

## CRITERIA 2: RELEVANT EXPERIENCE OF A COMPANY (40 POINTS)

This will take into consideration similar contracts successfully completed by the bidder with proof attached.

### 1) CIVIL ENGINEERING WORKS - CONSTRUCTION (20 points):

**Relevant experience of a company in Water Treatment works or Wastewater projects – Civil Engineering works.**

**Previous experience of the company – Civil Engineering works**

- a) The Tenderer shall provide no more than four (4) project references in wastewater or water treatment works projects completed within the **last fifteen (15) years**, using the template provided in the Returnable Schedules.
- b) The civil works experience must be in wastewater treatment works and/or water treatment works related projects (local or international) with a construction value greater than R 350 million (per individual project) excluding VAT.
- c) Where a project included multiple disciplines under a single contract, the Tenderer may cross-reference the same project under each applicable discipline, provided that the Tenderer clearly indicates the scope performed per discipline.
- d) If the Tenderer provides more than four (4) project references, only the first four (4) project references as they are ordered in the Tenderer's Response will be selected for evaluation. Utilize Table J2 below to complete a list of completed projects. This list of completed projects should be supplemented with the following evidence in sub item ( e) below.
- e) The Tenderer shall substantiate its experience by submitting the following:
  - i. A reference letter, appointment letter and completion certificate in the letterhead of the client shall include: The name of a client, tenderer's names, project amount, the scope of work / nature of works, the duration of the project (the start and end date), confirmation that the work was successfully completed, signature of client representative, contactable references (email and phone numbers). If the reference is in the tenderer's template, the stamp in the letter, contacts and signatures should be those of the previous client; **OR**
  - ii. Attach appointment letters (in client's letterhead, with reachable contact details) **AND** completion certificates detailing a brief description of the scope of works, project value, start & completion dates of the projects (all signed by client representatives). If the completion certificate contains all the details i.e. client names, project description (including size in Ml/day), project duration ( or start and end date), project amount and signed by all parties, then there is no need of an appointment letter.
  - iii. Should the scope of work not be detailed in the appointment letter or the completion certificate, the tenderer must submit the approved scope of work for that particular project being used to evaluate the tenderers experience.
- f) In the case of a Joint Venture, qualifying projects undertaken by any member of the Joint Venture may be submitted.
- g) Only completed projects/contracts will be considered for evaluation and allocation of points.
- h) Failure to submit the required project information may negatively affect the Tenderer's score.
- i) **Points / scoring broken down as follows:**
  - No projects listed and/or project is incomplete or information not as per requirements = 0 points
  - One (1) project with wastewater or water treatment scope and minimum value of R 350 million = **1 point**

- **Reporting:** Timely submission of monthly O&M reports, compliance reports, and safety records to the Polokwane Municipality.
- **Safety & Environment:** Adherence to the Occupational Health & Safety Act of 1993 and all environmental management requirements.

#### 4. PAYMENT AND FINANCIAL PROVISIONS

The contract shall specify a clear payment mechanism, structured to incentivise efficient and effective performance.

- Payment follows a fixed monthly O&M fee based on Part C: Schedule 25 and a deductible component linked to underperformance penalties for under-achievement of KPIs. The O&M rate provided under Part C: Schedule 25 includes all components requirements necessary for the O&M functions for each months. This shall include but not limited to staffing, electricity, water, chemicals, maintenance and breakdown equipment, repairs, waste handling and disposal, cleaning, landscape management and skill transfer to Municipal employees responsible for taking over the PWWTW upon the end of the O&M Contract.
- Underperformance penalties for O&M shall be R 5,000.00 per day per KPI underachieved (Environmental Impact Management related KPIs) and R 5,000.00 per each incident of non-compliance on Occupational Health and Safety regulations.
- All invoices shall be submitted monthly and processed according to the Municipality's standard payment cycle.
- Price adjustments for inflation will be managed via an agreed-upon index (e.g., Contract Price Adjustment coefficients and CPI or a specific industry index) prescribe for the rest of the CME&I Contract.
- The O&M Certificates shall continue and be integrated with the entire CME&I payment certificates, which should be submitted monthly.

