ensures that the process of assessment of the outcomes described in the NQF standards and qualification is fair, reliable and valid.
DPWI	: refers to the Department of Public Works and Infrastructure
NLRD	: National Learners' Records Database, which need to be completed and Submitted to a SETA in regards to learners completing a qualification or skills programme for learners can before they can be issued with a qualification.
Practical completion certificate	: a certificate issued in terms of a Project by the Consulting Engineer, signifying that the whole of the construction works have been completed, although some minor work may be outstanding which are to be remedied during the Defect Liability Period;
Public Body	: All provincial departments, municipalities and state owned entities implementing EPWP projects. The words Lead Implementer shall have a corresponding meaning.
SAQA	: South African Qualification Authority
Service	: mean the services to be provide by the Training Provider for the project in accordance with the Scope of work

Training Provider	: the natural or juristic person appointed by DPWI accredited to CETA to provide accredited training to the representatives of Learner
Project	: works associated with a contract executed by a Contracting Company following class room training received in terms of the Learnership Agreement, using labour-intensive methods in accordance with the provisions of the Guidelines for the Implementation of Labour Intensive Projects under the Expanded Public Works Programme.
Workplace Assessment	: The assessment by the Training provider of the experience component of the Learnership
Workplace Training	: All training and Mentorship services conducted during the workplace experience component of the Learnership, conducted on the site where the structured workplace experience is being offered, by the Mentors

2. INTRODUCTION

The Expanded Public Works Programme (EPWP) is a multi sectoral government initiative to create jobs. The EPWP through the Vuk'uphile Learnership Programme aims to develop and support small construction businesses using existing government expenditure on goods and services. The Vuk'uphile Learnership Programme, a contractor development programme of the EPWP, is aimed at developing small Contractors to move up the CIDB grading. This programme has been developed to assist contractors to acquire skills and complete projects such that they exit at CIDB Grades higher than their grades on entering the Vuk'uphile Learnership Programme.

This programme involves the training of existing SMME Contractors on the Supervision of Construction Process (SAQA ID 65949 Learnership No **32Q32008418184**) Qualification

within the classroom by CETA accredited Training Providers and workplace experiential training by Construction Mentors

These Terms of Reference are for Training services on the Vuk'uphile Learnership Programme aimed at:

- Appointing appropriately accredited training providers for the implementation of the EPWP Vuk'uphile Learnership Programme.
- Defining the scope of work and the expected deliverables from the accredited training service providers.

3. NORMATIVE REFERENCES

The latest editions of the following referenced documents are indispensable for the application of this standard:

- a) SAQA Register Qualification: National Certificate: Supervision of Construction Process SAQA ID 65949 Learnership No **32Q32008418184**. See www.saqa.org.za
- b) CETA Procedure for Quality Assurance of Learner achievement. See www.ceta.org.za
- c) Guidelines for the Implementation of Labour Intensive Projects under the Expanded Public Works Programme. See www.epwp.gov.za

4. OBJECTIVES

4.1 The objective of the project is to develop Contractors such that they exit the programme in CIDB grades higher than their grades on entering the programme, in accordance with the National Contractor Development Programme. The programme seeks to:

- a) Select a cadre of contractors with requisite knowledge and experience in their trade and with sustainable businesses are developed to undertake works of a similar nature; and
- b) To train and develop contractors to implement projects labour intensively and create jobs to support Expanded Public Works Programme (EPWP). Create temporary work

opportunities, combined with training or education or skills development, in accordance with the provisions of the Guidelines for the Implementation of Labour Intensive Projects under the Department of Public Works and Infrastructure

- 4.2 Department of Public Works and Infrastructure' objective in appointing a Training Provider on a learnership programme is to provide accredited training to the Learners in respect of the Supervision of Construction Processes Learnership NQF Level 4 (SAQA ID 65949 Learnership No **32Q32008418184**) to ensure that learners are assessed, moderated and certified in terms of CETA ETQA requirements.

5. LEARNERSHIPS

The Training Provider shall plan, deliver and report on all such training as is required for the successful completion of the respective CETA Learnerships for the Project. The name of the qualification is Supervision of Construction Processes SAQA NO 65949Learnership No **32Q320084181844**.

6. QUALIFICATIONS

- 6.1 A Training Service Provider needs to be accredited with the CETA.
- 6.2 The Training Service Provider needs to provide a letter of accreditation with the CETA in Supervision of Construction Processes SAQA Qualification ID 65949 and the Learnership No **32Q32008418184**.
- 6.3 The Department will verify Training Service Provider Accreditation through the CETA before appointment.

6.3.1 Facilitator

The requirements for a Facilitator on the Vuk'uphile Learnership Programme are as follows:

- a) A facilitator must have a valid ETDP SETA facilitator qualification,
- b) A facilitator must have post-qualification hands-on working experience within the skills development industry.

- c) The bidder must submit proof of a qualification that verifies that a Facilitator(s) can facilitate on qualification, Supervision of Construction Processes NQF 4, Qualification ID 65949.

6.3.2 Assessor

The requirements for an Assessor on the Vuk'uphile Learnership Programme are as follows:

- a) An assessor must have a valid ETDP SETA registration as an assessor,
- b) An assessor must have post-qualification hands-on working experience within the skills development industry as an assessor.
- c) The bidder must submit proof of a qualification that confirms that Assessor(s) can assess on qualification Supervision of Construction Processes NQF 4, Qualification ID 65949

6.3.3 Moderator

The requirements for a Moderator on the Vuk'uphile Learnership Programme are as follows:

- a) A moderator must have a valid ETDP SETA registration as a Moderator, and
- b) A moderator must have post-qualification hands-on working experience within the skills development industry as a moderator.
- c) The bidder must submit proof of a qualification that confirms that a Moderator(s) can moderate on qualification Supervision of Construction Processes NQF 4, Qualification ID 65949

- 6.3.4 The facilitator, the assessor and the moderator must have trained, assessed or moderated respectively, at least one group of learners on a construction related qualification. The Training Service Provider must provide work experience reference with contact details of employers.

6.3.5 Project Manager

A Project Manager on the Vuk'uphile Learnership Programme is required to have working experience within the Skills Development industry or the Built Environment industry.

7. TRAINING PROGRAMME

7.1 PRELIMINARY TRAINING PROGRAMME

7.1.1 The Training Provider shall, not less than fourteen (14) days prior to the commencement of the performance of the services, in consultation with the Employer, compile and submit to DPWI and CETA, a Preliminary Training Programme reflecting the proposed time frames for the performance of each of the components of the Services to be performed in terms of this Agreement.

7.1.2 The Preliminary Training Programme shall be in the form prescribed by DPWI and shall make provision for:

- (a) the proper delivery of all the Services included in this Agreement in accordance with the programme for the execution of the overall Project;
- (b) the delivery and completion of the training and all other Services to be performed by the Training Provider in terms of this Agreement, in a manner which is conducive to the learning process; to the satisfaction of DPWI.
- (c) The programme should also include preventative measures to be taken to curb COVID19 infections during Training.

