

APPOINTMENT OF MAXIMUM OF 10 CONSULTANTS FOR ELECTRICAL ENGINEERING SERVICES FOR A PERIOD OF THREE YEARS IN ELIAS MOTSOLEDI LOCAL MUNICIPALITY

C1.2 Contract Data

The General Conditions of Contract for Engineering services Works (3rd edition 2015) published by the South African Institution of Civil Engineers, is applicable to this contract. Copies of these conditions of contract may be obtained from the South African Institution of Civil Engineers (Tel: 011-805 5947).

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

Each item of data given below is cross-referenced to the clause in the General Conditions of Contract for Engineering services Works to which it mainly applies.

If for some reason that "The General Conditions of Contract for Engineering services Works (2015)" does not address, "The COLTO General Conditions of Contract 1998 for Road and Bridge Works" will be referred to.

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MUNICIPALITY**

C1.2.1: CONDITIONS OF CONTRACT

GENERAL CONDITIONS OF CONTRACT

SPECIAL CONDITIONS OF CONTRACT

1. **GENERAL**
2. **AMENDMENTS TO THE GENERAL CONDITIONS OF CONTRACT**
3. **TRANSFER OF RIGHTS**

C1.2.1 CONDITIONS OF CONTRACT

GENERAL CONDITIONS OF CONTRACT

This Contract will be based on the "General Conditions of Contract for Engineering services Works - (3rd edition 2015)", issued by the South African Institution of Civil Engineers (Short title: "**General Conditions of Contract 2015**") and can be obtained from:

SAICE

Waterfall Park
Howick Gardens
Vorna Valley Half way House
Becker Street
MIDRAND
1685
Gauteng Province
Tel: (011) 805-5947/8
Fax: (011) 805-5971.

It is agreed that the only variations from the General Conditions of Contract 2015 are those set out hereafter under "Special Conditions of Contract".

SPECIAL CONDITIONS OF CONTRACT

1. GENERAL

- 1.1 Consideration will only be given to consultants with a contact person specializing in the listed categories, and also with **relevant professional registration status**.
- 1.2 A contact person for the firm must be a professionally registered person in the employment of the firm or company.
- 1.3 **The appointment will be subject to the availability of a relevant professional person in the Elias Motsoaledi/Limpopo office. Upon allocation of work, the service provider will be required to establish offices within Elias Motsoaledi/Limpopo within thirty (30) days from the date of notification and availability of the relevant professional person in the office. Failure to comply will result in the withdrawal of the allocated work/service.**
- 1.4 Verifications of offices and all submitted documents will be conducted for all firms/companies that are allocated work/services.
- 1.5 Audits may be conducted from time to time to verify the information submitted in the application forms. Any inconsistency, if not reported to Elias Motsoaledi Local Municipality, will constitute false declaration and thus lead to termination.
- 1.6 Only one bid document with attachments per firm/consultancy can be submitted and not for each and every branch/office.
- 1.7 Any changes in key technical personnel (due to resignations, transfers, replacements, etc.) should be reported to Elias Motsoaledi Local Municipality in order to record the changes.
- 1.8 The allocation of work/services to be rendered will be on the basis of as and when the need arises.
- 1.9 The allocation of work/services to be rendered will be on a rotational basis within the various streams.
- 1.10 The Municipality is looking to appoint a maximum of 35 service providers per stream.

2. ADDITIONAL SPECIAL CONDITIONS OR AMENDMENTS TO THE GENERAL CONDITIONS OF CONTRACT

1 DEFINITION

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.

APPOINTMENT OF MAXIMUM OF 10 CONSULTANTS FOR ELECTRICAL ENGINEERING SERVICES FOR A PERIOD OF THREE YEARS
IN ELIAS MOTSOLEDI LOCAL MUNICIPALITY