#### 5. ASSET MANAGEMENT AND HANDOVER

- **Asset Condition:** The Contractor is responsible for maintaining the assets in a good working order, reasonable wear and tear excepted. A condition assessment will be conducted at the start and end of the O&M term and any damages or non-functional equipment shall be rectified prior to the final handover to the Municipality and the Project Engineer shall certify the suitable and operational condition of the PWWTW before handing over.
- **Manuals & Training:** The Contractor shall provide comprehensive O&M manuals and training to the Employer's (Municipality's) personnel during the contract period to facilitate a smooth eventual handover.

#### 6. GOVERNING LAW AND DISPUTE RESOLUTION

The contract shall be governed by the laws of the Republic of South Africa and FIDIC Yellow Book (2017 Edition) for specific clauses for dispute resolution, often involving mediation, adjudication or arbitration. The dispute resolution mechanism in the FIDIC Yellow Book (2017 Edition) is a multi-tiered process primarily detailed in **Clause 21: Disputes and Arbitration** with initial stages in **Clause 20: Employer's and Contractor's Claims** and **Sub-Clause 3.7: Agreement or Determination**). The process shall follows a progressive path as prescribe below:

##### a) Engineer's Determination (Sub-Clause 3.7)

The initial step for any claim (whether by the Employer or Contractor) is for the Engineer to manage it.

- The Engineer must first consult with both Parties in an endeavours to reach a binding agreement within 42 days.
- If no agreement is reached, the Engineer makes a **fair determination** within a further 42 days, considering all relevant circumstances.
- This determination is binding on both Parties unless a **Notice of Dissatisfaction (NOD)** is issued within 28 days. If no NOD is given, the determination becomes final and binding.

**b) Dispute Avoidance/Adjudication Board (DAAB) (Clause 21)**

If a Party is dissatisfied with the Engineer's determination and issues a NOD, the matter becomes a "Dispute" and must be referred to a standing **Dispute Avoidance/Adjudication Board (DAAB)** for a decision.

- **Dispute Avoidance (Sub-Clause 21.3):** The Parties may jointly request the DAAB to provide informal assistance or an opinion to help avoid a dispute. This assistance is not binding and the DAAB is not bound by the views expressed during this stage.
- **Adjudication (Sub-Clause 21.4):** A formal dispute is referred to the DAAB, which must give its reasoned decision within 84 days. The DAAB's decision is binding immediately, and the Parties must comply promptly ("pay now, argue later"), even if a Party gives a subsequent NOD.
- A Party can issue a NOD regarding the DAAB's decision within 28 days. Failure to issue a NOD makes the DAAB decision final and binding.

**c) Amicable Settlement (Sub-Clause 21.5)**

If a NOD has been issued after the DAAB decision, the Parties must attempt to settle the dispute amicably.

- This cooling-off period lasts for 28 days (reduced from 56 days in the 1999 edition).
- Arbitration cannot commence until this period has passed, unless both parties agree otherwise.

**d) Arbitration (Sub-Clause 21.6)**

If the dispute is not resolved through amicable settlement, it is finally settled by international arbitration.

- The arbitration is typically conducted under the **Rules of Arbitration of the International Chamber of Commerce (ICC Rules)**, unless otherwise specified in the Contract.
- The arbitral tribunal has the power to open up, review, and revise any decision or determination made by the Engineer or the DAAB.
- **Direct routes to arbitration** exist in specific cases, such as a Party failing to comply with a final and binding Engineer's determination or a DAAB decision, or if no DAAB is in place.

## **7. INSURANCE AND RISK**

The Contractor shall maintain all necessary insurances, including public liability and asset insurance, for the duration of the O&M period. The risk register developed during the design and build phases shall be continually updated and managed.

## **8. SANS SPECIFICATIONS IN THE O&M CONTRACT**

The Operations and Maintenance (O&M) Contract shall explicitly reference the latest editions of relevant South African National Standards (SANS), as developed by the South African Bureau of Standards (SABS). These standards ensure quality, safety, and regulatory compliance throughout the Operation And Maintenance Phases.

The Contractor is responsible for ensuring all O&M activities adhere to the following SANS specifications, in addition to the core legislative requirements of the **National Water Act** and the **Occupational Health & Safety Act of 1993**:

**a) General and Management Standards**

- **SANS ISO 9001:** Quality management systems: The Contractor must implement and maintain a quality management system for the O&M of the facility.
- **SANS 1921-1:** Construction and management requirements for works contracts Part 1: General engineering and construction works: Applicable to ongoing civil maintenance and minor works within the O&M period.