7.1.3 DPWI shall be entitled to require the Training Provider to make any modifications or amendments to the Preliminary Training Programme in such a manner as it may deem necessary or appropriate for the benefit of the Project.

7.1.4 If DPWI does not notify the Training Provider in writing of any modifications or amendments which it requires to be made to the Preliminary Training within fourteen (14) days of receipt by DPWI of the Preliminary Training Programme, then the Preliminary Training Programme shall be deemed to be approved by DPWI and shall henceforth be referred to as the "Training Programme".

7.2 REVISION OF THE TRAINING PROGRAMME

Should it become necessary at any time during the course of the performance of the Services, and for whatever reason, to modify or amend in any way, the Training Programme, the Training Provider shall notify DPWI in the next subsequent Monthly Report of the circumstances giving rise to the need for such modification or amendment, and shall provide DPWI with a revised Training Programme within the next subsequent monthly report.

7.3 SIGNIFICANCE OF THE TRAINING PROGRAMME

The approval by DPWI of any Preliminary Training Programme or of any modifications or amendments to the Training Programme shall not, unless specifically stated to the contrary by DPWI in writing to the Training Provider, relieve the Training Provider of any of its obligations in terms of this Agreement, but shall merely be deemed to infer that DPWI will be satisfied if the Services are performed in accordance with such revised Training Programme.

8. HOURS FOR TRAINING

Unless the nature of the training dictates otherwise, all training shall be conducted only during the normal business hours of the Employer.

9. LOCATION OF TRAINING

Unless otherwise specified, or agreed between DPWI, CETA, the Lead Implementer and the Training Provider, all training shall be delivered by the Training Provider at the following locations:

(a) Instructional Learning (Classroom Training)

All Instruction Learning (classroom training) at a venue (or venues) provided by the Lead Implementer and conveniently located within area of the project.

(b) Workplace Training

All training conducted during the structured workplace experience component of the Learnership shall, unless otherwise agreed between DPWI and the Lead Implementer, be conducted on the site where the structured workplace experience is being undertaken.

10. REPORTING REQUIREMENTS

10.1 MONTHLY REPORT

- (a) The Training Service Provider shall compile and submit a Monthly Report to DPWI, Lead Implementer and CETA, to be received by DPWI, Lead Implementer and CETA no later than the close of business on the third (03rd) day of each month, commencing from the month following the signing of this Agreement by both Parties.
- (b) The Monthly Report shall be submitted in a format as specified by DPWI and shall reflect all such data as DPWI shall require, including all data necessary to be able to assess the past month's activities and the progress of the Services during the previous month.

10.2 CLOSE-OUT REPORT

- (a) No later than thirty (30) days after the completion of the performance by the Training Provider of all other Services required in terms of this Agreement, the Training Provider shall submit a Close Out Report to DPWI in a format approved by DPWI and CETA, and in the number of copies (not exceeding five (5)) to be specified by DPWI).
- (b) The Close-out Report shall include, but not be limited to, the following:
 - (i) Full details of each Learner;
 - (ii) The complete training record of each Learner, including training attendance records and assessments;
 - (iii) A clear comparison of the actual progress of all components of the Services against that provided for within the Training Programme;
 - (iv) The Training Provider's comments and recommendations on recommended improvements for future projects, based on the lessons learned during the execution of the Services under this Agreement;
 - (v) All such other data as may be advised by DPWI, Lead Implementer and CETA.
- (c) DPWI shall notify the Training Provider of:
 - (i) approval of the Close Out Report; or

- (ii) any additions, omissions, or revisions as it may reasonably require to the Close Out Report; as the case maybe, within twenty one (21) days of receipt the Training Provider's Close Out Report.
- (d) In the event that DPWI, Lead Implementer and CETA require any additions, omissions, or revisions to be made to the Close Out Report submitted by the Training Provider as aforesaid, the Training Provider shall make all such revisions as required by DPWI without undue delay, and the provisions of Clause 10.2(c) shall also apply to all such revised Close Out Reports as may be received by DPWI.

11. RETENTION OF RECORDS

The Training Provider shall retain all records pertaining to this Agreement, including but not limited to the training records of all Learners, for a period of not less than five years calculated from the date of expiry, termination or cancellation of this Agreement, as the case may be.

12. REMUNERATION OF THE TRAINING PROVIDER

DPWI shall, from the date of commencement of this contract, remunerate and reimburse the Training Provider for the performance of Services described in 5 of this Agreement, and performed from date of commencement, in the amounts and at the times as described within the Pricing Schedule.

12.1 TRAINING FEE

Payment to the service provider will be made at the following stages of the learnership programme:

12.1.1 First Payment (Twenty percent (20%) of the learnership rate)

The Service Provider should ensure that the following have been undertaken for the twenty percent (20%) payment to be effected:

- (a) The service provider should have entered, formally, into service level agreement with the Department of Public Works and Infrastructure (DPWI),
- (b) The service provider should have submitted an Implementation Plan and Project Schedule/Programme to DPWI and a Lead Implementer,
- (c) The service provider should have submitted a plan to deal with preventative measures to be taken to curb COVID19 infections
- (d) The service provider should have conducted an induction programme with the learners,
- (e) All learners should have signed learnership agreements,
- (f) Details of all learners should have been captured on the CETA system and with learnership numbers having been issued,
- (g) The Service provider should have covered at least twenty percent (20%) of the total unit standards to be covered through this learnership programme,
- (h) The covered unit standards should have been assessed and moderated on, and
- (i) The Service provider should have submitted attendance register(s) and progress report(s) to DPWI and a Lead Implementer for the period covered.

12.1.2 Second Payment (Thirty percent (30%) of the learnership rate)

The Service Provider should ensure that the following have been undertaken for the thirty percent (30%) payment to be effected:

- (a) The service provider should have covered at least fifty percent (50%) of the total unit standards to be covered through this learnership programme,
- (b) The covered unit standards should have been assessed and moderated on, and
- (c) The service provider should have submitted attendance register and progress report(s) to CETA and DPWI for the period covered.

12.1.3 Third Payment (Thirty percent (30%) of the learnership rate)

The Service Provider should ensure that the following have been undertaken for the thirty percent (30%) payment to be effected:

- (a) The service provider should have covered at least eighty percent (80%) of the total unit standards to be covered through this learnership programme,
- (b) The covered unit standards should have been assessed and moderated on, and
- (c) The service provider should have submitted attendance register(s) and progress report(s) to DPWI and a Lead Implementer for the period covered.