- 1.3 **“Contract price”** means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
- 1.4 **“Corrupt practice”** means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.
- 1.5 **“Countervailing duties”** are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
- 1.6 **“Country of origin”** means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 1.7 **“Day”** means calendar day.
- 1.8 **“Delivery”** means delivery in compliance of the conditions of the contract or order.
- 1.9 **“Delivery ex stock”** means immediate delivery directly from stock actually on hand.
- 1.10 **“Delivery into consignees store or to his site”** means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the goods 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 component parts or materials which have been or are still to be imported (whether by the supplier or his subConsultants) 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 goods 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, component 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 **“Supplier”** means the successful bidder who is awarded the contract to maintain and Administer the required and specified service(s) to the State.
- 1.26 **“Tort”** means in breach of contract.
- 1.27 **“Turnkey”** means a procurement process where one service provider assumes total responsibility for all aspects of the project and delivers the full end product / service required by the contract.
- 1.28 **“Written”** or “in writing” means hand-written 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 (excluding professional services related to the building and Engineering services industry), 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 goods, 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 nonrefundable fee for documents may be charged.
- 3.2 Invitations to bid are usually published in locally distributed news media and on the municipality/municipal entity website.

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 GC 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.
- 6.2 When a supplier developed documentation / projects for the municipality / municipal entity, the intellectual, copy and patent rights or ownership of such documents or projects will vest in the municipality / municipal entity.

7. Performance security

- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder 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.

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 goods to be produced or services to be rendered should at any stage be subject to inspections, tests and analyses, the bidder or Consultant's premises shall be open, at all reasonable hours, for inspection by a representative of the purchaser or organization acting on behalf of the purchaser.
- 8.3 If there are no inspections 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 goods 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 goods or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such goods or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Goods 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 goods 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 goods 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 goods, which do comply with the requirements of the contract. Failing such removal, the rejected goods shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute goods forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected goods, purchase such goods 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 22 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 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, and in any subsequent instructions ordered by the purchaser.

10. Delivery and documents

- 10.1 Delivery of the goods and arrangements for shipping and clearance obligations, shall be made by the supplier in accordance with the terms specified in the contract.

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.

12. Transportation

- 12.1 Should a price other than an all-inclusive delivery price be required, this shall be specified.

13. Incidental Services

- 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any:

APPOINTMENT OF MAXIMUM OF 10 CONSULTANTS FOR ELECTRICAL ENGINEERING SERVICES FOR A PERIOD OF THREE YEARS
IN ELIAS MOTSOLEDI LOCAL MUNICIPALITY

- (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, 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, insufficient time to permit the purchaser to procure the required goods/services; 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

- 1.1 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.
- 1.2. 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 from the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.
- 1.3. 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.
- 1.4. The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 1.5. Upon receipt of such notice, the supplier shall, within the period specified and with all reasonable response time, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 1.6. If the supplier, having been notified, fails to remedy the defect(s) within the period specified, 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.
- 16.2. The supplier shall furnish the purchaser with an invoice accompanied by a copy of the Delivery note and upon fulfillment of other obligations stipulated in the contract. 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.

16.3. Payment will be made in Rand unless otherwise stipulated.

16.4 All payment claims (Fee claims and Consultants claim) must be addressed to the PMU Manager on or before the 20th on monthly basis.

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 or in the purchaser's request for bid validity extension, as the case may be.

18. Variation orders

18.1 In cases where the estimated value of the envisaged changes in purchase does not vary more than 20% of the total value of the original contract, the Consultant may be instructed to deliver the goods or render the services as such. In cases of measurable quantities, the Consultant may be approached to reduce the unit price, and such offers may be accepted provided that there is no escalation in price.

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 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 subConsultant(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 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 goods are required, or the supplier's services are not readily available.

21.4 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 22.2 without the application of penalties.

21.5 Upon any delay beyond the delivery period in the case of a goods contract, the purchaser shall, without cancelling the contract, be entitled to purchase goods 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, sum calculated on the delivered price of the delayed goods or unperformed 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. Termination for default

APPOINTMENT OF MAXIMUM OF 10 CONSULTANTS FOR ELECTRICAL ENGINEERING SERVICES FOR A PERIOD OF THREE YEARS
IN ELIAS MOTSOLEDI LOCAL MUNICIPALITY