**b) Civil, Mechanical, Electrical, and Instrumentation (CME&I)**

- **SANS 1200 series:** Standardized specifications for civil engineering construction: These form the baseline for all civil works, including pipe trenches (SANS 1200 DB), bedding (SANS 1200 LB), and pipelines. The O&M phase requires adherence to these standards during repairs and infrastructure replacement.
- **SANS 10400:** The application of the National Building Regulations: Ensuring all building structures within the PRWWTW site comply with safety and structural integrity standards.
- **SANS 10142:** The wiring of premises: Applicable to all electrical installations, maintenance, and fault finding within the plant.
- **SANS 10254:** The installation, maintenance, replacement and repair of fixed electric storage water heating systems: Ensuring the safe operation of any associated water heating systems.
- **SANS 10162:** The structural use of steel: Relevant for the inspection and maintenance of all structural steelwork and mechanical equipment supports.

**c) Operational and Performance Standards**

- **DWS General Authorisation (GA) Limits/Effluent Quality:** While SANS 241 is the standard for drinking water, the primary O&M performance standard for *discharge* is compliance with the specific Wastewater Limit Values (WLVs) detailed in the DWS's General Authorisations under the National Water Act. The contract must list these exact limits as mandatory performance metrics.
- **SANS 10252 Parts 1 & 2:** Water supply and drainage for buildings: Governing internal water and drainage installations related to the administration buildings, laboratories, and operational facilities.

**9. PERFORMANCE STANDARDS AND KEY PERFORMANCE INDICATORS (KPIs)**

The Contractor's performance shall be rigorously measured against the stipulated SANS standards and regulatory limits:

- a) Effluent Quality Compliance:** The Contractor must ensure that all final treated effluent discharged from the 20.00 Ml/day PRWWTW consistently meets or exceeds the specific limits set out in the Facility's Water Use License and the DWS General Authorisations. This includes continuous monitoring and monthly reporting on:
- pH (between 6 and 9 units)
  - Chemical Oxygen Demand (COD) (not exceeding 75.00 mg/l, or specific licensed limit)
  - Suspended Solids (SS) (not exceeding 25.00 mg/l, or specific licensed limit)
  - Faecal Coliforms (e.g., < 1000 cfu/100ml for general release, specific limits apply for reuse)
  - Nutrient limits (Ammonia, Nitrates, Phosphates) as specified by the DWS in the license.
- b) Asset Management and Condition:** At handover, and annually thereafter, the Contractor shall provide an asset condition report confirming that all CME&I assets are maintained in accordance with their original design specifications and relevant SANS 1200 and SANS 10142 maintenance requirements, ensuring a minimum of 98.00 % plant availability.
- c) Laboratory Quality Control:** All water quality testing and sampling procedures must align with established SANS methods for the analysis of water and wastewater, ensuring data integrity for compliance reporting.

**10. MEMORANDUM OF AGREEMENT (MOA)**

A formal **Memorandum of Agreement (MOA)** shall legally binds Polokwane Municipality and the appointed Contractor to the terms and conditions outlined in the bid specification and contract documents. The O&M Contract shall comply with the MFMA Section 33 and the **Municipal Systems Act**. The MOA below serves as the execution document that formalizes the relationship and references the full contract documents (e.g., the detailed Scope of Work, Pricing Data, and the main Conditions of Contract which is FIDIC Yellow Book 2017 Edition).

## MEMORANDUM OF AGREEMENT (MOA)

FOR THE OPERATIONS AND MAINTENANCE (O&M) OF THE 20.00 M<sup>3</sup>/DAY  
WASTEWATER TREATMENT WORKS (WWTW) IN POLOKWANE MUNICIPALITY  
ENTERED INTO BY AND BETWEEN:

### POLOKWANE LOCAL MUNICIPALITY

A municipality established in terms of the Local Government: Municipal Structures Act, 117 of 1998, with its address at [Insert Municipality Address], (hereinafter referred to as the "Employer")

AND

.....  
[CONTRACTOR NAME]

A company duly incorporated in accordance with the laws of the Republic of South Africa, with registration number [Insert Registration Number], and its registered address at [Insert Contractor Address], (hereinafter referred to as the "Contractor")

**(The Employer and the Contractor hereinafter collectively referred to as "the Parties")**

#### 1. INTERPRETATION

- 1.1 The headings in this Agreement are for convenience only and shall not affect its interpretation.
- 1.2 In this Agreement, unless the context otherwise requires, the singular includes the plural and vice versa.