12.1.4 Final Payment (Twenty percent (20%) of the learnership rate)

The Final invoice may only be paid once the following have been undertaken:

- (a) The close out report referred to in Clause 10.2 must have been received and accepted as complete,
- (b) All data required for certification of learners who have successfully completed the learnership must have been loaded onto the CETA system to the satisfaction of CETA ETQA,
- (c) All data required for the issuing of statements of Unit Standards achieved for those learners who did not successfully complete the learnership, but completed at least one Unit Standard, must have been loaded onto the CETA system to the satisfaction of CETA ETQA,
- (d) All data required for certification of those learners who have successfully completed the Skills Programme has been loaded onto the CETA system to the satisfaction of CETA ETQA,
- (e) All data required for the issuing of statements of Unit Standards achieved for those learners who did not successfully complete the Skills Programme, but completed at least one Unit Standard, has been loaded onto the CETA system to the satisfaction of CETA ETQA, and
- (f) All certificates and statements have been issued by CETA or CETA has issued a letter signed by the CETA ETQA manager, that all data has been successfully loaded onto the CETA system and that the delay in issuing certificates is through no fault of the Training Provider.

12.2 REIMBURSABLE EXPENSES

- (a) The rates, in the Schedule of Prices Section 1, for training of learners shall be an all-inclusive rate, excluding VAT, including in-class training, workplace assessment, travelling to and from the training venue up to a maximum of

1000km per month, the provision of all support staff, office overheads, telephone, printing, cell phone, accommodation and staff relocation expenses. The Service Provider must obtain approval from the Department for any work that might result in additional cost, including disbursements, beyond the cost allowed for in terms of the rates mentioned above before undertaking such work.

- (b) The Service Provider shall pay, fortnightly, allowances, at a rate not less than the rate pronounced by the Department of Labour in terms of the Basic Conditions of Employment Act 75 of 1997: Sectoral Determination 5: Learnership Sector, to the learners during the course of theoretical in-class training for a maximum period of twenty-four (24) weeks. The Service Provider will be paid an administration fee as a percentage of moneys paid to the learners and the percentage will be as stated by the Service Provider within Section 2 of the Schedule of Prices.
- (c) The Department of Transport's standard reimbursable rate for travelling costs (tariff per km) will be based on the published rate/s for all travelling over and above the 1000km, on-site training and approved by the Department of Public Works. Payment for travelling will only be made for vehicle capacity not exceeding 1950 cc. The information on tariff per kilometre can be obtained from the Website of the Department of Public Works ([www.publicworks.gov.za/Documents/Consultant documents/ Rates for reimbursable expenses](http://www.publicworks.gov.za/Documents/Consultant_documents/Rates_for_reimbursable_expenses)). The base of the training, i.e. where the training provider would travel from will be the training venue, will be the classroom when offering theoretical training and the site of the project when doing assessments.
- (d) The service provider shall be reimbursed at Government Printers' rates for photocopies made. The service provider must produce proof of payment for all photocopies made by a third party.
- (e) All Disbursements, i.e. travelling in excess 1000km, use of a vehicle with capacity larger than 1950cc, photocopies and or overnight accommodation must be approved by the Department before the Service Provider incurs such cost.

- (f) All travel Claims must be submitted on the required forms supplied by the Department of Public Works.
- (g) Time spent with Learners must be submitted on the applicable form supplied by the Department of Public Works and signed by each Learner.

12.3 SUBMISSION OF INVOICES

12.3.1 The Training Provider may submit monthly invoices to DPWI, reflecting the details of all amounts which the Training Provider considers due and payable to the Training Provider in terms of this Agreement.

12.3.2 The Training Provider's Monthly invoice shall be in the format as specified by DPWI and shall be accompanied by all supporting documents as reasonably required by DPWI.

12.4 PAYMENT

12.4.1 The due date for the payment by DPWI of any amounts becoming due and payable to the Training Provider in terms of this Agreement shall, for the purposes of this Agreement, be deemed to be the date which is thirty (30) working days after the receipt by DPWI of the Training Provider's valid tax invoice

12.4.2 Payment shall be made by the Department to the Service Provider in accordance with the tendered Contract Price,

12.4.3 Amounts due to the Service Provider shall be paid in full by no later than 30 (thirty) Business Days after the Department has received an approved account from the Service Provider.

12.4.4 If any item or part of an item in an account submitted by the Service Provider is disputed by the Department, the Department shall give notice before the due date of payment with reasons, but shall not delay payment on the remainder of the invoice, provided that the Department has received a revised valid tax invoice from the Service Provider reflecting the undisputed amounts, and in respect of which the provisions of Sub-Clause 12.4.2 shall apply from the date on which the revised invoice is received.

12.4.5 Sub-Clause 12.4.2 shall apply to contested amounts which are finally determined to be payable to the Service Provider.

12.4.6 When the Department inadvertently overpays the Service Provider then the Service Provider shall refund excess amounts on the same basis as in Sub-Clause 12.4.2.

12.4.7 In the case of Services carried out on a time charge basis and for all other directly reimbursable expenses, the Service Provider shall maintain records which clearly identify such time and expenses and shall retain such records for a period of five years after completion or termination of the Services. Within this period the Department may, on no less than 14 days' notice, require that a reputable and independent firm of accountants, nominated by the Department and at the Department's expense, audit any such time and expenses claimed by the Service Provider by attending at normal working hours at the office where the records are maintained. In the event that the independent firm of accountants discovers fraud on one part of the Service Provider, the cost of the independent firm of accountants will be for the account of the Service Provider.

12.5 MAINTENANCE OF FINANCIAL RECORDS

In respect of any:

- (a) Services charged for; and
- (b) Any reimbursable expenses as may be approved by DPWI;

The Service Provider shall maintain records in support of such charges and expenses for a period of not less than five (5) years after the completion or termination of this Agreement. Within this period the DPWI may, on not less than fourteen (14) days' written notice to the Service Provider, require that a reputable and independent firm of accountants, nominated by the Service Provider at the Service Provider's expense, audit any claims made by the Training Provider for time charges and expenses, by attending during normal working hours at the office where the records are maintained.