- 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 service similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.
- 23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years. 23.4 If a purchaser intends imposing a restriction on a supplier or any person associated time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed.
- Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the supplier as having no objection and proceed with the restriction.
- 23.5. Any restriction imposed on any person by the purchaser will, at the discretion of the purchaser, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first- mentioned person, and with which enterprise or person the first- mentioned person, is or was in the opinion of the purchaser actively associated.
- 23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
- (i) The name and address of the supplier and / or person restricted by the purchaser;
 - (ii) The date of commencement of the restriction
 - (iii) The period of restriction; and
 - (iv) The reasons for the restriction.
- These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.
- 23.7. If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website

24. Antidumping and countervailing duties and rights

- 24.1 When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase.
- When, after the said date, such a provisional payment is no longer required or any such anti- dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favorable difference shall on demand be paid forthwith by the supplier to the purchaser or the purchaser may deduct such amounts from moneys (if any) which may otherwise be due to the supplier in regard to goods 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 (Professional Indemnity) , 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

APPOINTMENT OF MAXIMUM OF 10 CONSULTANTS FOR ELECTRICAL ENGINEERING SERVICES FOR A PERIOD OF THREE YEARS
IN ELIAS MOTSOLEDI LOCAL MUNICIPALITY

and the cause thereof. Unless otherwise directed by the purchaser in writing, 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 Notwithstanding any reference to mediation and/or court proceedings herein,

(a) The parties shall continue to perform their respective obligations under the contract
Unless they otherwise agree; and

(b) The purchaser shall pay the supplier any monies due the supplier for goods delivered and / or services rendered according to the prescripts of the contract.

28. Limitation of Liability

28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;

(a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

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

29. Governing language

29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.

30. Applicable law

30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified.

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 SARS must have certified that the tax matters of the preferred bidder are in order.
- 32.4 No contract shall be concluded with any bidder whose municipal rates and taxes and municipal services charges are in arrears.

33. Transfer of contracts

- 33.1 The Consultant shall not abandon, transfer, cede assign or **sublet** a contract or part thereof without the written permission of the purchaser

34. Amendment of contracts

- 34.1 No agreement to amend or vary a contract or order or the conditions, stipulations or provisions thereof shall be valid and of any force unless such agreement to amend or vary is entered into in writing and signed by the contracting parties. Any waiver of the requirement that the agreement to amend or vary shall be in writing, shall also be in writing.

35. Prohibition of restrictive practices

- 35.1 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 Consultant(s) was / were involved in collusive bidding.
- 35.2 If a bidder(s) or Consultant(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 section 59 of the Competition Act No 89 Of 1998.
- 35.3 If a bidder(s) or Consultant(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 Consultant(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 Consultant(s) concerned.

3. TRANSFER OF RIGHTS

TRANSFER OF RIGHTS AND INDEMNITY (To be completed during Engineering services by successful Bidder only)

Claim for materials on site, Payment Certificate No. **Date:**

Contract No: for (contract title)

I, the undersigned (name of signatory) in my capacity, as
..... of (name of Consultant)

duly authorized hereto on behalf of the Consultant hereby transfer, cede and assign all the Consultant's rights, title and interest in and to the materials and goods, for which evidence of bona fide ownership is attached hereto, unto and in favor of (name of Employer) insofar as the Consultant retains actual control of the materials and goods, the right of ownership thereof passes to the Employer by *constitutum possessorium*.

I herewith indemnify the Employer against any claim to and in respect of said materials by reason of the Consultant's sequestration or liquidation or of any defect in the Consultant's title to the materials and agree that no payment for materials on site will be made by the Employer until such time as I have submitted documentary proof of bona fide ownership of the said materials and goods.

This transfer shall become effective upon conclusion of the Consultant receiving payment from the Employer or from any other person on behalf of the Employer for the materials and goods as Materials on Site, payment of retention money thereon excluded.

I further confirm that I am fully responsible for all materials and goods listed under this Transfer of Rights and that they have been insured adequately against all risks and will remain insured until they are built into or used in the permanent works and taken over by the Employer.

This certificate of Transfer of Rights applies only to the materials and goods as listed in the following table:

Description of Item	Unit	Quantity	Rate	Amount	Supplier
Total Value of Materials and goods					

Signed by: **Date:**
for and on behalf of the Consultant.