#### 2. PURPOSE AND DURATION

- 2.1 The purpose of this Agreement is to legally bind the Parties to the terms and conditions for the Operation and Maintenance of the new 20.00 M<sup>3</sup>/day PRWWTW, following the successful completion of the design, civil, mechanical, electrical, and instrumentation works.
- 2.2 This Agreement shall commence on the **Effective Date** defined as the date of signature by the Client (Polokwane Municipality) on the Completion Certificate upon completion of the **Build Phase** and shall remain in force for a period of **twelve months [1 year]** with the possibility of extension.

#### 3. ENTIRE AGREEMENT AND PRECEDENCE

- 3.1 This Memorandum of Agreement, together with the following incorporated documents, constitutes the entire agreement between the Parties:
  - The signed Form of Offer and Acceptance.
  - The Conditions of Contract (FIDIC Yellow Book 2017 Edition);
  - The Scope of Work (Parts C3 of the Bid Specification Document);
  - The Pricing Data/Schedules (Part C2 of the Bid Specification Document);
  - All Annexures (Part C5 of the Bid Specification Document), including the detailed SANS specifications and DWS compliance limits; and
  - All relevant Polokwane Municipality Supply Chain Management (SCM) Policies.
- 3.2 In the event of any conflict between the provisions of this MOA and any Annexure or other incorporated document, the provisions of this MOA shall take precedence, followed by the main Conditions of Contract.

#### 4. OBLIGATIONS OF THE CONTRACTOR

- 4.1 The Contractor hereby agrees and undertakes to perform all Services for the O&M of the PRWWTW as set out in the Scope of Work (Part C3: Specifications and Part C5.7 Operation and Maintenance Data).
- 4.2 The Contractor will ensure that all operations and maintenance activities meet the Performance Standards and Key Performance Indicators (KPIs) specified in the bid document, including adherence to all relevant **SANS standards** and the **DWS General Authorisation limits**.
- 4.3 The Contractor shall ensure that its employees, agents, representatives, and sub-contractors comply with this Contract and all applicable South African Laws in the execution of the Works, including the Occupational Health & Safety Act of 1993.

**5. OBLIGATIONS OF THE EMPLOYER (POLOKWANE MUNICIPALITY)**

- 5.1 The Employer undertakes to grant the Contractor access to the site and existing infrastructure necessary for the performance of the O&M services.
- 5.2 The Employer shall pay the Contractor the amount due in accordance with the Pricing Data and the conditions of the contract.

**6. CONFIDENTIALITY AND DATA PROTECTION**

- 6.1 The Contractor acknowledges that it may process information classified as confidential or personal information (as defined in the **Protection of Personal Information Act, 2013 (POPIA)**) on behalf of the Employer.
- 6.2 The Contractor undertakes to keep such information confidential and maintain appropriate security measures to prevent unauthorised access or disclosure.

**7. DISPUTE RESOLUTION**

- 7.1 The Parties agree to the dispute resolution mechanism detailed in the Conditions of Contract (FIDIC Yellow Book 2017 Edition which is briefly described under C5.7.1 O&M Contract Data: Governing Law and Dispute Resolution, starting with good faith negotiations and escalating to formal adjudication or arbitration if unresolved.

**8. GENERAL**

- 8.1 **No Variation:** No amendment or variation of this Agreement shall be valid or of any force unless it is recorded in writing and signed by authorised representatives of both Parties.
- 8.2 **Cession/Assignment:** Neither Party may cede, assign, transfer, or otherwise make over any of its rights or obligations contemplated in this Agreement without the prior written consent of the other Party.
- 8.3 **Authority to Sign:** The persons signing this MOA warrant that they are duly authorised to enter into this contract on behalf of their respective entities.

THUS DONE AND SIGNED AT ..... ON THIS ..... DAY OF

..... 20 .....

**FOR THE EMPLOYER: POLOKWANE LOCAL MUNICIPALITY**

Signature: .....

Print Name: .....

Capacity: The City Manager (or duly authorised delegate)