13. FUNCTIONALITY CRITERIA

Functionality Criteria	Weighing factor:
A) PROJECT MANAGER POST QUALIFICATION EXPERIENCE WITHIN THE SKILLS DEVELOPMENT INDUSTRY OR BUILT ENVIRONMENT INDUSTRY 5 Points = 61 months and above relevant experience; 4 Points = 49 to 60 months relevant experience; 3 Points = 37 to 48 months relevant experience; 2 Points = 25 to 36 months relevant experience; 1 Point = 0 to 24 months relevant experience;	15
B) MODERATOR POST QUALIFICATION EXPERIENCE WITHIN THE SKILLS DEVELOPMENT INDUSTRY AS A ETDP SETA QUALIFIED MODERATOR 5 Points = 61 months and above relevant experience; 4 Points = 49 to 60 months relevant experience; 3 Points = 37 to 48 months relevant experience; 2 Points = 25 to 36 months relevant experience; 1 Point = 0 to 24 months relevant experience;	15
C) ASSESSOR POST QUALIFICATION EXPERIENCE WITHIN THE SKILLS DEVELOPMENT INDUSTRY AS A ETDP SETA QUALIFIED ASSESSOR 5 Points = 61 months and above relevant experience; 4 Points = 49 to 60 months relevant experience; 3 Points = 37 to 48 months relevant experience; 2 Points = 25 to 36 months relevant experience; 1 Point = 0 to 24 months relevant experience;	15
D) FACILITATOR POST QUALIFICATION EXPERIENCE WITHIN THE SKILLS DEVELOPMENT INDUSTRY AS A ETDP SETA QUALIFIED FACILITATOR 5 Points = 61 months and above relevant experience;	25

4 Points = 49 to 60 months relevant experience; 3 Points = 37 to 48 months relevant experience; 2 Points = 25 to 36 months relevant experience; 1 Point = 0 to 24 months relevant experience;	
E) DETAILED APPROACH TO TRAINING DEMONSTRATING A COMPREHENSIVE UNDERSTANDING OF THE FOLLOWING COMPONENTS 1. Programme of activities, 2. CETA accreditation system, 3 Project monitoring and evaluation system, 4. Learner assessment programme, and 5. Training provider project organisational structure, that is specific to this Project 5. Points= Provided five of the above listed items 4 points= Provided four of the above listed items 3 Points= Provided three of the above listed items 2 Points= Provided two of the above listed items 1 Point= provided one of the above listed items 0 Point= Did not provide any of the above listed items	30

A minimum of 60 points on functionality must be achieved for further evaluation on price and preference.

14. SECURITY CLEARANCE

It is an explicit condition of this agreement that partners, directors and/or the members of staff who will have insight into the planning of projects requiring security clearance, be kept to a minimum and that such persons will not object to being submitted to a security clearance, if the Employer so requires.

If the latter is applicable, the necessary forms will accompany this tender or be provided to the Service Provider at any stage thereafter. These forms must be completed, if attached, and returned with the tender. It is important to furnish information which is complete in every respect.

Should the authority responsible for the clearance, for security reasons not be satisfied with the classification obtained of any of the staff members of the Service Provider, it will be a further condition of this appointment that none of such staff members be involved with any aspect of the Project.

All documents pertaining to these projects must be stored in a safe place when not in use so as to ensure that the level of security of the projects is maintained.

The Employer will not accept liability for any costs in this regard.

15. FINGER PRINTS (except Defence projects)

Persons of whom security clearance is required can obtain a finger print form SAP 91(a) from any police station. Kindly ensure that the police official responsible for taking the finger prints certifies the form since non-certification will result in the form being unacceptable.

16. DURATION

The appointed Training Service Provider will be contracted to the Department of Public Works and Infrastructure for a period of 36 months.

17. PRICING

The bidder shall refer to Pricing Instructions and Schedule of Prices for pricing of this bid, which documents are annexed to these Terms of Reference.

The bidder to submit completed Schedule of Prices as part of its bid.

18. BRIEFING SESSION

Prospective bidders are expected to attend the compulsory Briefing. Failure to attend the compulsory briefing will result in disqualification. Date, time and venue of the compulsory briefing will be communicated as per the tender advert.

19. ENQUIRIES/ CONTACT DETAILS

Project Manager: Osborne Neluvhalani

Tel: 012 492 1449

Mobile: 082 974 4632

Email: Osborne.Neluvhalani@dpw.gov.za

Project Administrator: Sindile Thobela

Tel: 012 406 1897

Email: Sindile.Thobela@dpw.gov.za

Annexure A

SCHEDULE OF PRICES

Appointment of Training Service Provider for provision of Training to contractors and supervisors in NQF 4 Supervision of Construction processes (ID65949 Learnership No 32Q32008418184) on the Eastern Cape Department of Human Settlements EPWP Vuk'uphile Learnership Programme

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT R
1.	THEORECTIAL IN-CLASS TRAINING WHICH INCLUDE CLASSROOM AND ONSITE ASSESSMENTS				
1.1	Training of Contractors in Supervision of Construction Procecess (Qualification ID 65949, Learnership No.: 32Q32008418184)	No.	20		
TOTAL CARRIED FORWARD TO SUMMARY					

Annexure A

SCHEDULE OF PRICES

Appointment of Training Service Provider for provision of Training to contractors and supervisors in NQF 4 Supervision of Construction processes (ID65949 Learnership No 32Q32008418184) on the Eastern Cape Department of Human Settlements EPWP Vuk'uphile Learnership Programme

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT R
2.	CONTRACTORS ALLOWANCES				
	(a) Contractor Allowance	Prov. Sum			R 248,600.00
	(b) Service Provider's charges, profit, administration and all other charges, in respect of sub-item 2(a)	%			
TOTAL CARRIED FORWARD TO SUMMARY					

Annexure A

SCHEDULE OF PRICES

Appointment of Training Service Provider for provision of Training to contractors and supervisors in NQF 4 Supervision of Construction processes (ID65949 Learnership No 32Q32008418184) on the Eastern Cape Department of Human Settlements EPWP Vuk'uphile Learnership Programme

ITEM	DESCRIPTION	AMOUNT R
	SUMMARY OF SECTIONS	
	THEORETICAL IN-CLASS TRAINING	
	CONTRACTOR/SUPERVISOR ALLOWANCES	
	SUB-TOTAL	
	15% VAT	
TOTAL TENDERED AMOUNT		

Total Bid Price/Tendered Amount to be carried to PA-32



Annexure B

PRICING INSTRUCTIONS

Description of Work:

Appointment of Training Service Provider for the provision of Training to Contractors in NQF 4 Supervision of Construction Processes (ID65949) on the EPWP Vuk'uphile Learnership Programme for the Eastern Cape Department of Human Settlement

1. RATES AND SCOPE

- 1.1 Service providers are to base their rates, for the training team, for the provision of services associated with all the phases of the Scope of Work for the simultaneous servicing of the number of Learner Contractors stated below, based on individuals employed (total number as determined by the Service Provider) to provide the services working on average of not less than **40 hours of training per week**. Overtime, if necessary, shall **not** be remunerated by the Employer.
- 1.2 Eastern Cape Department of Human Settlements EPWP Vuk'uphile Learnership Programme aims to train a total number of **twenty (20)** Learners that is Ten (10) within Alfred Nzo District Municipality and another Ten (10) within Bluecrane Local Municipality.

The Vuk'uphile Learnership Programme model allows for a single facilitator to train a class of not more than twenty (20) learners at a time however in this case **two facilitators** will be required as the Trainees has been divided into two groups. The Training Team shall comprise of the following Staff:

Training Team

- i. One (1) Project Manager, who can be any of the team members below,
- ii. One (1) Moderator,
- iii. One (1) Assessor, and
- iv. Two (2) Facilitators.