Witnessed by: **Date:**

NOTE: This form, together with the documentary proof of ownership or proof of payment by the Consultant to the supplier, shall accompany the Consultant's claim for payment for materials on site in terms of **Clause 6.10.1.5 of the General Conditions of Contract 2015.**

C1.2.2 PART A: CONTRACT DATA PROVIDED BY THE EMPLOYER

The following contract specific data are applicable to this contract.

REFERENCE CONTRACT SPECIFIC DATA BY THE EMPLOYER

Clause 1.1.13: The defects liability period is 12 months measured from the date of the completion certificate.

Clause 1.1.14: The time for achieving Practical Completion is when the defined project scope is completed, and the duration is **Four (4) months** from the Commencement Date, including special non-working days

Clause 1.1.15: **Name of Employer: ELIAS MOTSOLEDI LOCAL MUNICIPALITY represented by Head of Department: Department of Technical Services**

Clause 1.2.1: **Address of Employer:**

The Employer's address for receipt of communications is

Postal: P.O Box 48;
Groblersdal 0470
Fax: 013 262 3056/7/8/9
Tel: 013 262 2547/2886

Clause 1.1.16: **Name of Employers Agent**
'Employers Agent' means any Director, Associate or Professional Employers Agent appointed by a Director of Onboard Consulting Engineers and Project Managers to fulfil the functions of the Employers Agent in terms of the Contract Data.

Clause 3.2: The Employers Agent is required to obtain the specific approval of the Employer for the following:

- a) Nominating the Employers Agent's Representative in terms of CI 3.3.1.
- b) Delegation of Employers Agent's authority in terms of CI 3.2.4.
- c) The issuing of instructions for dealing with fossils and the like in terms of CI 4.7.1
- d) The issuing of an instruction to accelerate progress in terms of CI 5.7.3.
- e) Granting permission to work during non-working times in terms of CI 5.8.1.
- f) The issuing of further drawings or instructions in terms of CI 5.9.1.
- g) Suspend the progress of the works in terms of CI 5.11.1.
- h) The reduction of a penalty for delay in terms of CI 5.13.2.
- i) The issuing of a variation order in terms of CI 6.3.2.
- j) Issuing of instructions to carry out work on a day work basis in terms of CI 6.4.1.4.
- k) The determination of additional or reduced costs arising from changes in legislation in terms of CI 6.8.4.
- l) The agreeing of the adjustment of the sums for general items in terms of CI 6.11.
- m) Authorizing the Consultant to repair and make good excepted risks in terms of CI 8.2.2.
- n) The giving of a ruling on a Consultant's claim in terms of CI 10.1.5.
- o) The agreeing of an extension to the 28 period in terms of CI 10.1.5.1.
- p) The inclusion of credits in the next payment certificate in terms of CI 10.1.5.2.

Clause 6.2: The Guarantee shall be delivered within 14 days after receipt of the acceptance document from the Employer.

APPOINTMENT OF MAXIMUM OF 10 CONSULTANTS FOR ELECTRICAL ENGINEERING SERVICES FOR A PERIOD OF THREE YEARS
IN ELIAS MOTSOLEDI LOCAL MUNICIPALITY