2. PAYMENT

2.1 Theoretical In-Class Training (All three (3) Phases)

The Service Provider Payment, for rates in **Section 1** of the Schedule or Bill of Quantities, to the service provider will be made at the following stages of the learnership programme:

2.1.1 First Payment (Twenty percent (20%) of the theoretical training rate, Items 1.1. & 1.2)

The Service Provider should ensure that the following have been undertaken for the twenty percent (20%) payment to be effected:

- (a)
- (b) The service provider should have entered, formally, into service level agreement with the National Department of Public Works (NDPW),
- (c) The service provider should have submitted an Implementation Plan and Project Schedule/Programme to NDPW and CETA,
- (d) The service provider should have submitted a plan to deal with preventative measures to be taken to curb COVID19 infections
- (e) The service provider should have conducted an induction programme with the learners,
- (f) All learners should have signed learnership agreements,
- (g) Details of all learners should have been captured on the CETA IT system and with learnership numbers having been issued,
- (h) The Service provider should have covered at least twenty percent (20%) of the total unit standards to be covered through this learnership programme,
- (i) The covered unit standards should have been assessed and moderated on, and
- (j) The Service Provider should have submitted attendance register and progress report(s) to CETA and NDPW for the period covered.



2.1.2 Second Payment (Thirty percent (30%) of the theoretical training rate, Items 1.1. & 1.2)

The Service Provider should ensure that the following have been undertaken for the thirty percent (30%) payment to be effected:

- (k) The service provider should have covered at least fifty percent (50%) of the total unit standards to be covered through this learnership programme,
- (l) The covered unit standards should have been assessed and moderated on, and
- (m) The service provider should have submitted attendance register and progress report(s) to CETA and NDPW for the period covered.

2.1.3 Third Payment (Thirty percent (30%) of the theoretical training rate, Items 1.1. & 1.2)

The Service Provider should ensure that the following have been undertaken for the thirty percent (30%) payment to be effected:

- (a) The service provider should have covered at least eighty percent (80%) of the total unit standards to be covered through this learnership programme,
- (b) The covered unit standards should have been assessed and moderated on, and
- (c) The service provider should have submitted attendance register and progress report(s) to CETA and NDPW for the period covered.

2.1.4 Final Payment (Twenty percent (20%) of the learnership rate)

The Final invoice may only be paid once the following have been undertaken:

- (a) The close out report referred to in Clause 6.2 of Annexure A of the Special Conditions of Contract, for Training of Contractors on the EPWP Vuk'uphile Learnership Programme, must have been received and accepted as complete.



- (b) All Data required for certification of those learners who have successfully completed their training must have been loaded onto the CETA system to the satisfaction of CETA ETQA.
 - (c) All Data required for the issuing of statements of Unit Standards achieved for those learners who did not successfully complete their training, but completed at least one Unit Standard, must have been loaded onto the CETA system to the satisfaction of CETA ETQA.
 - (d) All Certificates and Statements must have been issued by CETA or CETA must have issued a letter, signed by the ETQA manager, to indicate that all data has been successfully loaded onto the CETA system and that the delay in issuing certificates is through no fault of the Training Provider.
- 2.2 The Service Provider shall pay, fortnightly, allowances or stipends, at a rate pronounced by the Department in terms of the Basic Conditions of Employment Act 75 of 1997, to the learners during the course of theoretical in-class training for a maximum period of twenty (20) weeks. The Service Provider will be paid an administration fee as a percentage of moneys paid to the learners and the percentage will be as stated by the Service Provider within Section 2 of the Bill of Quantities. The Service Provider's claim for payment can be submitted to the Department fortnightly after the payments have been made to the learners.
3. The rates, in the Schedule of Prices Section 1, for training of learners shall be an **all inclusive rate**, excluding VAT, including travelling to and from the training venue (classroom and onsite), the provision of all support staff, office overheads, telephone, printing, cell phone or telephone charges, accommodation or offices and staff relocation expenses.
4. The Service Provider will only be paid for learners trained. The contract will come to an end at the conclusion of activities listed under Sub Clause 2.1.4, above, or when the budgeted funds have been depleted, whichever comes first.
5. Time spent with Learners must be submitted on the applicable form supplied by the Department of Public Works and signed by each Learner.

SPECIAL CONDITIONS OF CONTRACT

FOR

TRAINING OF EMERGING CONTRACTORS

ON THE

EPWP VUK'UPHILE LEARNERSHIP PROGRAMME

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**SPECIAL CONDITIONS OF CONTRACT FOR TRAINING OF EMERGING CONTRACTORS
ON THE EPWP VUK'UPHILE LEARNERSHIP PROGRAMME**

PREAMBLE

The Parties to this agreement hereby record hereunder, the terms of the agreement made between them in relation to the provision by the Training Provider of the Services for the Project.

1. DEFINITIONS

In this Agreement, the words and phrases as defined in the documents listed in Clause 2 shall have the meanings assigned to them in the said documents and in addition, the following words and phrases shall, unless the context dictates otherwise have the meanings assigned to them hereunder :

- (a) **"Act"** means the Skills Development Act, 1998 (Act No. 97 of 1998), as amended.
- (b) **"day"** means the period from twelve midnight to the next.
- (c) **"CETA"** means the Construction Education and Training Authority.
- (d) **"Employer"** means the Implementing Body, Lead Implementer or Public Body shall have a corresponding meaning.
- (e) **"Force Majeure"** means an event which is beyond the reasonable control of the Parties and which makes one or both of the Parties' performance of its obligations under this Agreement impossible or so impracticable as to be considered impossible under the circumstances.
- (f) **"Learner"** shall have the meaning assigned to it in the Learnership Regulations.
- (g) **"Learnership"** means a structured outcomes-based learning programme leading to a qualification registered by the South African Qualifications Authority (SAQA) as described in Section 16 of the Act.
- (h) **"Learnership Agreement"** means an agreement or agreements (as the case may be) as contemplated in Section 17 of the Act, and as compiled or approved by CETA.
- (i) **"Legal Representation"** Personal representation by someone with legal background who is appointed as an Attorney or Advocate who is not an employee of either party to this agreement.
- (j) **"Management Plan"** means the document "Department of Public Works – Expanded Public Works Programme: Management Plan for Labour Intensive Construction Learnerships" forming part of the Memorandum of Agreement
- (k) **"Memorandum of Agreement"** means the document so named and signed by the Department of Public Works and Infrastructure (DPWI) and CETA, recording their agreement to execute the Project as a part of the Expanded Public Works Programme of the DPWI, for Labour Intensive Construction Learnerships.
- (l) **"DPWI"** means the Department of Public Works and Infrastructure and DPWI and The Department shall have a corresponding meaning.
- (m) **"Party" or "Parties"** means DPWI, and/or the Training Provider, as appropriate.