- Clause 6.2: The Liability of the Guarantee shall be for 10% of the Accepted Bid Sum.
- Clause 5.3: The Consultant shall commence executing the work within 14 days of the commencement date.
- Clause 5.6.1 & 5.6.2: The Consultant shall deliver to the Employers Agent, within 14 days calculated from the Commencement Date, a realistic programme in terms of Clause 5.6.1 and supporting documents in terms of Clause 5.6.2.
- Clause 8.6.1.1.3: The amount to cover professional fees for repairing damage and loss to be included in the insurance sum is **NIL**.
- Clause 8.6.1.2: Special risk insurance issued by SASRIA is required.
- Clause 8.6.1.3: The limit of indemnity for liability insurance required should not be less than the contract amount.
- Clause 5.13.1: The penalty for failing to complete the works is 0.05 % of the total bid sum per calendar day
- Clause 6.8.2: The value of the certificates for phase 2 issued shall be adjusted in accordance with the Contract Price Adjustment Schedule with the following values:
- Contract Price Adjustment Factor = $(1 - x) \left[\frac{aLt}{Lo} + \frac{bPt}{Po} + \frac{cMt}{Mo} + \frac{dFt}{Fo} - 1 \right]$ rounded off to the fourth decimal place.
- Coefficients for calculating Contract Price Adjustment Factor shall be:
Value of x is 0.10
- a = 0.15 b = 0.20 c = 0.55 d = 0.10
- L is the "Labour Index" and shall be the "Consumer Price Index – for Polokwane Area" In Release P 0141.1 Table 21
- The base month is: "the month prior to the closing of the Bid"
No Contract Price Adjustment will be done if contract period is less than 7 months.
- Clause 6.8.3: Price adjustments for variations in the costs of special materials are only allowed in phase 1D-2.
- Clause 6.10.1.5: The percentage advance on materials not yet built into the Permanent Works is: 80%
- Clause 6.10.3: The percentage retention on the amounts due to the Consultant is 10 %, excluding contract price adjustment, contingencies and VAT, and limited to 10% of the contract amount, excluding contract price adjustment, contingencies and VAT.
- Clause 6.10.5: A Retention money guarantee will be not permitted.
- Clause 7.8.1: The Defects Liability Period is 12 months measured from the date of the Certificate of Completion.
- Clause 10.7.1 Dispute resolution shall be by Adjudication.
- SPECIAL**
- i) The minimum local labour target is 10% of the tender sum
 - ii) The minimum local SMMEs target is 20% of the tender sum
- Clause 10.7.1: Dispute Resolution shall be by Adjudication.

Payment for labour-intensive component of the works

Payment for works identified in the Scope of Works as being labour-intensive shall only be made in accordance with the provisions of the Contract if the works are constructed strictly in accordance with the provisions of the Scope of Work. Any payment for such works shall not relieve the Consultant in any way from his obligations either in contract or in delict

Linkage of payment for labour-intensive component of works to submission of project data

The Consultant's payment invoices shall be accompanied by labour information for the corresponding period in a format specified by the employer. If the Consultant chooses to delay submitting payment invoices, labour returns shall still be submitted as per frequency and timeframe stipulated by the Employer. The Consultant's invoices shall not be paid until all pending labour information has been submitted.

Applicable Labour Laws

The current Ministerial Determination (also downloadable at www.epwp.gov.za), Expanded Public Works Programmes, issued in terms of the Basic Condition of Employment Act of 1997 by the Minister of Labour in Government Notice, shall apply to works described in the scope of work as being labour-intensive and which are undertaken by unskilled workers.

C1.2.2: PART B: CONTRACT DATA PROVIDED BY THE CONSULTANT

The following contract specific data are applicable to this contract:

REFERENCE CONTRACT SPECIFIC DATA BY THE CONSULTANT

Clause 1.1.9: **Name of Consultant:**

Clause 1.2.1: **Address of the Consultant:**

The Consultant’s address for receipt of communication is:

Physical:

Postal:

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

E-Mail:

Telephone No:

Fax No:

Clause 5.5 The works shall be completed within **Four(4) months** (including special non-working days and the year-end break).

Clause 6.8.3: The variation in cost of all special materials is to be provided in the table SM 1 for special materials.
The rates and prices for the special materials shall be furnished by the Bidder, which rates and prices shall not include VAT but shall include all other obligatory taxes and levies. The quoted price is the ruling price on the Month prior to close of bid.

TABLE: SM1

Special Materials*	Unit	Rate or Price for the base month
Bitumen (specify type)		
.....
.....
.....
.....
.....

*Consultant to indicate the type, unit and rate of special material to be listed. The Consultant shall substantiate the above rates or prices with acceptable documentary evidence. Consultant to provide any other Special Materials if deemed necessary.

N.B. Diesel, reinforcing steel, and cement will not be accepted as special material.

C1.3 Form of Guarantee - Pro Forma

**The Municipal Manager
Elias Motsoaledi Local Municipality
Number 02 Grobler Ave
Groblersdal
0470**

**CONTRACT: EMLM 21/2023
FOR**

**APPOINTMENT OF MAXIMUM OF 10 CONSULTANTS FOR ELECTRICAL ENGINEERING SERVICES FOR A
PERIOD OF THREE YEARS IN ELIAS MOTSOLEDI LOCAL MUNICIPALITY**

GUARANTOR DETAILS AND DEFINITIONS

“Guarantor” means:.....