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- (n) "Project" means a project to be undertaken by Implementing Body, as the Employer for the implementation of Labour-intensive Emerging Contractor Learnerships, called the Vuk'uphile Learnership Programme, under the DPWI Expanded Public Works Programme.
- (o) "SAQA" means the South African Qualifications Authority established by Section 3 of the SAQA Act 1995, as amended by Act 67 of 2008.
- (p) "Services" mean the Services to be provided by the Training Provider for the Project in accordance with this Agreement..
- (q) "Service Provider" means the successful bidder appointed to undertake this project. Training Provider shall have a corresponding meaning.

2. INTERPRETATION

- 2.1 This Agreement shall be construed and interpreted in the English language. All reports and other documents pertaining to this Agreement and the Services and all communications between the Parties shall be in English.
- 2.2 This Agreement shall be governed by the laws of the Republic of South Africa.
- 2.3 Words importing the singular shall also include the plural, and.
- 2.4 Words importing the masculine gender shall also include the feminine and neuter as the context requires.
- 2.5 A natural person includes a juristic person and vice versa.
- 2.6 Reference to a Party in a document includes that party's successors and permitted assigns.
- 2.7 A reference to a document includes an amendment or supplement to, or replacement or novation of that document.
- 2.8 The several documents forming this Agreement are to be taken as mutually explanatory of one another. However, if any discrepancies or ambiguities between the provisions of this Agreement and the provisions of the Memorandum of Agreement or the Act, then the terms and provisions of the primary source of such terms and conditions shall take precedence and prevail in this Agreement.
- 2.9 Any reference to an enactment is that enactment as at the date of signature hereof and as amended or re-enacted from time to time.
- 2.10 If any provision is a definition (under this heading "Definitions and Interpretation" and/or any other heading in this Agreement) and is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the "definitions and interpretation" clause (or any other clause), effect shall be given to it as if it were a substantive provision in the body of the Agreement.

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- 2.11 If there is any conflict between the provisions of this Service Level Agreement and the Contract Data, the provisions of this Service Level Agreement shall prevail.

3. DOCUMENTS FORMING PART OF THIS AGREEMENT

The following documents shall form part of and be construed as part of this Agreement:

- (a) The Memorandum of Agreement; and
- (b) The Learnership Agreements; and
- (c) Annexures, if any; and
- (d) Any Agreement as may be entered into between DPWI, CETA and the Training Provider relating to the Services to be provided in terms of this Agreement subsequent to the signing of this Agreement by Parties, including any agreement as may be entered into concerning the provision by DPWI and/or CETA to the Training Provider of any training materials.

4. COMMENCEMENT AND DURATION

- 4.1 Notwithstanding the Signature Date, this Agreement shall commence on _____ ("Commencement Date") and shall endure for a period of thirty six (36) months or for the duration of the training phases, whichever comes first. The Agreement may be renewed for such term of duration and on such terms and conditions as may be negotiated and agreed between the Parties.
- 4.2 As per the provisions of Sub-Clause 4.1, formal signature is not required to render this Agreement valid.
- 4.3 Unless terminated or cancelled at an earlier date in terms of Clause 16, this Agreement shall expire without any need for the giving of prior notice thereof by either Party one to the other after the Training Provider has successfully completed his duties in terms of this agreement and on the date of receipt by the Training Provider of the final payment by DPWI of all amounts due and payable in terms of this Agreement to the Training Provider.

5. SUB-CONTRACTING

The Service Provider shall not sub-contract the whole or any part of this Agreement without the prior written consent in writing of both the DPWI, and such consent if given shall not relieve the Service Provider from any liability or obligation under this Agreement and he shall be accountable for the acts, defaults and neglects of any sub-contractor, his agents, servants or workmen as fully as if they were acts, defaults or neglects of the Service Provider

6. OBLIGATIONS OF THE TRAINING PROVIDER

6.1 DUE DILIGENCE

The Training Provider shall exercise due skill, care and diligence in the performance of the Services for the Project, in strict conformity with the provisions of the SAQA Act, the

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Management Plan, the Memorandum of Agreement, the Learnership Agreements, this Agreement and within the time frames as specified within the Training Programme.

6.2 PROVISION OF RESOURCES

6.2.1 Determination of Necessary Resources

The Training Provider shall be solely responsible for determining all the resources necessary to deliver the Services within the time frames specified.

6.2.2 Provision of Resources

The Training Provider shall itself and at its own cost, provide all resources necessary for the planning and delivery of the Services required in terms of this Agreement including, but not limited to the provision of all requisite:

- (a) registered practitioners, assessors and moderators;
- (b) training materials;
- (c) training aids;

and everything necessary for the proper performance of the Services, all to the reasonable satisfaction of DPWI.

6.2.3 Training Provider to Provide Financing of All Resources

The Training Provider shall, at its own cost, provide all financing as may be necessary for the provision of the resources referred to in Sub-clause 6.2.2 above.

6.2.4 Ownership of Documents and Copyright

The copyright in the work produced by the Training Provider and ownership of factual information collected by the Training Provider hereunder shall vest in DPWI.

7. LEARNERSHIP AGREEMENTS

The Training Provider shall, when required by DPWI and/or CETA and without undue delay, enter into the Learnership Agreements with the Learners and the Employer, timeously as to ensure that no delay occurs to the progress of the Project and/or the performance of the Services. The first payment to the Training Provider will only be processed once these EPWP learnership agreements are loaded onto the CETA system and all have learnership numbers.

8. APPROVAL OF PERSONNEL

- 8.1 All personnel utilised by the Training Provider in the performance of the Services shall be appropriately qualified, experienced and registered to perform their respective portions of the Services, to the satisfaction of CETA, Implementing Body and DPWI.
- 8.2 The Training provider shall not engage on the performance of the Services any appropriate personnel who have not been registered by CETA.

- 8.3 The Training Provider shall, within seven (7) days of the signing of this Agreement, submit to DPWI, full details of all personnel whom the Training Provider intends to utilise for the performance of the Services, including documentary evidence of their registration in relation to the respective parts of the Services they will perform. DPWI reserves the right to request the personnel to undertake oral or written assessments for these personnel to be allowed perform duties in terms of these services.
- 8.4 In the event that any of the Training Provider's personnel as approved by DPWI are or become unable, for whatever reason, to continue with the performance of their Services on the Project, the Training Provider shall notify DPWI in writing thereof within seven (7) days of becoming aware of such circumstances and shall nominate another suitably qualified and registered substitute for approval by DPWI. DPWI reserves the right to request the nominated replacement personnel to undertake oral or written assessments before they are approved as replacements.

9. MONITORING, ASSESSMENT AND INVESTIGATION

DPWI reserve the right at any time during the Agreement Term, to conduct whatever monitoring, assessments, investigations and the like pertaining to the Services to be provided in terms of this Agreement.

10. CO-OPERATION AND CO-ORDINATION WITH OTHERS

The Training Provider shall at all times co-operate fully with all DPWI, IMPLEMENTING BODY and CETA personnel, representatives and consultants undertaking any mentoring, monitoring, assessments, reviews, investigations and the like pertaining to the Project and shall take all reasonable measures to facilitate such activities.

The Training Provider shall work under direct instruction and supervision of the DPWI Project Manager and comply fully with the CETA Manager ETQA in terms of Quality Assurance and registering achievements.

11. CONFIDENTIALITY

11.1 INFORMATION AND DATA

The Training Provider shall treat all:

- (a) information and data supplied or made available to the Training Provider for the purposes of performing the Services, by CETA, the Employer or by DPWI or any persons or parties representing these parties ; and
- (b) information and data pertaining to the Project and to which the Training Provider becomes privileged in the course of the performance of the Services in Terms of this Agreement;

as confidential and shall not divulge any such information without the prior written permission of DPWI. Such confidentiality shall apply with specific emphasis in relation to individual project and financial data. The Training Provider shall implement appropriate measures to ensure compliance with the provisions of this sub-clause by all its personnel.

11.2 MEDIA AND PUBLICITY

The Training Provider shall not make any comments or statements nor release any details, data or information to the public, the press or other media, nor in any seminars, symposia, meetings or other public forum without the prior written permission of DPWI. The Training Provider shall implement appropriate measures to ensure compliance with the provisions of this sub-clause by all its personnel.

11.3 CONSEQUENCES OF BREACH

Any breach by the Training Provider of the requirements of this Clause shall, without prejudice to any other rights and remedies available to DPWI in law, be deemed to constitute grounds for the immediate cancellation of this Agreement by DPWI in terms of Clause 16.8

11.4 ENDURANCE OF THIS CLAUSE

The provisions of this Clause shall endure and continue to bind the Training Provider, notwithstanding any termination, cancellation or expiry of this Agreement.

12. FORCE MAJEURE

- 12.1 The failure of a Party to fulfil any of its obligations under this Agreement shall not be considered to be a breach of, or default under, this Agreement insofar as such inability arises from an event of *Force Majeure*.

Provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures in order to comply with the terms and conditions of this Agreement, and has informed the other Party as soon as possible about the occurrence of such an event.

- 12.2 In the event that the performance of the Services has to be suspended on the grounds of *Force Majeure*, the Agreement Term shall be extended by the extent of the delay plus a reasonable period for the resumption of work or, if the speed of performing certain Services has to be reduced, the time for their completion shall be extended as may be necessary in the circumstances.

13. VARIATIONS

No amendments or variations to this Agreement shall be of any force or effect unless reduced to writing and signed by all Parties.

14. SOLE AGREEMENT

This agreement constitutes the sole agreement between the Parties for performance of the Services and any representation not contained therein shall not be of any force or effect.

No Party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.

15. CONCESSIONS

No grant by DPWI or the Training Provider (viz by the grantor) to the other of any concession, waiver, condonation or allowance shall, in respect of any specific event or circumstance other than that in respect of which the grant was made, constitute a waiver of the rights of the grantor in terms of this Agreement or diminish or detract from the rights of the grantor to enforce the provisions of this Agreement.

16. SUCCESSION AND ASSIGNMENT

- 16.1 Except as defined in Clause 18.4, each Party binds itself and its partners, successors, executors, administrators, assigns and legal representatives to the other Party and to the other partners, successors, executors, administrators, assigns and legal representatives of the other Party in respect of all obligations and liabilities of this Agreement
- 16.2 The Training Provider shall not without the written consent of the DPWI, assign the Agreement or any part thereof or any obligation under the Agreement or cede any right or benefit there under. Failure so to do shall constitute a material breach of contract.
- 16.3 The approval by DPWI of an assignment shall not relieve the Training Provider of its obligations for the part of the Agreement already performed or the part not assigned.

17. NON CONFORMANCE AND BREACH

17.1 DEVIATIONS

Any deviation by the Training Provider from the requirements set out in this Agreement shall be deemed to constitute a breach of the Agreement.

17.2 PENALTIES

Should DPWI become liable in respect of the payment of any levies, penalties, interest, imposts or the like as a result of any failure or omission on the part of the Training Provider timeously to provide DPWI with the accurate information required in terms of this Agreement, then such amounts shall immediately be recoverable from the Training Provider by way of set-off against all such amounts as may be or become due and payable to the Training provider under this or any other agreement and/or contract as may exist between DPWI and the Training Provider.

17.3 LIABILITY AND INDEMNITY

The Training Provider shall indemnify DPWI against every liability which DPWI may incur to any other person whatsoever and against the adverse effects of all claims to the extent that the same may arise as a result of the Training Provider's breach of its obligations and negligence. The maximum amount of compensation payable by the Training Provider to the DPWI in respect of liability under this Agreement is limited to an amount equal to twice the amount of fees payable to the Training Provider under this Agreement, excluding reimbursements.

18. TERMINATION

18.1 TERMINATION BY DPWI

DPWI may terminate this Agreement after the occurrence of any of the following events:

- (a) (i) if the Training Provider has not remedied a failure or material breach in the performance of his obligations in terms of this Agreement within seven (7) days after having been notified in writing by DPWI to do so, or within any further period as DPWI may have subsequently approved in writing or
 - (ii) commits any breach of Clause 7 and 10; or
 - (iii) commits any breach of the Memorandum of Agreement; or
 - (iv) if the Training Provider's accreditation in terms of the SAQA Act is terminated or cancelled by CETA; or
 - (v) becomes insolvent or bankrupt;
- forthwith, by the giving of written notice to the Training Provider; or
- (b) if, as the result of *Force Majeure*, the Training Provider is unable to perform a material portion of the Services for a period of not less than thirty (30) days, by the giving of thirty (30) days' notice in writing to the Training Provider.

18.2 TERMINATION BY THE TRAINING PROVIDER

The Training Provider may terminate this Agreement by giving not less than thirty (30) days' written notice to DPWI after the occurrence of any of the following events:

- (a) if DPWI fails to pay any monies due to the Training Provider in terms of this Agreement and which are not subject to dispute pursuant to Clause 18 within forty-five (45) days after receiving written notice from the Training Provider that such payment is overdue ; or
- (b) if, as the result of *Force Majeure*, the Training Provider is unable to perform a material portion of the Services for a period of not less than thirty (30) days ; or
- (c) when the Services have been suspended under Clause 19 and the period of suspension exceeds six (6) months, or it is clear to the Training Provider that it will be impossible or impracticable to resume the suspended Services before the period of suspension has exceeded six (6) months ; or
- (d) if the DPWI is in material breach of a term of this Agreement and fails to rectify such breach within sixty (60) days of the receipt of written notice requiring it so to do.

18.3 PAYMENT ON TERMINATION

Upon termination of this Agreement pursuant to Clauses 18.1 or 18.2, DPWI shall make payment to the Training Provider in terms of this Agreement for Services satisfactorily performed prior to the effective date of termination.