Physical address:.....

“Employer” means: **ELIAS MOTSOLEDI LOCAL MUNICIPALITY**

“Consultant” means:.....

“Engineer” means: **Consultant**

“Works” means: **APPOINTMENT OF MAXIMUM OF 10 CONSULTANTS FOR ELECTRICAL ENGINEERING
SERVICES FOR A PERIOD OF THREE YEARS IN ELIAS MOTSOLEDI LOCAL MUNICIPALITY**

“Site” means: **xxxxxxx VILLAGE**

“Contract” means: The Agreement made in terms of the Form of Offer and Acceptance and such amendments or additions to the Contract as may be agreed in writing between the parties.

“Contract Sum” means: The accepted amount inclusive of tax of R.....

Amount in words:.....

“Guaranteed Sum” means: The maximum aggregate amount of R.....

Amount in words:.....

“Expiry Date” means:.....

CONTRACT DETAILS

Engineer issues: Interim Payment Certificates, Final Payment Certificate and the Certificate Completion of the Works as defined in the Contract.

PERFORMANCE GUARANTEE

1. The Guarantor's liability shall be limited to the amount of the Guaranteed Sum.
2. The Guarantor's period of liability shall be from and including the date of issue of this Performance Guarantee and up to and including the Expiry Date or the date of issue by the Engineer of the Certificate of Completion of the Works or the date of payment in full of the Guaranteed Sum, whichever occurs first. The Engineer and/or the Employer shall advise the Guarantor in writing of the date on which the Certificate of Completion of the Works has been issued.
3. The Guarantor hereby acknowledges that:
 - 3.1 Any reference in this Performance Guarantee to the Contract is made for the purpose of convenience and shall not be construed as any intention whatsoever to create an accessory obligation or an intention whatsoever to create a suretyship;
 - 3.2 Its obligation under this Performance Guarantee is restricted to the payment of money.
4. Subject to the Guarantor's maximum liability referred to in 1, the Guarantor hereby undertakes to pay the Employer the sum certified upon receipt of the documents identified in 4.1 to 4.3:
 - a. A copy of a first written demand issued by the Employer to the Consultant stating that payment of a sum certified by the Engineer in an Interim or Final Payment Certificate has not been made in terms of the Contract and failing such payment within seven (7) calendar days, the Employer intends to call upon the Guarantor to make payment in terms of 4.2;
 - b. A first written demand issued by the Employer to the Guarantor at the Guarantor's physical address with a copy to the Consultant stating that a period of seven (7) days has elapsed since the first written demand in terms of 4.1 and the sum certified has still not been paid;
 - c. A copy of the aforesaid payment certificate which entitles the Employer to receive payment in terms of the Contract of the sum certified in 4.
- 5.1 Subject to the Guarantor's maximum liability referred to in 1, the Guarantor undertakes to pay to the Employer the Guaranteed Sum or the full outstanding balance upon receipt of a first written demand from the Employer to the Guarantor at the Guarantor's physical address calling up this Performance Guarantee, such demand stating that:
 - 5.2 the Contract has been terminated due to the Consultant's default and that this Performance Guarantee is called up in terms of 5; or
 - 5.3 a provisional or final sequestration or liquidation court order has been granted against the Consultant and that the Performance Guarantee is called up in terms of 5; and the aforesaid written demand is accompanied by a copy of the notice of termination and/or the provisional/final sequestration and/or the provisional liquidation court order.
- 6 It is recorded that the aggregate amount of payments required to be made by the Guarantor in terms of 4 and 5 shall not exceed the Guarantor's maximum liability in terms of 1.
- 7 Where the Guarantor has made payment in terms of 5, the Employer shall upon the date of issue of the final Payment Certificate submit an expense account to the Guarantor showing how all monies received in terms of this Performance Guarantee have been expended and shall refund to the Guarantor any resulting surplus. All monies refunded to the Guarantor in terms of this Performance Guarantee shall bear interest at the prime overdraft rate of the Employer's bank compounded monthly and calculated from the date payment was made by the Guarantor to the Employer until the date of refund.
- 8 Payment by the Guarantor in terms of 4 or 5 shall be made within seven (7) calendar days upon receipt of the first written demand to the Guarantor.
- 9 Payment by the Guarantor in terms of 5 will only be made against the return of the original Performance Guarantee by the Employer.
- 10 The Employer shall have the absolute right to arrange his affairs with the Consultant in any manner which the Employer may deem fit and the Guarantor shall not have the right to claim his release from this Performance Guarantee on account of any conduct alleged to be prejudicial to the Guarantor.