18.4 DEATH OR ILLNESS OF TRAINING PROVIDER

Should the Training Provider, being an individual or the last survivor of a partnership or body corporate, die or be prevented by illness or any other circumstances beyond its control from performing the obligations implied by the Agreement, the Agreement shall be terminated without prejudice to the accrued rights of either Party against the other.

19. SUSPENSION

DPWI may, at DPWI's sole discretion and for whatever reason, temporarily suspend all or part of the Services by notice to the Training Provider who shall immediately make arrangements to stop the performance of the Services and minimise further expenditure.

20. DISAGREEMENTS AND DISPUTES

20.1 WRITTEN NOTIFICATION

20.1.1 If at any time prior to or after the expiry, termination or cancellation of this Agreement, any disagreement or dispute shall arise between the Parties in relation to any matter pertaining to this Agreement and/or the performance of the Services, the Party raising the disagreement or dispute (the aggrieved Party) shall, no later than twenty one (21) days after the disagreement or dispute has arisen, or the aggrieved Party should reasonably have become aware of the events and circumstances giving rise to the disagreement or dispute, notify the other Party in writing, setting out the nature and details of the disagreement or dispute and requiring that the disagreement or dispute be resolved in the manner provided in this Clause.

20.1.2 The Party upon whom such written notice has been served in terms of Sub-clause 20.1.1 (the other Party) shall, within fourteen (14) days of receipt of the said notice from the aggrieved Party, provide the aggrieved Party with its written response thereto.

20.1.3 The periods allowed to the Parties to act within in this Clause 19 shall be deemed to exclude the traditional year-end shut-down period commonly associated with the building and construction industry in South Africa.

20.2 AMICABLE SETTLEMENT

20.2.1 The aggrieved Party shall be entitled to require that any disagreement or dispute be resolved through direct discussions and negotiations in good faith between the Parties if:

- (a) the aggrieved Party is dissatisfied with the other Party's response referred to in Sub-clause 20.1.2, by written notice to the other Party, to be given no later than fourteen (14) days after receipt of the other Party's said response ; or

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- (b) the other Party shall have failed to have given its response in terms of Sub-clause 20.1.2 within the time allowed therefore, by written notice to the other Party given no later than fourteen (14) days after the expiry of the period allowed in Sub-clause 20.1.2,
- 20.2.2 Subject to the provisions of Sub-clause 20.1.3, DPWI shall, in the case of the Training Provider being the aggrieved Party, within seven (7) days of receipt of the Training Provider's notice in terms of Sub-clause 20.2.1 ; or
- convene a meeting between the Parties with the view to resolving the grievance through discussions and negotiation in good faith between the Parties.
- 20.2.3 The meeting referred to in Sub-clause 20.2.2 above shall be convened by DPWI to take place:
- (a) unless otherwise mutually agreed, at the DPWI Head Office (the address of which is given in Clause 21 of this Agreement); and
- (b) at a time and on a date as mutually agreed between the Parties; and
- (c) in any event, no later than the date which is **fourteen (14) days** after the giving of notice by the relevant Party in terms of Sub-clause 20.2.1 above.
- 20.2.4 The Parties shall be represented in such meeting (and in all subsequent meetings as may take place) by their respective signatories.
- 20.2.5 Neither Party shall be entitled to legal representation in the meeting(s) referred to in this Sub-clause 20.2.
- 20.2.6 The meeting (and all subsequent meetings as may mutually be agreed on by the Parties) shall be chaired by DPWI, who shall be responsible for the recording of all items agreed upon during the meeting(s) and the distribution of such records to the Training Provider within a reasonable period of each meeting. Parties shall record their acknowledgement of the accuracy of the minutes by appending their signatures thereto and any matter so recorded as having been agreed by the Parties shall not again be disputed by either Party.
- 20.2.7 No later than twenty one (21) days after the commencement of the initial meeting (as referred to in Sub-clause 20.2.2) or such other extended period as the Parties may agree, DPWI shall issue the Training Provider with its written decision on the disagreement or dispute, taking due cognisance of all matters as have been agreed in accordance with the provisions of Sub-clause 20.2.6. Such decision of DPWI shall be final and binding upon the Parties unless and until the decision is amended or overturned pursuant Sub-clause 20.3.

20.3 ARBITRATION

20.3.1 If:

- (a) the Training Provider is dissatisfied with DPWI's decision given in terms of Sub-clause 20.2.7; or
- (b) DPWI fails to give its decision within the time allowed in terms of Sub-clause 20.2.7;

then the Training Provider shall be entitled, by the giving of written notice to DPWI to require that the disagreement or dispute be referred to arbitration by a single arbitrator to

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be mutually agreed upon or, failing agreement, to be nominated by the incumbent President of the Association of Arbitrators of Southern Africa.

20.3.2 The arbitration shall be in accordance with the provisions of the Arbitration Act of 1965 (as amended) and shall be conducted in accordance with such procedure as may be agreed between the Parties or, failing such agreement, in accordance with the Rules for the Conduct of Arbitrations published by the Association of Arbitrators of Southern Africa current at the date the arbitrator is appointed.

20.3.3 The Training Provider's right in terms of Sub-clause 20.3.1, to require that a matter be referred to arbitration shall be not be exercised prior to the date of:

- (a) receipt of DPWI's written decision in terms of Sub-clause 20.2.7; or
- (b) the day following the expiry of the period allowed in Sub-clause 20.2.7 to deliver its written decision on the disagreement or dispute;

whichever is the earlier, and shall expire at the close of normal business on the thirtieth (30th) day thereafter.

20.4 COSTS

20.4.1 Each Party shall pay its own costs (if any) as may be incurred pursuant Sub-clauses 20.1 and 20.2.

20.4.2 Such costs as may be incurred by the Parties pursuant Sub-clause 20.3 shall be dealt with in accordance with the Rules of Procedure as applicable.

21. ADDRESSES

The Parties hereby nominate the addresses set out hereunder, where all notices in terms of this Agreement may be served upon them. Each Party shall be entitled at any time to change its address as specified hereunder, by the giving of written notice thereof to the other Party.

DEPARTMENT OF PUBLIC WORKS AND INFRASTRUCTURE:

Central Government Building
Corner Bosman and Madiba Street
PRETORIA
0002

THE TRAINING PROVIDER:

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SIGNATORIES:

The Service Provider:

THUS SIGNED AT _____ ON THIS ____ DAY OF _____ 20 ____

(Who by his/her signature hereto warrants that he/she is authorised to sign on behalf of

_____)
AS WITNESSES:

1.

2.

DEPARTMENT OF PUBLIC WORKS AND INFRASTRUCTURE

THUS SIGNED IN _____ ON THIS ____ DAY OF _____ 20 ____

(Who by his/her signature hereto warrants that he/she is authorised to sign on behalf of National Department
of Public Works)

AS WITNESSES:

1.

2.