APPOINTMENT OF MAXIMUM OF 10 CONSULTANTS FOR ELECTRICAL ENGINEERING SERVICES FOR A PERIOD OF THREE YEARS
IN ELIAS MOTSOLEDI LOCAL MUNICIPALITY

- 11 The Guarantor chooses the physical address as stated above for the service of all notices for all purposes in connection herewith.
- 12 This Performance Guarantee is neither negotiable nor transferable and shall expire in terms of 2, where after no claims will be considered by the Guarantor. The original of this Guarantee shall be returned to the Guarantor after it has expired.
- 13 The Performance Guarantee, with the required demand notices in terms of 4 or 5, shall be regarded as a liquid document for the purposes of obtaining a court order.
- 14 Where this Performance Guarantee is issued in the Republic of South Africa the Guarantor hereby consents in terms of Section 45 of the Magistrate’s Courts Act No.32 of 1944, as amended, to the jurisdiction of the Magistrate’s Court of any district having jurisdiction in terms of Section 28 of the said Act, notwithstanding that the amount of the claim may exceed the jurisdiction of the Magistrate’s Court.

Signed at.....

Date.....

Guarantor’s signatory (1).....

Capacity

Guarantor’s signatory (2).....

Capacity.....

Witness signatory (1).....

Witness signatory (2).....

C1.4: Agreement with Adjudicator

This agreement is made on the.....day of 20.....between: the Employer
(Name of company / organisation).....
of (address).....
.....and the Consultant
(Name of company / organization).....
of (address).....
..... (hereinafter called **the Parties**)

and
(name).....
of (address)
..... (hereinafter called **the Adjudicator**)

Disputes or differences may arise/have arisen* between the Parties under a Contract dated.....
and known as Contract No.....
(Contract title).....

and these disputes or differences shall be/have been* referred to adjudication in accordance with the CIDB Adjudication Procedure, (hereinafter called "**the Procedure**") and the Adjudicator may be or has been requested to act.
(* Delete as necessary)

IT IS NOW AGREED as follows:

1. The rights and obligations of the Adjudicator and the Parties shall be as set out in the Procedure.
2. The Adjudicator hereby accepts the appointment and agrees to conduct the adjudication in accordance with the Procedure.
3. The Parties bind themselves jointly and severally to pay the Adjudicator's fees and expenses in accordance with the Procedure as set out in the Contract Data.
4. The Parties and the Adjudicator shall at all times maintain the confidentiality of the adjudication and shall endeavor to ensure that anyone acting on their behalf or through them will do likewise, save with the consent of the other Parties which consent shall not be unreasonably refused.
5. The Adjudicator shall inform the Parties if he intends to destroy the documents which have been sent to him in relation to the adjudication and he shall retain documents for a further period at the request of either Party.

SIGNED by:

(Signature):	(Signature):	(Signature):
Name:	Name:	Name:

who warrants that he/ she is duly authorised to sign for and on behalf of the **First Party** in the presence of

who warrants that he/ she is duly authorised to sign for and on behalf of the **Second Party** in the presence of

the **Adjudicator** in the presence of

APPOINTMENT OF MAXIMUM OF 10 CONSULTANTS FOR ELECTRICAL ENGINEERING SERVICES FOR A PERIOD OF THREE YEARS
IN ELIAS MOTSOLEDI LOCAL MUNICIPALITY

Witness: (Signature).....	Witness: (Signature).....	Witness: (Signature).....
Name:	Name:	Name:
Address:	Address:	Address:
.....
.....
Date:	Date:	Date: